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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM **Shri Vijai Pratap Singh**
Hon'ble Member (J)

Shri S. Vijayaraghavan
Hon'ble Member (T)

Company Petition No.50/2016

In the matter of :
The Companies Act, 1956 and the Companies Act, 2013;

And

In the matter of:

Sections 235,237,397,398,399,402,403,404 and 406 of the Companies Act, 1956 and under section 58 and 59 of the Companies Act, 2013;

And

In the matter of:

M/s. Digha Seafood Exports Private Limited, a company incorporated under the Companies Act, 1956, having its registered office at 20/1, Camac Street, Kolkata – 700 016;

And

In the matter of:

Ram Milan Singh, residing at 1050/1, Santoshpur, Udita Complex, Chaturthi Building, Flat No.706, Kolkata – 700 075;

.....**Petitioner**

And

In the matter of:

1) M/s. Digha Seafood Exports Private Limited, a company incorporated under the Companies Act, 1956, having its registered office at 20/1, Camac Street, Kolkata – 700 016 ;

2) Prabhat Kumar residing at Satish Apartment, 175/1, Pranabananda Road, P.O. Garia, Kolkata – 700 084;

3) Pranab Kumar Kar residing at Village & Post Office- Saripur, Police Station- Digha, District- Midnapore, Pin Code- 721428;

4) B.S.Panda, Chartered Accountant, carrying on profession in the name of M/s. B.S.Panda & Associates as proprietor thereof having his office at 2, J.L. Nehru Road, 2nd floor, Room No.8, Kolkata – 700 013;

5) Canara Bank, a Banking Company constituted under the Banking Companies (Acquisition and Transfer of Undertaking Act), 1970 having its principal Head Office at Bangalore and also carrying on business from its branch office at 2/1, Russel Street, Overseas Branch, Kolkata – 700 071;

.... **Respondents**

Counsels on Record:

1. Mr. Ratnanko Banerjee, Sr.Advocate]
2. Ms. Swapna Choubey,] For the Petitioners
3. Mr. Vikash Singh, Advocate]
4. Ms. Archita Kundu, Advocate]

1. Mr. Jishnu Shah, Sr. Advocate]
2. Mr. Kuldip Mallick, Advocate] For the Respondents
3. Mr. Mohan Ram Goenka, Pr.C.S.]
4. Mr. Krishnendu, Advocate]

Date of Pronouncing the order : 14 - 3 - 2017

ORDER

Per Shri Vijay Pratap Singh, Member (J)

The present Company Petition has been filed by the Petitioner on the grounds of oppression and mismanagement. Brief facts as per the Petitioner are that his rights as a shareholder in the company M/s Digha Seafood Export Private Limited have been adversely affected by the other shareholders.

The company carries on the business of processing and export of seafood among other things. The Petitioner is the owner of Milsha Agro Exports Private Limited, Milsha Sea Products and Sarveshwary Exports Private Limited, and has been in like business for more than 35 years. On 6th September, 1999 the partnership firm "Digha Seafood Exports" was formed. Petitioner and Respondent No. 3 became partners in the firm. Later on, Respondent No. 2 was inducted as the

working partner in the firm, with remuneration and salary, at the request of the Petitioner.

The Petitioner acquired bank finances through personal guarantees and furnishing collateral securities for the firm. At the request of the Respondent No. 2 and 3 the said firm was converted to a private limited company on 31st March, 2008, keeping the partnership nature of the company for better prospect and with the same profit and loss sharing ratio in the firm which was in the ratio of 40:40:20 of the Petitioner, Respondent No. 3 and Respondent No. 2 respectively.

On 9th July, 2008, the company was incorporated. The first allotment of shares of the company was made on 31st March, 2011. However, when the allotment of the shares was made, the Petitioner got 36.31% of the issued capital as opposed to the earlier arrangement. Based on the personal guarantees extended by the Petitioner and Respondent No. 2 and 3, the respondents took loans from the Bank in the name of the company and furnished the fixed deposits created out of business, as collateral. Eventually in 2014 the Petitioner's shareholding was found to have been reduced to 20% of the issued share capital of the company which was informed by the Office of the Export Inspection Agency and to which the Respondents replied that the reduced shareholding is based on the Petitioner's capital contribution in the company. To that effect the Petitioner served a letter of appointment for an independent auditor to audit the accounts on 17th March, 2015 and as well as on 25th March, 2015, which was never carried out. The Petitioner thereafter received one of the first notices on 2nd January, 2016 for a board meeting on 12th January, 2016, to which the Petitioner asked for an inspection of Books of Account of the said company by a letter dated 11th January, 2016.

