NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD

Company Petition No. 131 (ND) of 2013

Dated FRIDAY the 16th DAY OF DECEMBER, 2016

CORAM: Mr. V.S.R. AVADHANI & Mr. H.P. CHATURVEDI

(Judicial Members)

In the matter of R.R. Sheetgrah Private Limited

Between

1. Mr. Rajendra Singh
2. Mr. Bachoo Singh
3. Mr. Nandlal
4. Mr. Nandlal
5. Mr. Rajveer
6. Mr. Jagat Singh
7. Mr. Narendra Singh Verma
8. Mr. Rajesh kumar
9. Yadaram

... Petitioners

AND

1. M/s. R.R. Sheetgrah Private Limited
2. Mr.Girish Kumar Bansal
3. Mr. Naveen Agarwal
4. Mr.Shalabh Bansal
5. Sanjeev Kumar

....Respondents

Claim: Petition under sections 397, 398, 402, 403, 406, 235 and 237 of the Companies Act, 1956 for various reliefs

Shri Arun Saxena and *Ms. Nalini*, Advocates for the (Petitioners)

Shri Rakesh Kumar Advocate for the Respondents

The Company Petition came before us for hearing on various dates and finally on 26.102016 for final hearing and having heard the arguments and after considering the material on record and stood over till day for consideration, the bench delivers the following

ORDER

(Per Mr.V.S.R Avadhani , Member Judicial)

I. Besides the Company Petition, several Company Applications are also pending for a long time. With the consent of both sides we heard the Company Petition along with the applications and this Order will dispose of all the applications. Oral arguments are submitted and written arguments are also filed in the Company Petition. In the above circumstances, the Company Petition was taken for final disposal.

The Company Petition is filed under Sections 397, 398, 402, 403, and 237 of the Companies Act, 1956 for the following key reliefs:

1) Declare Form 5 dated 10.2.2013 increasing the Authorized Capital of the Company from 30 lacks to 35 lacks as null and void and to cancel the same;

2) Declare Form 2 dated 18.2.2013 for the allotment of shares to Respondent No. 3 as null and void and cancel the allotment of 2.00 lacks shares to the Respondent No.3;
3) Declare removal of the Petitioner No. 1 as director of the Company and to further declare Form No. 32 as null and void and to reinstate Petitioner No. 1 on the Board of Directores;
4) To direct investigation into the affairs of the Company
5) Direct to initiate criminal proceedings against the Respondent for the acts of fraud committed by them;(other reliefs are not extracted to maintain brevity)

(i) **Petitioners' case:** The Company was promoted by Petitioner No. 1 and Ranveer Singh. For the purpose of construction and operation of the cold storage and warehouse, the company had obtained credit facilities from Syndicate Bank to an extent of 1.80 Crores on hypothecation of the fixed assets of the Company besides collateral security provided by Ranveer Singh and his family members. The Bank, however declared the debt as 'non performing asset' (NPA) and that forced the Petitioners to approach the Respondents 2 and 3 for infusing funds on the understanding that they will be made directors and shares of some of the members will be transferred to them. Accordingly, a cluster of 49,400 shares belonging to Petitioners' group was transferred to Respondents 2 to 4 in February 2011. Up to this extent, facts are not in dispute.

It is contended by the Petitioners that an agreement was signed between the parties where under the control of the company was given to the Respondents. (Vide para 7.6) However, it is alleged, subsequently the Respondents in order to gain absolute control over the affairs of the Company have fabricated 'resignation letter' of the Petitioner No. 1 by means of 'forgery' and removed him from the Board of Directors on 18.2.2013. It is the case of the Petitioner No. 1 that notice of that meeting was not served on them and that no such meeting was in fact, convened. It is further alleged that the Respondents have also increased the authorised capital of the Company from 30 lacks to 35 lacks on 19.2.2013 without sending any notice for the purported EOGM and increased the paid up capital from 13, 25, 000 to Rs. 33, 25, 000 on 18.2.2013 without sending notice of Board Meeting to the Petitioners and the Petitioners came to know of these transactions from the web site of Ministry of Corporate Affairs with which the Respondents have uploaded the statutory Forms.

According to the Petitioners, this was done to water down the share holding of the Petitioners and reduce them to minority. To censure the validity of the allotment of 20 lack new shares to the Respondent No. 3, it is canvassed by the Petitioners, that there was no proper valuation of the share value and without collecting any premium the shares are allotted to the prejudice of the Company. On these grounds among others which will be referred at relevant discussion, the Petitioners have raised the issues of oppression and mismanagement on the following broader aspects:

1. by illegally removing the Petitioner no. 1 from the Board of Directors;

2. by illegally increasing the authorised capital of the Company;

3. By illegally allotting shares to Respondent No. 3; and

4. By non-complying with the provisions of the Companies Act, 1956 particularly by not sending the notice of meetings, nonetheless the Petitioners are majority share holders by 18.2.2013.

(ii) **Respondents' case:** They contend in the Reply that none of the acts alleged in the petition would amount to oppression and mismanagement prejudicial to the interest of the members of the company. They admit that the banking operations of the Company were taken over by the Respondents 2 and 3 in February 2011. While referring to the circumstances that drawn the parties to an understanding, it is stated that when the Company was in deep financial troubles the Petitioners approached the Respondents 2 to 4 with a proposal to take over the company by making substantial payment to the Bank and this was agreed by the Respondents. Yet, the petitioner No1 requested the Respondents to continue him as Director and also agreed to continue his personal guarantee to the bank for some time. The value of the Company's assets was arrived at 2.65 lacks (Annexure 1 to Reply paper book) It was further agreed that 100% shareholding of the Company will be transferred to Respondents 2 to 4 and their other family members. With that understanding, the Respondents agreed to take over the reins of the company with a liability of 257. 29 lacks due to the Bank and by investing a further amount of Rs. 7.71 lacks.

In pursuance of that understanding, the Respondents 2 and 3 became Directors of the Company on 1.2.2011 and 211.2.2011 respectively and copies of Form 32 were also filed with MCA (Annexure 4 Colly). To reflect the above understanding an agreement dated 15.9.2011 and affidavit dated 28.12.2011 came to be executed between the parties (Annexure 5)

It is the contention of the Respondents that the Petitioner No. 1 had submitted his resignation and it was accepted by the Board on 18.2.2013 only in pursuance of the above understanding and the Petitioners have suppressed these two material documents and therefore rendered themselves disentitled for the equitable reliefs. They have illustrated in para I (xi) (d) & (e) of the Reply statement certain instances to display how the above agreement was acted upon. One such instance is, on 8.2.2011, four members Ajeet Singh, Giriraj Kishore, Ramesh Chand and Ranveer Singh have transferred their shares in favour of Respondents 2 to 4 and in pursuance of it, the total shares thus transferred are 46, 400 representing 43.31% which is an admitted fact; and the Petitioners transferred remaining 56.69% also but kept the share transfer forms with Petitioner No. 1 which remains a disputed fact.