On 18th March 2016, the Respondents sent their reply to the aforementioned letter of the Petitioner by alleging diversion of funds and denial of his personal guarantee with the bank. It was then discovered that the authorized share capital of the company had been increased from Rs.1 Crore to Rs. 2 Crores in an extraordinary general meeting held on 16th January, 2012. On 1st February 2012 in a purported board meeting, the Respondents had alongwith Respondent No. 4, further issued and allotted 7,07,820 equity shares to themselves.

Petitioner submitted that he had not been served any notice of any meeting since the year 2011. Additionally, the Petitioner was never given any director's remuneration as was given to Respondent No. 2 and Respondent No. 3, despite being a partner in the business of the Respondent company. The petitioner's main contentions summed up are that of: illegal increase in the authorised share capital of the company leading to a substantial decrease in the shareholding of the Petitioner, eventual ousting of the Petitioner from the management of the company by virtue of reduced shareholding and finally the lack of any notice served for meeting convened by the Board of Directors of the Company.

The Petitioner contended that the valid authorized share capital of the company is Rs. 1 Crore which is divided into 10,00,000 equity shares of Rs. 10 each. However, the Respondents have illegally increased the authorized share capital of the company from Rs. 1 Crore to Rs. 2 Crores in an Extraordinary General Meeting of the company held on 16th January, 2012. The Petitioner contends that the validly issued, subscribed and paid up share capital of the company was Rs. 92,93,000 which was divided into 9,29,300 equity shares of Rs. 10 each, which was allegedly illegally increased to Rs. 1,63,71,200 divided into 16,37,120 equity shares of Rs. 10 each, wherein 7,07,820 equity shares of Rs. 10 each were allotted to Respondent Nos. 2 and 3 at a Board meeting that was held on 1st February, 2012. The Petitioners contended that the Memorandum and the Articles of Association which were actually registered for the Company were not the ones shown to the Petitioner at the time of incorporation by the Respondents. The Petitioner further contended that at the time of incorporation of the company by virtue of the arrangement between the partners of the business firm, the Petitioner held fully paid up 3,37,400 equity shares of Rs. 10 each which was equivalent to 36.31% of the issued capital, Respondent No. 2 held 2,41,400 shares equivalent to 25.98% shares and Respondent No. 3 held 3,50,500 fully paid up equity shares equivalent to 37.72%.

The Petitioner contended that the Respondent No. 4 who is a Chartered Accountant has been acting in collusion with the Respondents for furthering the causes of the illegal acts of the Respondents. The Petitioner's further contended

that no board meeting was held within his knowledge whereby the authorised capital had been increased.

The petitioner had started his business of Digha Seafood Exports with Respondent No. 3 who was an erstwhile supplier of raw materials to a business wherein Petitioner was a partner, and Respondent No. 2 who was a family friend's son and was working as a medical representative before he joined the business of the Petitioner. The Petitioner again contended that in addition to the personal guarantees and his immovable property as a collateral security to Bank, he had provided other resources from his partnership firm M/s. Veejay Impex and his flat as a rent free residential accommodation for the Respondent No. 2 which was used until 2013. The Petitioner submitted that he looked after sales of the business firm while the procurement of raw materials and processing activities, accounts department and other paperwork of the said firm were carried out by the Respondent Nos. 2 and 3. The Petitioner has submitted that the Respondent Nos. 2 and 3 with an intention to defraud the Petitioner have annexed an undated supplementary deed of rejoinder to the original partnership deed dated 6th September, 1999 at the time of filing the company's incorporation documents where they have shown the profit and loss sharing ratio of the partners as 70:20:10 of Respondent No.3, Respondent No. 2 and the Petitioner respectively, with the forged signature of the Petitioner.