As matters stand thus, on 11.2.2013 the Bank asked the company to get the documents signed by the Directors and guarantors to enhance the proposal of ODMS (CC) limit but the Petitioner refused to sign the documents and then had given his resignation letter which was accepted by the Board on 18.2.2013.

So far as the enhancement of authorised capital and paid up capital is concerned, the Respondents pleaded in para III of the Reply that in Form No. 2 the date of allotment is inadvertently mentioned as 18.2.2013 but the correct date of the allotment of 2, 00, 000 shares to the Respondent No. 3 was on 20.2.2013 and the Board has adapted a resolution for correcting the said date by filing the Form 23 with ROC on 12.12.2013 (Annexure 11). They challenge the *locus standi* of the Petitioners to dispute the correctness

of allotment of shares by raising authorised capital and the paid up capital because, the Petitioners lost interest in the company by virtue of the Agreement dt. 15.9.2011. They have further stated that the fresh shares have been issued to the Respondents 2 to 4 on premium on 20.2.2013 and on the other hand, the Petitioners have transferred his group's shares to the Respondents at 50% discount.

(iii) **Rejoinder:** Petitioners deny that Respondents paid 2.65 Crores consideration to them towards purchase of shares. To support this plea, Petitioners have stated that the Respondents failed to provide immediate access to the documents for inspection as ordered by the CLB in CA No. 297 of 2013 dated 30.12.2014 (Annexure R1) and after a long ordeal of persuasion, on 7.2.2015 they have produced directors' minutes book, members' minutes book and a statement showing details of payment of Rs. 2.65 Crores and failed to produce other documents mentioned in the letter dated 23.01.2015. (Vide the copy of inspection Report Annexure R5) It is stated that the documents produced are fictitious. The Petitioners have narrated in para 11 of the Rejoinder to explain the statement showing details of payment of Rs. 2.65 Crores and affirmed that the Respondents, without paying the amount, have simply usurped the company by unlawful allotment of shares.

According to the rejoinder, the minutes of Board of Directors' meeting dated 11.2.2011 is fabricated and no such meeting was convened to the knowledge of the petitioner No.1 who was director by then; that the minutes of Board meeting dated 14.2.2011 has never discussed items (2)& (3)of the agenda; that the minutes of the Board dated 8.4.2011 is fabricated and no notice was given to the Petitioner No.1; the Minutes of Board of Directors' Meeting dated 6.1.2012 and 4.4.2012 are fabricated because no notice was given to the Petitioners. Similarly, the minutes dated 30.6.12, 28.12.2012, 21.1.2013, 9.2.2013, 18.2.13, 20.2.2013, 2.9.2013 5.10.2013, 15.11.2013 are all fabricated, not convened and no notice of such meetings were given to the petitioners.

In para 44 of the Rejoinder, the Petitioners have referred to the Agreement dated 15.9.2011 and affidavit dated 28.12.2011 and stated that they will show that the control of the company and operation of the account with Bank of Baroda was given to Respondents till the time they realize the unsecured loan to be given by the Respondents to the Company but contrary to that understandings, the Respondents have not paid the agreed amount.

(iv) In that way, the plea of the Petitioners is that the Agreement and the affidavit are true but they are not acted upon. In para 50, it is stated that since the loan account of the company was declared as NPA, Ranveer Singh and Petitioner No. 1 approached the Respondents 2 and 3 for 'financial assistance' only but there was no agreement that the Respondents 2 and 3 will take over the company in lieu of their investment. It is pointed out that the Petitioner No. 1 was having only 4.06% share by the time of the transaction and so, it is not possible for him to agree to sell the entire company to the respondents.

We have extended our anxious consideration to the weighty and dialectical assertions exhaustively touching upon the aspects of the debate, both legal and factual. Having heard both sides and having perused the

written arguments and the documents available on record, we are answering the material questions involved in the Company Petition as below:

II. Question No. 1: Whether the agreement between the parties is acted upon to any extent? If so, what is its impact on the maintainability of this Petition?

(i) There cannot be any dispute as regards the existence of the understanding which was later reduced to writing in the form of an agreement and an affidavit dated 15.9.2011 and 28.12.2011 respectively. At the outset, the existence of both these documents is not in dispute but the dispute is only on their import. Both the documents are in Hindi, and the Respondents filed the English version with their written submission paper book as Annexure A and B. The correctness of this translation is not disputed by the Petitioners. On the other hand, the Petitioners have extracted the same translated version in the suit No. 88 of 2016, the plaint copy of which is filed by the Respondents with CA No.6 of 2016, an application for permission to file additional documents. The state of affairs leading to bringing these documents into existence are also not in dispute, viz, the company was in financial troubles and the Bank was after the Company for repayment of the debt and the Petitioners approached the Respondents, of-course, the Petitioners state that it is only for 'financial assistance' but not for taking over of the company.

(ii) The Petitioners have propounded in paragraphs 7.4 and 7.5 of the Petition that there was agreement to transfer 49400 (37.28%) of shares of four members of their group to the Respondents' group and it was complied on 8.2.2011; and further, the Respondents 2 and 3 will be made directors of the Company. In this regard at page 17 of the Reply the Respondents have shown that they have paid a sum of Rs.2, 47, 000 to the four members of the Petitioners' group who have parted with their shares at a value of Rs. 5/ only as against the face value of Rs. 10/- each. In the light of these facts we shall examine the two documents. The important recitals of the 'agreement' dated 15.9.2011 are as below:

1. The cost of Cold storage is settled amount to Rs. 2.65, 00, 000/- and 2, 25, 000 was paid to Ranvir Singh and Rakesh Kumar to be adjusted in the expenses of cold storage. This 2, 25, 000 is shown as 'excess amount' and not part of 2.65 lacks.

2. Clauses 2 and 4 display that out of 2.65 lacks, a sum of one Crore is invested by Naveen Agarwal(R3) and the remaining one Crore sixty five lacks is invested in cold storage; and the share interest transaction shall be settled from the account of Petitioner No. 1.

The above agreement shows clearly that it was entered into between the three partners namely Girish Bansal, Naveen Aggarwal and Rajinder Singh- the Respondents 2 and 3 and the Petitioner No. 1.