The Petitioner further helped Respondent Nos. 2 and 3 in providing the infrastructure and resources from his established seafood business concerns. An agreement dated 1st June, 2010 was made with "Digha Seafood Exports" and his firm "Milsha Sea Product" to provide plant and machineries to Digha Sea Food for processing so that it can get the Merchant Exporter License. Despite all of the aforementioned facts, the Petitioner contended that the Respondents acted in utter breach of trust whereby they stopped giving information of the Company's affairs to the petitioner and started ignoring his advices. The Petitioner therefore in the light of the events refused to approve any document or provide his personal guarantee for any modification/enhancement of bank credit limit until an independent audit was done to his satisfaction.

The Petitioner further submitted that on 1st February, 2012 in a purported Board Meeting the Respondents in collusion with Respondent No. 4 further issued and allotted 7,07,820 equity shares to themselves whereby the Respondent No. 2 got 5,07,820 shares and Respondent No. 3 got 2,00,000 shares. The Petitioner contends that no consideration has been paid or is received by the company in respect of the shares. The Petitioner also contended that he was not offered shares in accordance with his shareholding as on 31st March, 2011, when a further issue of share capital and a subsequent allotment was done. This was allegedly in violation of Section 81(1) (a) of the Companies Act of 1956 whereby existing shareholders have the right to be offered shares first when a further issue of capital is made by a company.

The Petitioner contended that he was fraudulently made to sign the balance sheet for the year 2013 and was never given any notice of any meetings held by the Board or general meetings since the year 2011. The Petitioner submitted that if the financial accounts of the company are examined, it would be found that Respondent No. 3 being a fish supplier supplied fish to the company at a higher rate than the market rate and made huge profit prejudicing the interest of the company. The Petitioner further submitted that in the last week of April 2016 the petitioner found a letter by the Respondent No. 5 dated 8th February, 2016 demanding the Petitioner to submit his personal guarantee in respect of the transactions between company and the Bank in question. The Petitioner apprehends that the Respondents have applied for an increase in cash credit limit of the company which is beyond the knowledge of the Petitioner. The Petitioner further contends that they are aware of the partial utilization of the existing credit limit that has been sanctioned at present and seeks to restrain the respondents from drawing any further credit limit from the Bank to prevent misutilization of funds.

The Petitioner also prayed that the Respondents be prevented from dealing in assets of the company including the share capital as he apprehends the company would be reduced to state of insolvency and would leave the Petitioner as an insignificant minority. The Petitioner has prayed for the restoration of the shareholding as was existing on 31st March, 2011 and to subsequently set aside all shares and allotments subsequent to 31st March, 2011. The Petitioner has further

prayed for an inspection into the books of account of the company to be carried out and prayed for taking physical possession of the records of the company apprehending misuse. The Petitioner submits that there is an absolute loss of trust between the Petitioner and the Respondents and seeks for an independent audit to be carried out of the books of the company. Petitioner prays for an order seeking all cash transactions of the company be done with the mutual consent of both the parties and sale of assets if any be also carried out with the consent of both the parties and also freezing the bank accounts of the company.

In reply, the Respondents contended that the Petitioner was aware of the increase in authorized share capital and the subsequent allotments. Therefore, since the Petitioner was aware and gave consent to the same he is estopped from challenging the same. The Respondent submitted that the Petitioner had signed the extracts of the Extra ordinary general meeting resolutions as well as Board resolutions. The Petitioner, according to the Respondents, has also allegedly signed the Balance sheets of the company after examining the accounts of the company. The said balance sheets also reflect the purported increase in the share capital and its subsequent allotments. To the same the Petitioners never allegedly protested.

The Respondents submitted that since there was no system of giving notice by registered post or by hand and therefore the Petitioner was informed as and when the meetings took place, to which the Petitioner responded positively and attended the meetings but at a later point of time when Petitioner started to threaten the Respondents, the Respondents started the system of giving notice by registered post. The Respondents again submitted that the increase of the authorised share capital and allotment of shares were done in compliance of the sanction letter of the Respondent Bank. The purported increase was done to facilitate the loan transaction from the Respondent Bank. The Respondents contend that the Petitioner was in a competing business as that of the Respondent company and was more interested in developing his business and his son's enterprises instead of working for the welfare of the respondent company. The Respondents contended that now since the Respondent company is doing well, the petitioner seeks to further his ulterior motives of reaping benefits of the business of

the Respondent company and frustrate the business of the respondent company so that it benefits his and his son's company which does similar business as that of the Respondent company.