Further, the affidavit sworn by the Petitioner No. 1 (Rajinder Singh) discloses the following facts:

1. Rajinder Singh's name will be deleted from Bank account of the Company with Bank of Baroda;

2. He shall not interfere with the right of Respondents to run the RR Cold Storage;

3. He shall not interfere with his share of property invested in the Cold Storage;

(iii) The interesting point is, the agreement and the affidavit executed between the Petitioner No 1 and the Respondents 2 and 3 is an arrangement or understanding between the individuals but not on behalf of the Company. Petitioner No.1 was acting in his individual capacity in entering that understanding for the management of the affairs of the company and that was the reason why he had undertaken to be out of the managerial affairs, including the transactions with the bank. Had it been an agreement for the management of the Company and transfer of absolute control thereof from the Petitioners' group to the Respondents' group, there would have been minutes of Board which is absent. Or, in any case, there would have been a comprehensive Memorandum of Understanding between all the members. It is no body's case that there were minutes of the Board to that effect. Therefore, the above two documents do not go to establish that the Petitioners cease to be members and have sold out the company to the Respondents. There is nothing to infer from the above two documents that the Petitioners have parted with their interest in the Company totally. It may not be out of context to remind ourselves the principle that in the absence of specific clause one cannot try to interpret a contract by inferences.

(iv) One more aspect which was highlighted in the Rejoinder as well as during the course of arguments on behalf of the Petitioners is that the Petitioner No. 1 was having only 4+ % of share in the paid up equity of the company by 15.9.2011 and therefore, he can at best enter into an arrangement with anybody including the Respondents 2 and 3 in respect of his share only and not with respect to the shares of others. The above documents are not giving any clue that Petitioner No 1 has executed the documents on behalf of his group. In that view of the matter also, we are not able to accept the contention of the Respondents that by virtue of the agreement and the affidavit dated 15.9.2011 and 28.12.2011, the Petitioners ceased to have interest in the company. Mere undertaking by one group that it will not interfere with the managerial functions of the company by other group does not infer the parting of interest in the company completely by that group.

(v) In as much as the agreement is between individuals, the enforcement of the terms of that agreement cannot be the subject matter of enquiry in a summary proceedings before the Tribunal and the questions relating to interpretation, enforceability and the validity of transactions flowing from the terms incorporated in the said document are the matters to be decided by a civil court. For the limited purpose of the present proceedings, it is our view, the agreement and the affidavit in question did not vest absolute management of the Company in the Respondents and did not divest the interest of the Petitioners' group as such and that agreement does not affect the interest of the Petitioners' group in the Company.

(vi) We have to proceed with deciding remaining litigious issues keeping in view our finding that the Petitioners' group is still having interest in the Company. To buttress that observation further, we propose to focus our attention on yet some other circumstance.

In the Reply at para I (xiii) the Respondents have pleaded that

> "That the Respondents No 2 and 3 were also become the Directors of the Respondent No. 1 Company on 1st February, 2011 and 11th February, 2011 in view of the understanding arrived with the Petitioner No 1 for taking over the Respondent No 1 Company. Copies of Form 32 for the appointment of the Respondents No 2 and 3 as Directors of the Respondent No. 1 Company are attached herewith and ..." (emphasis added)

It is clear from the underlined portion of the plea that the understanding was with Petitioner No. 1 only and not with other members of the Petitioners' group. It is never pleaded by the Respondents that the other members of the Petitioners' group have accepted this understanding. In the absence of such plea, we shall only conclude that the Petitioner No. 1 alone is party to the understanding and therefore, 'taking over' of the Company by the respondents in pursuance of that 'understanding' do not arise.

Further, regarding the theory of transfer of 56.69% shares held by the Petitioners group barring the admitted transfer of 49, 400 shares by Ajeet Singh, Giriraj Kishore, Ramesh Chand and Ranveer Singh, it is averred in the Reply thus:

> "That for the balance shareholding of 56.69% had also been transferred by signing the share transfer forms signed by the petitioners, which was being kept with Petitioner No. 1. The Respondents in good faith did accept such situation considering it is now merely a procedural formality, since the control of the Respondent No. 1 Company had already been agreed to be given in favour of the Respondents by the Petitioner No. 1."

(vii) The Petitioners did not admit the above assertion of fact made by the Respondents. In the Rejoinder, the Petitioners have stated with reference to the above assertion, as below, vide para 60:

> "..It is specifically denied that the balance shareholding of 56.69% had also been transferred by signing the share transfer Forms signed by the Petitioners, which was being kept with the Petitioner No. 1...It is respectfully submitted that the balance shareholding of 56.69% had never been transferred nor any share transfer forms have been signed by the Petitioners herein....The Respondents have failed to explain why they have handed over the signed share transfer forms back to the Petitioner No. 1 after paying the alleged consideration..."

(viii) Because the 49, 400 shares are transferred admittedly on 8.2.2011, it is presumed that in all probabilities, the remaining 56.69% shares also must have been agreed to be transferred, almost at the same time, if the above statement is believed, because no other date of that transaction is given in the Reply. When some shares are actually transferred by the petitioners' group, it is unknown why transfer of remaining shares was kept pending. The agreement is dated 15.9.2011. If really the Petitioners signed the transfer form but kept them with the Petitioner No. 1, that fact also should have been mentioned in that document and the affidavit dated 28.12.2011. There is no explanation to the question raised by the Petitioners in the rejoinder that when the entire money is paid, what was the reason for keeping shares along with signed transfer forms with the Petitioners' group only. Therefore, the argument of the Respondents that the 56.69% shares are agreed to be transferred to them is belied by the fact that

the shares are retained by the Petitioners. That means, the 'agreement' if any for transfer of 59.69% share holding was not concluded or materialized.

It is equally apparent from the material on record and the pleadings that the transfer of 56.69% of the shares to Shri Naveen Agarwal was not carried by a decision of Board. The presumption is that when the transfer of shares is not affected in the Register of Members and the shares are still in the possession of the Petitioners only, the Petitioners are holding those shares. The Respondents did not take any steps for getting those shares transferred and for rectification of the Register of Members based on the so called understanding or agreement. They ought to have filed a civil suit for submitting the transfer deed to the company and for specific performance of the agreement to sell the shares by the Petitioners who have received consideration; that was also not done. In the aftermath of the above observations, we shall hold that still Petitioners name shall be in the Register of members to an extent of 56.69%.

The agreement followed by the affidavit remains an inconclusive contract and at best, from the perspective of the Respondents, the Petitioners failed to perform their part of the contract. So long as the Petitioners' group remains holders of 56.69% shareholding, the agreement and the affidavit cited above will not impinge upon their rights in the Company. Therefore, we repel the contention of the Respondents that the Company Petitioners have no right to file the Petition for the reliefs under Sec. 397 and 398 of the Companies Act, 1956. Question No.1 is thus answered in favour of the Petitioners.