The Respondents contended that on numerous occasions on being asked by the Respondent Bank to furnish the personal guarantee of the petitioner before the 5th March, 2016 failing which the Respondent Bank warned of withdrawing of the enhancement facilities permitted to the Respondent company, the Petitioner was requested many times to furnish his personal guarantee which he refused and did not act to safeguard the interests of the Respondent company. This was apparently the reason for removal of the petitioner as a director of the company for which an Extraordinary General Meeting was called for on the 14th of May, 2016 wherein the Petitioner failed to show up and was consequently removed as a director keeping in view the larger interests of the Respondent Company. The Respondents submitted that the Petitioners have delayed in establishing processing unit for the partnership firm and was helping in establishing his son's business. The Petitioner was allegedly in violation of the partnership agreement by opening another processing unit, according to Respondents, and hence were oppressive towards the Respondents. The Respondents submitted that the Petitioner was given the 40% shareholding in the partnership firm as he had given his property as a collateral security on behalf of the partnership as the properties of the other two respondents were either not in Kolkata or absolutely lacking. The Respondents even contended that the Petitioners had taken multiple loans from the Respondent Company out of which he has not returned Rs. 2 Lakhs still and paid the remaining loans without any interest to the Respondent Company.

The Respondents contended that the Petitioner had the knowledge of the Memorandum of Association and the Articles of Association and had signed the same. The Petitioner apparently has also signed the supplemental deed to the original partnership deed whereby the 70:20:10 partnership ratio was mentioned and now was denying the same. The Respondents submitted that in August-September 2015, the Respondents had applied for enhancement and renewal of loan from Canara Bank and when asked for personal guarantees from the directors of the Respondent Company, the Petitioner had refused to give his personal

guarantee thereby not cooperating with the management of the Respondent Company for the welfare of the company. The Respondent by a letter dated 2nd January 2016 called for a board meeting to be held on 12th January, 2016 for discussion upon sanction letter received from Canara Bank for executing guarantee, for increase of authorized share capital from 2 Crores to 3 Crores, and for collection of share application money from the shareholders. The Petitioner was allegedly present for the meeting and agreed to execute his personal guarantee. However, at a later point of time in March 2016, the Petitioner informed that he would no longer sign the personal guarantee. As a consequence, the Petitioner was removed from the Board of Directors by a letter dated 18th March, 2016. Finally, the Respondents submitted that the EOGM on 14th May, 2016 had the following agendas: Increase in the authorized share capital from Rs. 2 Crores to Rs. 3 Crores, unsecured loan of the Respondent No. 3 was converted to 1,10,575 equity shares and Petitioner removed as a director.

On the basis of the pleadings of the parties following question arises for the decision of the case:

(1) Whether the first and the further increases in the authorised share capital and its subsequent allotments were done according to due process of law? If so, then was the petitioner entitled for preferential allotment in proportion to the shareholding?

(2) Whether the removal of the Petitioner from the Board of Directors was justified for the reason of Petitioner having a conflicting interest vis-à-vis the Respondent Company?

(3) Whether the absence of notices which were to be served to the Petitioner for attending meetings amounts to oppression?

Section 16 and Section 17 read along with Schedule I Regulation 47 of the Companies Act, 1956 talks about the alteration in memorandum of association of a company, especially alteration in share capital of a company and the procedure to be followed for increase in share capital of the company. Section 16 states that special resolution needs to be taken if a company wants to carry out alteration in the Memorandum of Association. In the present case, the Respondent Company

was formed to adopt the scheme of shareholding as had existed in the partnership firm, which was 40:40:20. However, when shares were allotted, the Petitioner was given 36.41% shareholding. In the light of this shareholding, it would not have been possible for the Respondents to alter the memorandum in absence of the consent of the Petitioner. Therefore, the said alteration of the Memorandum of Association has been done in violation of the procedure mentioned under Companies Act, 1956. Additionally, the approval of Central Government has also not been sought for the same. Considering the initial partnership shareholding ratio 40:40:20 had been amended to 70:20:10 by a supplementary deed that was attached to the Memorandum of Association which was apparently signed by the Petitioners, it is still contested that if the supplementary deed in question was also approved by him.

There is no mention of the approval of an amended Memorandum of Association that reflects the increase in authorized share capital. The Respondents have tacitly tried to prove it by the signature of the Petitioner on the minutes of the meeting wherein the increase was done and signature on the balance sheet of the company which reflected the increase. The increase of authorized share capital on 16th January, 2012 and the other purported to take place in the EOGM of 14th May, 2016 have not been done according to the procedure established by the Companies Act, 1956. Allotment of shares by directors in a manner by which an existing majority of shareholders is reduced to a minority:

> In the case of ***Gluco Series (P.) Ltd.[1987] 61 Comp. Cas 227 (Cal)***, it was observed *that "it is not open to the directors of a company to issue and allot shares in a manner by which an existing majority of shareholders are reduced to a minority. The court will scrutinise with particular circumspection any such issue or allotment and unless it is satisfied beyond reasonable doubt that such issue was unavoidable and was, resorted to as an extreme and emergency measure with an object of fundamental importance, like-saving the existence of the company, will not allow the existing balance of power in the company to be disturbed. In the facts and circumstances, I hold that at the material time the petitioners were in the majority taking into account the effective shares held by the parties. I also hold further that as a result of the issue and allotment of the said 900 disputed shares, the existing majority of the share holders of the company had been disturbed. Accordingly, it must be held that the petitioners have made out a case of*

mismanagement within the meaning of Sections 398 of the Companies Act, 1956, and also have made out a case of oppression against the respondents Nos. 2 and 3 within the mischief of Sections 397 thereof. The Court must be satisfied beyond reasonable doubt that such issue was unavoidable and was resorted to as an emergency measure with the object of saving the existence of the company. If the issue of shares disturbs the existing majority of the shareholders and if it is not bonafide, it will amount to an oppression and mismanagement and if it is not bona fide and it will amount to an oppression and mismanagement and the court will grant relief by interfering if it can be shown that the issue of further shares was made only for the benefit of the directors of the company".

In the present case, the Respondent contend that the Petitioner had signed the balance sheets and the resolution that reflected the change in authorized share capital and therefore had tacitly consented to the increase. Such a contention in the light of the following case is not maintainable. In Smt. Abha Puri vs. Amethi Hume Pipes (P) Ltd [2009] 95 SCL 263 (CLB) where it was discussed that among other things, *rendering a majority holding by manipulated issue of further shares, and removal of petitioner as director was held to be acts of oppression. Mere signing of balance sheet by or doubtful signature of petitioner reflecting above changes, does not appear to be ground to dismiss the petition in the context of circumstances surrounding the case.*

The CLB in the case of A. Arumugam vs Pioneer Bakeries (P.) Ltd. [2007]80 SCL 190 has held that among *other things the transfer of shares disturbing parity of shareholding between contesting parties, respondent garnering controlling interest through transfer of shares by disturbing parity of shareholding between parties; and appointment of respondent's group members as directors with a view to control the board, constitute oppression.*

In the case of ***Badrinath Galhotra vs. Aanam (P) Ltd [2007]76 SCL 241 (CLB)***, *in a situation of quasi partnership, where members held equal shares and took part in the management, breach of a decision collectively taken is an act of oppression. The courts in the aforesaid cases have held that it is the facts and circumstances of a particular case that reveals that a company is in the nature of partnership.* In the facts and circumstances of this case, on facts and conduct of parties, it is noted *that until the appellants on 21.5.2011, issued "anytime*

convertible shares', to their group to usurp control, there has been a tacit understanding of maintaining parity in equity even when more shares were issued based on the amounts brought into the projects. Even when the Authorized Capital of the company was increased in the EGM held on 25.3.2011, there was no change in the Equity Share Capital of the company and only the Redeemable Preference Share Capital was contemplated and accordingly carved out for increase in the Authorized Capital of the company by adding Preference Capital only. The appellants in violation of this arrangement, issued "anytime convertible shares' with a malafide intention of gaining majority and illegally usurping the company. There has been equal representation on the Board. The appellants and the respondents understood themselves and acted as partners in the venture being run as a private limited company to manage and control two projects separately without interference of the one in another's. To be a company in the nature of quasi-partnership it is not necessary that it must have been converted into a private limited company from an existing partnership. It is also not necessary that there must be a written agreement to that effect. For all practical purposes, it was in the nature of quasi-partnership.