III. Question No. 2: Whether the Petitioner No. 1 has resigned to the Board of Directors on 18.2.2013?

(i) In Petition at para 8.1 the Petitioners have pleaded that they came to know after seeing Form 32 uploaded on the MCA portal, about the removal of the Petitioner No.1 from the directorship of the Company with effect from 18.2.2013 and that the resignation letter is a forged and fabricated one and that he had not received any notice of Board meeting said to have been held on 18.2.2013. This was answered by the Respondents thus: Vide para 1 (xv) of the Reply

> "...When the Respondents 2 to4 had asked the Petitioner to sign the guarantee documents, he had refused to sing the said documents. It is at that point of time he had agreed to resign from the board of the Respondent No. 1 Company. Thereafter, he had given his resignation letter to the Respondent No. 1 Company"

(ii) It is explained by the Respondents in Para 1 (xvi) of the Reply as to why in spite of sale of entire share holding by the Petitioners, the Petitioner No. 1 was continuing on the board; that is because the Petitioners and their family members have to be discharged from the personal guarantee given by them to Syndicate Bank. This explanation of the Respondents may be examined in the light of the recital in the affidavit of the Petitioner No.1 that Mr. Girish Bansal shall take money received in the Cold storage and thereafter he shall deposit the same in Syndicate Bank. That means, in the absence of any other circumstance, the Respondents have to discharge the debt due to Syndicate Bank. It is for that debt the Petitioners were standing as personal guarantors. Their personal guarantee will be discharged only

after the liability is discharged or by substitution of another person (s) as guarantors.

It seems conceivable to accept the plea of the Respondents made in their counter that as per the understanding, the Petitioners' name shall be deleted from the Bank of Baroda and Syndicate Bank as bank signatory, and further the Petitioner will be entitled for the profits of the company and will have right to check the account till release of his personal security. In clause 11 of the affidavit, it is clearly mentioned that at the end of the year Mr. Rajinder Singh can inspect the accounts including profit and loss account.

(iii) What is clear from the above situation is that the Petitioner No. 1 was allowed to have access to books of the Company in spite of the Agreement and the affidavit. In view of the above circumstances, we shall look at the material relating to the Board meeting dated 18.2.2013 regarding acceptance of resignation of the Petitioner No. 1 and the truth and authenticity of letter of resignation.

The copy of minutes dated 18.2.2013 is signed by Mr. Naveen Aggarwal (R3) Item No. 1 of the minutes (vide page 185 of Petitioners' paper book) reads:

> "Mr. Naveen Agarwal, Director of the Company presented before the member of the Board the resignation letter of Mr. Rajendra Singh, who is unable to continue the directorship of the company due to pre-occupation of work. The Board discussed the matter and following resolution was passed:
>
> "RESOLVED THAT, the resignation tendered by Mr. Rajendra Singh as Director of the Company, due to pre-occupation of work, be and is hereby accepted with immediate effect."

Copy of resignation letter is at page 186 of the paper book. It is type written, on computer. The signature and date alone are in handwriting. The contention of the Petitioner is that it is forged. It is also the contention of the Petitioner No. 1 taken in the Rejoinder that the he had not received any notice of meeting dated 18.2.2013 in which his alleged resignation was accepted.

(iv) The contention of the Respondents is that this Tribunal holding summary enquiry cannot decide whether the document is forgery or not and it is the civil court that can resolve that issue. As this Tribunal has to record findings based on the appreciation of material on record in a summary enquiry, we attempt to find out whether there is prima facie material to enable us to record a finding for the limited purpose of disposal of the Company Petition.

The Respondents filed application CA 6 of 2016 on 22.9.2016 along with certain additional documents and that application is also coming for disposal along with this Company Petition. In fact Sri Arun Saxena, Ld. Counsel did not raise any serious objection to receive those additional documents filed by Respondents. That Application contained certified copy of Report of Shri Raj Kumar Shrotriya; Examiner of Questioned Documents dated 213.2016 where under he had examined the questioned signature marked as 'Q1" which is on the resignation letter dated 18.2.2013. It transpires from the documents filed along with this Application that the Petitioner had filed Complaint under Sec. 156 (3) of the Code of Criminal

Procedure to take cognizance of offences punishable under Sections 420, 467 and other provisions of the Indian Penal Code, and issue summons to the Respondents herein. He has filed the original report of the Hand Writing expert referred supra in the criminal court. We are not concerned with the question whether the Criminal Court has issued summons or not but our emphasis is on the Expert Report. The Expert has opined in clear terms that the questioned signature Q1 has not been written by the person (Rajendra Singh) whose sample signatures are marked as A1 to A5.

(v) No doubt, the opinion of hand writing expert is only a relevant piece of evidence in court of law and has no status of conclusive proof. We are also alive to the fact that the Expert has to depose in the Court subjecting himself to cross examination, for accepting the report as a relevant piece of evidence by the Court. But, this Tribunal will not strictly apply the Evidence Act and it would only follow the principles. In a summary enquiry, the Tribunal is not precluded to take into consideration certain documents whose origin and custody is authentic. In this case, the report of handwriting expert clearly indicates, at least prima facie, that the resignation letter is not containing the signature of the Petitioner No1.

(vi) We should not be understood to have declared by the above reference to the expert's report that the letter of resignation is forged. We cannot give such outright declaration because the tribunal's power is limited to decide the questions falling within the periphery of 'oppression' and 'mismanagement' and it cannot expand its jurisdiction to settle contentious and complex issues which can be done only on receipt of substantial evidence, which is possible before a civil court only. The issues like fraud and forgery require evidence and Tribunal is not competent to adjudicate upon those matters. In *Shri Harsh Malhotra vs. Shri Lal Chand Malhotra (Since deceased through Legal Representatives Smt. Sudha Vadehra and Shri Rakesh Malhotra) and Bajaj Auto Ltd*[1] a Division Bench of Delhi High Court referring to the principles settled by *Ammonia Supplies Corporation (P) Ltd vs. Modern Plastic Containers Pvt Ltd*[2] held, where the appellant gets a declaration from competent Civil Court that the share transfer deed in question already made in favour of the Respondent is forged and fabricated, the appellant has no basis to approach the Respondent company to register the disputed shares in his favour. The Division Bench proceeded to observe-

> "Therefore, we are of considered opinion, the Appellant cannot be relegated to avail of the remedy under sec. 111 of the Companies Act, 1956 at this stage and the Appellant is well within its right to maintain his civil suit to seek the declaration as prayed for by him in the present suit."

(vii) We have taken into consideration yet another circumstance to doubt the truth of the minutes dated 18.2.2013. The Petitioners have taken specific stand that no notice of that meeting was issued to them. Undoubtedly, the Petitioner No 1 was a Director as on 18.2.2013 and pending acceptance of his resignation by the Board. The Respondents did not produce the proof of sending notice to the Directors including the Petitioner No.1, except pleading that notice was issued. Non production of the dispatch register or the postal receipts to that effect which ought to be in the custody of the Respondents, and offering no explanation for their

[1] MANU/DE/2632/2008
[2] (1998) 7 SCC 105

non-production, would compel us to draw an inference that no notice was issued to the Petitioner. The attendance sheet of the Board meeting dated 18.2.2013 is not produced before us. Our conclusion in this regard is that the meeting dated 18.2.2013 was not held to the notice of Petitioners. The law is well settled that notice of Board Meeting shall be served on all the Directors and if not served on any single director, the decision taken in that meeting will become invalid. If the authority in this respect is required, it is in *Shri Parmeshwari Prasad Gupta vs. The Union of India.*[3]

(viii) Further the resignation letter is dated '18.2.2013'. The Board meeting was also held on the same day. Had the Petitioner No. 1 was present in that meeting, the letter of resignation would have been presented by him personally to the Board. But, surprisingly it was presented before the members of the Board by Mr. Naveen Agarwal, the Respondent No. 3. These circumstances are sufficient to hold that the hypothesis of Resignation of Petitioner No. 1 propounded by the Respondents is not convincing and therefore not acceptable.

(ix) We answer on this question, that the material before us is not establishing the fact asserted by the Respondents that the Petitioner No. 1 has resigned to the Board on 18.2.2013. We say again, we are not declaring the resignation letter as 'forged' but arriving at this conclusion because Petitioner No. 1 was not served with notice of Board meeting dated 182.20134 and there are other doubtful circumstances in the way of believing the premise of resignation. In the alternative, even if there is meeting, the minutes of that meeting are vitiated for non-service of notice on the Petitioner No. 1 who was one of the Directors on that day. Mere uploading of statutory form does not validate an otherwise invalid transaction. Question No.2 is thus answered against the Respondents and in favour of the Petitioners.

IV. Question No 3: Legality of increasing the paid up capital on 18.2.2013 and allotment of 2, 00, 000 shares to Shri Naveen Agarwal.

(i) The company was incorporated initially with paid up capital of Rs. 1.00 lack divided into 10000 equity shares of Rs. 10/-. In the year 2008 the paid up capital was increased to Rs. 13, 25,000/- and further to Rs. 33, 25, 000 on 18.2.2013.

The authorised capital of the Company has been modified upwards after the incorporation of the Company like this. Initially it was 5 lacks divided into 50000 equity shares of Rs. 10/ each and then on 10.10.2008 it was raised to 30 lacks and further raised to 35 lacks on 19.02.2013. This increase of authorised share capital on 19.2.2013 is in question before us. The important point to be noted is that by 18.2.2013 the authorised capital stood at Rupees 33 lacks. For convenient reference the following table is drawn.

Date	***Authorised capital in Rs.***	***Paid up Capital In Rs.***
7.05.2008 (date of incorporation)	5, 00, 000	1, 00, 000
10.10.2008	30, 00, 000	13, 25, 000

[3](1973) 2 SCC 543

18.2.2013	30, 00, 000	33, 25, 000
19.2.2013	35, 00, 000	33, 25, 000

It is pertinent to note that on 18.2.2013, the Company had only Rs. 30 lacks authorised capital and it had raised the paid up capital to 33, 25, 000/- on that day, i.e., beyond the authorised capital, which is per se unauthorized. We shall refer to certain documents and pleadings in this regard to examine whether this is a deliberate act committed by the respondents or only an unintended slip-up.

(ii) At para 1.7 of the Petition, it has been asserted by the Petitioners that the Paid up Capital of the Company was illegally and unauthorizedly increased from Rs. 13, 25, 000 to Rs. 33, 25, 000 divided into 33, 25,000 shares of Rs. 10/- each on 18.2.2013 and condensed the holding of Petitioners' group from 56.69% to 22.58%. By 18.2.2013 the Petitioners together held 79100 shares equal to 56.69% as mentioned in the Petition, with effect from 29.9.2012. We have already recorded a finding that the Petitioners continue to hold their 56.69% of shares with them and they have not transferred the same to the Respondents. In other words, as we have observed above, the Petitioners are continuing as members of the Company and their names are borne on the Register of members which was not sought to be rectified by the Respondents till date. We will consider the present issue in the light of the above.

To repeat, the Company could not have issued shares on 18.2.2013 beyond the authorised capital. As per the record the authorised capital was enhanced to 35 lacks on 19.2.2013. On 18.2.2013, the authorised capital stands at 30 lacks only but the company has issued paid up shares of 33, 25, 000/-

Page 187 (Annexure p7) of the Petitioners' paper book shows that Form No. 5 was filed on 19.2.2013 showing that in the meeting of the members of the Company held on 19.2.2013, the authrised share capital of the company has been increased from 30 lacks to 35 lacks. Page 203 (Annexure p8) is Notice of EOGM dated 22.1.2013 to be held on 19.2.2013 at 11.15 am to transact the business shown in item No.1, to increase authorised capital of the Company from 30 lacks to 35 lacks. Page 205 is the extract of minutes of the meeting of EOGM dated 19.2.2103 where under the authorised share capital was increased accordingly.

(iii) In plain words, on 18.2.2013, the Company had no shares in its possession to be allotted to any others. But curiously, Form No.2 at page 206 (Annexure P8) shows that on 18.2.2013 the Company allotted 200, 000 shares of Rs.20 lacks out of the paid up capital of Rs. 33, 25,000/- with the attachment of certified copy of minutes of the meeting of the Board of Directors of the Company held on 18.2.2013 at the Registered office at 11.30 am whereby the Board has allotted the 2 lacks equity shares to the applicant who has paid the application money to the company. The shares are allotted to Naveen Agarwal who is the beneficiary of the resolution and who has put his digital signature in the Form No. 2. The Petitioners contend that they have no notice of EOGM dated 18.2.2013 and 19.2.2013 and therefore increasing of capital and allotment of shares is vitiated.

(iv) The case of Respondents is that the petitioners 'were made aware' of the general meetings of the Company (vide para 8I7 of Reply) and that because 100% of the shares of the Company had been 'agreed to be transferred' in favour of the Respondents by the petitioners, there was no requirement of sending any 'formal notice' to them for the general meeting for the increase of the authorised share capital of the company. This defence is illogical. On one hand the Respondents admit that there was only 'agreement' for sale of 100% share holding; not a concluded transaction of sale. Evidently, transfer of those shares was not effected; and the Petitioners are members of the Company on that day and were entitled to the notice of EOGM. Admittedly the Petitioners were not given any notice of EGOM but only 'made aware' of it which is not a legal compliance. Making certain director aware of the meeting does not amount to a notice, which is mandated by sec.286 of the Companies Act, 1956 which is in the following terms:

> ***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. (*Emphasis is added by us*)

(v) The law is well settled that notice to the Directors under the above provision is a condition precedent for the validity of meeting. As correctly relied upon by Sri Arun Saxena, the Ld Counsel for the Petitioners, the frequently quoted judgment of the Apex Court in *Shri Parmeshwari Prasad Gupta vs. The Union of India*[4] is the leading authority on this subject. When 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."