Moreover, with the first allotment of shares done after the increase in the share capital Section 81 of the Companies Act of 1956 contemplates that when a company proposes to increase the subscribed capital of the company by allotment of shares then such further issue of shares shall be offered to the persons who, at the date of the offer are holders of the equity shares of the company in proportion as nearly as circumstances admit to the capital paid-up on those shares at that date. Moreover if it was required to infuse more money in the Respondent Company, an increase in share capital of the company only to allot maximum shares to the Respondents could have been avoided and that the Respondents could have lent the same amount of money to the Respondent Company itself as a loan.

In the following cases, the transfer of shares held by a company to some shareholders otherwise than by making an offer to all was held to be an act of oppression. In the case of Col. Kuldip Singh Dhillon vs. Paragaon Utility Financiers (P.) Ltd. [1986] 60 Comp. Cas. 1075 (Punj. and Har.) *at a board meeting, the shares held by the company were transferred to some of the directors although it*

had earlier been resolved that they would be offered to all the shareholders. It was held that before deciding to whom the shares should be sold, an offer of sale should have been made to all the shareholders, shares should have been transferred to one who made the highest offer.

In the case of Capricorn Oil Ltd. vs. Ratan Mohan Sarda [2012] 113 SCL 395 (Cal), *majority was turned into minority by management group by allotting shares to its own people without calling meeting or offering corresponding shares to promoter's group or other shareholders, was held as an act of oppression.* The CLB held that the issue of further shares by one group of shareholders by taking advantage of its managerial position to denude other group of shareholders of its majority control is grave act of oppression.

In the following case, the issue of further shares benefiting a section of the shareholders was held to be an act of oppression. In the case of Piercy vs. Mills & Co. [1920] 1 Ch. 77; Mrs. Rashmi Seth vs. Chemon (India) (P.) Ltd [1992] 9 CLA 83 (CLB), *it was held that the issue of further shares may form the subject-matter of a petition under Section 397/398, if it can be proved that the idea of issuing further shares was to benefit one group to the detriment of the other.*

However, in the case of Hanuman Prasad Bagri vs Bagrees Cereals (P.) Ltd [2007]73 SCL 57 (Cal.), it was discussed that *it is a general principle to be observed by the directors that further issue of shares must be made for the benefit of the company and it does not matter if in the process the directors themselves also benefit.* In the case of R. N. Jalan vs. Deccan Enterprises (P.) Ltd. [1992] 75 Comp Cas 417 (AP) and Needle Industries case, it was held that *what was considered objectionable was the use of their fiduciary powers mainly for an extraneous purpose like maintenance or acquisition of control over the affairs of the company.*

In the cases of Mrs. Sentha Marai Munusamy vs. Micro Particle Engineers (P.) Ltd [2000] 28 SCL 108, and Martin Castelino vs. Alpha Omega Ship Management (P.) Ltd. [2001] 33 SCL 210 (CLB), *it was observed that it is not open to directors to issue and allot shares in a manner by which an existing majority of shareholders is reduced to a minority.*

In the case of Mrs. Uma Prathak vs Eurasian Choice International (P.) Ltd [2004] 54 SCL 60 (CLB), *it was observed by the CLB that when shares are issued with the sole object of creating new majority or to convert a majority into minority, the action of the board of directors is not only a severe breach of fiduciary duty but also a grave act of oppression.*

In the cases of Dale and Carrington Investments (P.) Ltd. vs. P.K.Prathapan [2001] 32 SCL 323 (CLB); Deepak C. Shriram vs. General Sales Ltd. [2001] 34 SCL 365; V. Ramesh Kumar vs Shanthini Jay Krishnan [2007] 79 SCL 520 (CLB), *it was held that the lack of equity in allotment of further shares or not making even an offer to a shareholder is an act of oppression.*