The Supreme Court in the above case held, as a consequence of invalidity of the meeting, the resolution becomes inoperative.

(vi) The next contention of the Respondents is that 2 lacks shares are allotted to Naveen Agarwal on 20.2.2013 but not on 18.2.2013. In page 29 of the Reply, it is averred:

> "That the Respondents state that the contentions raised by the petitioners have no force, as the date in Form 2 for the allotment of shares has been inadvertently mentioned as 18th February, 2013. The correct date of the allotment of 2, 00, 000 (Two lacks equity share was 20th February, 2013....The Respondent Company has already taken appropriate steps by rectifying the date of Board resolution for the said allotment of shares by filing the Form 23 of the Respondent NO 1 Company with the ROC on 12th December, 2013."

That Form is Annexure 11 of the Reply paper Book. The Form shows that a resolution was passed on 15.11.2013. Filling of the statutory Form

[4](1973) 2 SCC 543

'inadvertently' cannot be accepted generously. The Form for the allotment of shares dated 18. 2. 2013 was digitally signed by the Director who was no other than the beneficiary of allotment. If it were done by some other Director, we may accept that there is 'inadvertence' but such a defence is not available if the Form was digitally signed by the beneficiary himself. Further there was no clarification given by the Respondents as to by whom and at what stage the 'inadvertence' was occurred. It is conspicuous by its absence from the Reply of the Respondents as to when they have noticed this inadvertent mistake crept in the filling of Form.

(vii) In our considered opinion there shall not be any mistake in the date of allotment of shares. On 18.2.2013 at 1130 am the Board met to accept the resignation of the Petitioner No.1 which we have already referred in the earlier paragraph, even according to the Respondents' own showing. At the same time the minutes relating to allotment of shares was also transacted. This may be sooner or after the Board Meeting. A perusal of the copy of minutes relating to resignation of Petitioner No. 1 shows that it is 'Item No.1". It presupposes that there is another item also in the agenda. The copy of Minutes relating to allotment of shares shows that it is the only agenda. Then what is the second or other agenda during the minutes relating to resignation of Petitioner No. 1 shall be explained by the Respondents. They ought to have produced the original minutes Register. There is every reason to believe that there was another agenda on 18.2.2013 other than subject of the resignation of the Petitioner No. 1; and in the absence of showing any other agenda by producing the Register of Minutes, one has to deduce that the other agenda is about the allotment of shares to Naveen Aggarwal. There cannot be any other possible conclusion that can be reached by us except as above.

(viii) Therefore, we hold that the allotment of 2 lacks shares to Naveen Aggarwal on 18.2.2013 beyond the paid up equity available with the company on that day, and without serving any notice to the members, including the Petitioners, of EOGM for increasing the authorised capital from 30 lacks to 35 lacks on 19.2.2012 is illegal and contrary to the procedure known to law.

(ix) We have another reason also to detect that the allotment of shares to Naveen Kumar is not legal because such allotment is not supported by any minutes of the Board Meeting. Further, the minutes dated 18.2.2013 shows that the application money was received by the Company well in advance. That means, even before taking a decision to whom the new shares have to be allotted, the Company has accepted the application money, obviously from Naveen Aggarwal only, one of the Directores, who is Respondent No. 3 herein. It is therefore seems to be a pre determined affair to benefit a particular member by allotting him new shares by increasing the capital. Without a decision by the Board as to whom the new shares shall be allotted, the company ought not to have accepted the application money from the Respondent No. 3.

(x) A similar situation was considered in *Dale & Carrington Investment (P) Ltd. and another vs. P.K. Prathapan and others*[5]. The Supreme Court having referred to certain earlier precedents held that:

> "Further it was held that if a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its

[5] (2005) 1 SCC 212

> Board of Directors malafide, the said act must ordinarily be considered to be an act of oppression to the said member. The member who holds the majority of shares in the company is entitled by virtue of his majority to control, manage and run the affairs of the company. This is a benefit or advantage which the member enjoys and is entitled to enjoy in accordance with the provisions of company law in the matter of administration of the affairs of the company by electing his own men to the Board of Directors of the company"

(xi) The ratio evolved in *Dale* (supra) was followed with approval by Apex Court in *Shri V.S. Krishnan & Ors vs. M/s Westfort Hi-tech Hospital Ltd. & Ors.*[6] From the facts and circumstances placed before us, we have no vacillation to hold that the allotment of 2 lacks shares to the Respondent No. 3 on 18.2.2013 is a calculated affair, and the meeting of EGOM was held without notice to all the members including the Petitioners group and so, the minutes of that meeting are vitiated and consequently we hold that the allotment of 2 lack shares to Naveen Aggarwal (R3) is illegal. This question is answered against the Respondents and in favour of the Company Petitioners.

V. Question No 4: Whether the acts complained of are amounting to oppression and mismanagement of the company and prejudicial to the interests of the Company or/and its members?

(i) There cannot be any denial of the fact that by increasing the authorised capital of the Company without notice to the Petitioners who were members of the Company, and allotting 2, 00, 000 shares to the Respondents' group has resulted in reducing the Petitioners' group to a minority. The ratio laid down in *Dale* (supra) has settled the legal proposition that such an act amounts to oppression. Defining the expression 'oppression', the Apex Court in *Sangramsinh P. Gaekwad v/s Shantadevi P. Gaekwad*[7] remarked thus:

> "The expression 'Oppression' complained of, thus, must relate to the manner in which the affairs of the company are being conducted and the conduct complained of must be such as to oppress the minority members. By reason of such acts of oppression, it must be shown that the majority members obtained a predominant voting power in the conduct of the company's affairs."

The above view is followed by the Supreme Court again in *Incable Net (Andhra) Limited & Ors. vs. AP Aksh Broadband Ltd. & Ors.*[8] So far as the disputes between both the parties relating to the terms of the understanding between them is not shown to be backed by any malafide intention or fraud on the part of the Respondents. On the other hand, as we observed, the agreement is between the persons who are members in their individual capacity and the Company has no role in that agreement. Any disputes arise on account of misconception or misunderstanding of the terms of the agreement may not per se amount to oppression, because according to *Halsbury's Laws of England*,[9] the expression 'oppression' is understood as it should be 'harsh' and 'burdensome' and only based on fact, it can be construed as to whether the acts of majority are 'harsh' and 'burdensome'. Every act complained of may not be oppressive in real terms. The classic annotations made by a Division Bench

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[6] (2008) 3 SCC 363
[7] (2005) 11 SCC 314
[8] (2010) 6 SCC 719
[9] 4th Edition, Volume 7, para 1011

of Calcutta High Court in *Bagri Cereals Pvt Ltd vs. State*[10] are extensively read. The Bench said:

> "In a Petition under Sec. 397 of the Act it is left to the court on the facts of each case as to whether there exists any oppression which calls for action. There is statutory definition of what oppression is but the fact remains it must be shown that the conduct is oppressive and the events shall have to be shown in such a manner so as to evince a consecutive set of facts which would render the court to come to a conclusion that the company is being conducted in a manner oppressive to some members of the company. The conduct shall have to be burdensome, harsh and wrongful. It is now well settled principle of law that isolated act by itself may not support the inference that there was a malafide intention or that the act can be termed to be as such oppressive or burdensome. It is further to be noted that a mere lack of confidence would not bring home the charge of harsh and wrongful act neither it can conclusively prove an oppression of a minority by the majority. There must be an existing element of lack of probity or fail dealing to a member in the matter of his rights as a shareholder."

In *Shanti Prasad Jain vs. Kalinga Tubes Ltd., etc.*[11] referring to *Elder* Case, it was fervently held that the conduct complained of must relate to the manner of management of the affairs of the company and must be such so as to oppress a minority of the members including the petitioners qua shareholders. The court, however, pointed out that that law, however, has not defined what oppression is for the purpose of the said section and it is left to court to decide on the facts of each case whether there is such oppression.

(ii) Keeping the above principles in view, we find that the disputes between the two groups on the failure of performance of some or other part of the agreement relating to the management of the Company if resulted in one group making certain claims against the other group may not by itself amount to oppression or mismanagement within the meaning of Sections 397 and 398 of the Companies Act unless it is established that there is a deliberate failure of performance of certain terms of the agreement by one party or the other. That kind of plea and evidence is absent in this case and therefore we find it difficult to accept that part of the contention of the Petitioners.

(iii) So far as the theory of resignation of the Petitioner No. 1 is concerned, we are satisfied that there is prima facie material to hold that the meeting of the Board dated 18.2.2013 is not legal because notice was not given of that meeting to the Petitioner No. 1 who is the Director and also to hold that there are doubts about the legitimacy of the resignation letter, the said act amounts to oppression. As we have already expressed in this regard, there are calculated efforts on the part of the Respondents to bring into light the resignation of the Petitioner No. 1 perhaps as a prelude to increase their share holding strength to gain absolute control over the management of the Company and that effort is per se oppressive act prejudicing the Petitioners who were, hitherto the questioned meeting of the Board, happened to be the majority group of share holders.

(iv) The Ld. Counsel for the Respondents would argue that the Petitioners have suppressed the two material documents namely the agreement and the affidavit, and so, they are not entitled for the equitable relief. We are unable to

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[10] 2001 (105) CompCas 465 (Cal)
[11] [1965] 2 SCR 720

accept this contention. Suppression of every document may not be fatal to the maintainability of proceedings in terms of equity. Further, in our view, those documents merely constitute an understanding between few members of the company in their personal capacity, in relation to the management of the company affairs. Further, keeping in view the broad spectrum of the case on hand, we find non-reference of those documents by the Petitioners in the CP but only challenging their validity in the rejoinder, do not affect the otherwise merits of the Petitioners' case.

The Respondents further argued that the Petitioner filed a civil suit and also a criminal complaint claiming a declaration that the operation of the agreement is up to the year 2014 only and the said relief is virtually based on the contentions raised in the Company Petition. Further in the criminal complaint, the petitioners claimed that the letter of resignation is forgery. It is therefore fervidly argued by Ld. Counsel for the Respondents that the Company Petitioners are resorting to forum shopping and this being a forum of equity shall not allow such conduct of the parties who are abusing the process of law. We are absolutely in agreement with the principle that 'forum shopping' is abuse of process of law and equity does not allow such practices.

(v) But, we find that this principle cannot be extended to the present set of facts placed before us. We have already found that there is already misconstruction of the agreement between the parties. The agreement referred above is not containing comprehensively the entire gamut of the understanding and the terms of the agreement are not disclosing a clear picture of the outcome thereof as intended by the parties while determining the terms. This confusion showed the way to the conflict eventually. The performance of some or the other part of the contract always can be enforced through a properly constituted suit and this Tribunal is not competent to give a final and conclusive verdict on those disputes. Therefore, there is no wrong in approaching the Civil Court for appropriate reliefs. We are unconcerned whether the Petitioners have sought for appropriate relief in the suit or not. The filing of civil suit is only during pendency of this Petition; had it been earlier to approaching this Tribunal, there may be force in saying that the Petitioners having approached the civil court cannot move the Tribunal. It is open to the parties to seek the relief from the Civil Court for enforcing the terms of the agreement.

(vi) The Ld. Counsel for the Respondents placed reliance on the following decisions.

(i) *Kishore Samrite vs. State of UP and others*[12] wherein the Court dealt with a situation where the cases of abuse of the process of court and such allied matters have been arising before the courts consistently and laid down the principles to check these practices. (ii) *Maria Margarida Sequeria Fernandes and others vs. Erasmo jack de Sequeria (dead) through LRs*[13] is the case where the Court has critically examined and explained the value of trial of a case by the court and investigation for truth. (iii) *S.P. Chenglvaraya Naidu (dead) by LRs vs. Jagannath (dead) by LRs*[14] reiterated the principle that one who comes

[12] (2013) 2 SCC 398
[13] AIR 2012 SC 1727
[14] AIR 1994 SC 853

to the court, must come with clean hands. (iv) *K.R. S. Mani vs. Snugrapha jewelers Ltd*[15] is on suppression of facts.

The above cases laid down the principles broadly in explaining how the equity jurisdiction of the judicial courts and forums, has to be exercised. In the light of facts of the present case and for the reasons we have already stated in the above paragraphs, we are of the view that the Petitioners have not impaired the process of law by suppression of any fact and any suppression, by chance, were there, it is on account of mis construction of the terms and ill drafting of the agreement which shall not be taken to have violated the principles of equity.

(vii) The next set of judicial precedents cited by Ld. Counsel for the Respondents is: *Srikanta Datta Narasikharaj Wadiyar vs. Sri Venkateswara Real Estate Enterprises (P) Ltd.,*[16] where the High Court thought it fit to consider the preliminary objection whether the Company Petitioners filed the Petition under Sec. 397 and 398 of the Act is in 'good faith'. In Paragraph 20 of the report the Court said that the question good faith has to be tested by the conduct of the Petitioners reflected not only in the proceedings before the court but also in the parallel proceeding in the civil court and other litigations in other court. A reading of facts of the decision shows that long prior to filing of the Company Petition, litigation was started in various courts on the basis of the agreements with the Ruler, and Petition was filed under Sections 397 and 398 as a last resort having withdrawn the earlier suits and in that context the Court observed as above. The ratio laid down by the High Court cannot be read separate from the facts of the case and the facts in the present case stand completely on a different footing.