Since the company in question is a private one, the remuneration of directors is governed by its Articles of Association and the contract that the Company shall have with the Director. However, the Petitioner had never been offered any remuneration as long as he was the director of the Respondent Company whereas the other two directors of the company, Respondent Nos. 2 and 3 had received remuneration as directors. Even the procedure relating to removal of Directors that needs to be carried out under Section 284 of the Companies Act, 1956 has not been followed as it needs to be seen the nature of the directorship of the Petitioner, whether he was rotational or non-rotational, and who was no less than a promoter to the Respondent Company. Additionally, the option to be heard was not given to the Petitioner before his removal from the Board of Directors.

The Respondents submitted that they followed an informal arrangement of notice for meetings convened by the Board of the Respondent Company whereby the notice was given verbally before meeting were convened. However, after the Petitioner started threatening the Respondents of dire consequences, the Respondents started giving notices. Section 97 of the Companies Act, 1956 contemplates notice of increase of share capital or of members. Serving of notice to members for general meetings is mandatory under all circumstances.

Section 171 talks of a member's right to inspect the books of the Company which has been denied to the Petitioner herein. This was done for the reason that the Petitioner apparently had conflicting interest in the Respondent Company as a

Director since he had a competing business of Milsha Seafood Exports. However, despite being a competitor, the Respondents were in an agreement with the Petitioner for the use of their plant and machinery for certain processing and packaging work. Additionally the two contentions made by the Respondents against the Petitioners that now since the Respondent company is doing well, the petitioner seeks to further his ulterior motives of reaping benefits of the business of the Respondent company and frustrate the business of the respondent company so that it benefits his and his son's company which does similar business as that of the Respondent company, are contradictory to each other as the Petitioner being a shareholder in Digha Seafood Pvt Ltd himself, it would be detrimental to him if he were to frustrate the business of the respondent company. Even though the Petitioner apparently signed all the documents, it does not necessarily indicate that the procedure for the same was followed, either in the situations of increase in authorized share capital or attending of meetings by the Petitioner in absence of notices. In the light of the aforementioned issues and events, denial of inspection of books together with other acts of the Respondents constitutes oppression herein.

We hereby in the aforementioned case find a situation of oppression being meted out to the Petitioners and it finds that the rights of the Petitioner as a shareholder in the company have been adversely affected. In view of our foregoing conclusions and in exercise of the powers under Sections 397 and 398 read with Section 402, to make appropriate orders bringing to an end the matters complained of and to regulate the conduct of the future affairs of the Company, we direct the company to restore the shareholding of the Petitioners to the initial ratio as had been agreed to before the incorporation of the company in the original partnership deed. It is further directed that the company cancel the increase in the authorized share capital and the further allotments of share capital done, in pursuance of the EOGM held on 16th January, 2012, or at any other meeting held afterwards. The petitioner's allegations that their group has been converted from a majority to a minority in shareholding and respondent's representation in management has substantially been increased are found to be correct. In view of the continuous effects of such oppressive acts, to undo the effects and to regulate the affairs of the Respondent No. 1 company in future, the present petition

deserves to be allowed. A clear case of oppression has been made out. Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Tribunal under Section 402 to set right, remedy or put an end to such oppression is very wide. The respondents have been involved in continuous acts of oppression against the petitioner and the present petition deserved to be allowed in favour of the petitioner.

ORDER

The petition is allowed with costs.

We direct that the transfers effected as a consequence of the EOGM held on 16th January, 2012 in respect of shares of the Companies, impugned in the company petitions, being violative of the articles of association, are hereby set aside and the Companies shall accordingly, rectify the register of members within a period of thirty days. The members of the Company shall reconstitute the board of directors, undo the removal of the Petitioner from the Board of Directors and carry on the regular business in accordance with the articles of association of the Company and meet the statutory obligations. The Companies shall, hence forth give notice of the board meetings to every director by registered post with acknowledgment due.

Sd/-
(S. Vijayaraghavan)
Member (Technical)

Sd/-
(Vijai Pratap Singh)
Member(Judicial)

Dated, the 14th day of March, 2017