(viii) B. L. Sreedhar & Ors vs. K. M. Munireddy & Others[17] and *Jain Narain Parasrampura & Others vs. Pushpa Devi Saraf & Others*[18] are cases where the Supreme Court dealt with rule of estoppel on different set of facts. Estoppel is a matter of evidence. Evidence is a matter of restatement of facts and therefore, to decide whether in a given case the parties are barred by the rule of estoppel to put forth a contention, examination of facts is the acid test to decide whether to apply that ratio or not. On facts, we reiterate, it seems a case of conflicting indulgence of the tenor of agreement; and therefore, there cannot be any occasion for one party acting upon the promise made by the other. In as much as the agreement is not in dispute but only its understanding by the respective parties, estoppel as such cannot be applied in the facts of the case on hand.

M.S.D.C Radharamanan vs. M.S.D. Chandrasekara Raj and another[19] and *Shri G. Govindraj and Smt. G. Lopangnayagi vs. Venture Graphics Pvt Ltd & others* [20] are cases where it was found that when both the parties are at logger heads, it is appropriate to show exist to one party. But, we find on the facts of the case that both parties are unable to reach a consensus due to unclear terms of the contract for management of company and if once the Board is given a chance to decide its further course of action, there is every prospect of running the Company smoothly. We cannot lost sight of the fact that both

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[15] (2004) 52 SCL 488 (Mad)
[16] (1991) Com Cas 211 (Kar
[17] (2003) 2 SCC 355
[18] (2006) 7 SCC 756
[19] AIR 2008 SC 1738
[20] (2005) 128 Comp Case 632 (CLB)

parties have equally contributed for the good of the company. The Petitioners' group, according to our observation in the preceding part, has 56.69% share as on today. For the reason that they complained oppression at the hands of Respondents' group, it is unjustified to show exist to the Petitioners, thereby approving the void decisions taken by the Respondents in the meetings of Board and EOGM without notices to Director and the Members, respectively.

VI. Conclusions: In the result of the discussion and observations recorded by us in the above paragraphs of the order, the following conclusions are arrived at.

1. That the agreement and an affidavit dated 15.9.2011 and 28.12.2011 respectively do not divest the interest of the Petitioners' 56.69% of share holding in the capital of the Company and therefore, they are entitled to lay claim for the reliefs under Sections 397 and 398 of the Companies Act, 1956;

2. That the Resignation of Petitioner No. 1 to the Board of Directors on 18.2.2013 is not established; and therefore, the Petitioner No. 1 shall be deemed to be Director of the Company on and after 18.2.2013.

3. Increasing the capital and Allotment of 2, 00, 000 new shares to Mr. Naveen Agarwal – the Respondent No. 3 on 18.2.2013 is illegal as the minutes of the meeting held on that day is vitiated. That allotment is therefore liable to be set aside.

4. The acts of the Respondents in bringing into existence resignation letter of Petitioner No. 1, and fiction of its acceptance in the Board Meeting on 18.2.2013 which is vitiated; and increasing the capital and allotment of new shares to Respondent No. 2 on 18.2.2013 is with the calculated motive of reducing the Petitioners to minority and to usurp the majority in the management and control of the Company, are acts of oppression prejudicial to the interest of the Petitioners and the company;

VII. Relief: While shaping the appropriate relief, we have meticulously examined the import and compass of Sec. 402 of the Companies Act, 1956, which is analogous to the Sec. 242 of the Act, 2013 and the underlying theme is same. The following passage from *Debi Jhora Tea Co. Ltd, v. Barendra Krishna Bhowmick and others*[21] guided us to determine the course to be adopted by us in the present case. That passage reads:

> "26. It should be borne in mind that when a court passes an order under Sections 397, 398 and 402 as has been done in the instant case there could be no limitation on the court's power while acting under the sections. Instead of the winding up of a company, the court under the abovementioned sections has been vested with ample power to continue the corporate existence of a company by passing such orders as it thinks fit in order to achieve the objective by removing any member or members of a company or to prevent the company's affairs from being conducted in a manner prejudicial to the public interest. The court under Section 398 read with Section 402 of the Act has the power to supplant the entire corporate management. Under the aforesaid sections, the court can give appropriate directions which are contrary to the provisions of the articles of the company or the provisions of the Companies Act". (Emphasis is ours)

[21] (1980) 50 Company Cases 771 (Cal)

(i) The Madras High Court in *M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja and another*[22] went further and said -

"in a case where technically speaking there may not be any oppression within the meaning of Section 397 of the Act for the purpose of setting right things, the Court could pass orders under Section 402 of the Act."

The above view is approved and followed by the same High Court again in *G. Vijayalakshmi (a) Brinda & Another vs. Tirupur Textiles Pvt. Ltd. & Others*[23] However, such extreme contingency did not arise before us because, there are acts of oppression established and they are sufficient to order winding up of the Company.

(ii) Having considered the overall circumstances and because of the agreement between the members which was ill drafted and does not portray comprehension for its adherence by parties and enforcement of the terms; and also from the undeniable fact that it is the Respondents' group that revived the ailing company by timely infusing funds, and the fixed assets like land and buildings were contributed by the Petitioners' group, we are of the view that it is not a fit case to order any inconsiderate award like winding up of the Company or directing one group to pay the value of share to the other. We are also of the strong view that still there are bright prospects to continue the company in a healthy manner, once both the groups work harmoniously. In view of the above reasoning of ours, we order as follows:

1. That the Petitioner No. 1 is declared to be Director of the Company as on and after 18.2.2013;

2. That raising of Authorised Capital of the Company from 30 lacks to 35 lacks and allotting 2, 00, 000 new shares to Shri Naveen Agarwal -the Respondent No. 3 is declared void and that allotment is hereby cancelled;

3. The Company shall hold fresh meetings of Board and General Meeting of Members respectively by issuing notices to all the Directors including the Petitioner No. 1 and all the members including the Petitioners herein and take decision about increasing of the Capital, and allot shares according to law following the provisions of the Companies Act, 2013 and the Rules there under.

4. Both parties are at liberty, if they so advised, to seek appropriate reliefs in regard to the enforcement of the agreement between the Petitioner No. 1 and the Respondents in appropriate legal forum.

5. The Petition as far as other reliefs is concerned, be and hereby dismissed.

6. All the pending Company Applications are considered and they are disposed off, and merged with this Order.

7. There shall be no order as to costs.

Typed by self, corrected and pronounced in open Court this Friday, the 16th Day of December, 2016.

16.12.2016

V.S.R. AVADHANI, JDL. MEMBER

16/12/2011

H.P. CHATURVEDI, JDL. MEMBER

[22] (2007) 138 Company Cases 897 (Mad)
[23] 2012 7 MLJ 97