

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, CHENNAI

**TCP No.177/2016**  
(CP No. 56 of 2015)

Sections 397, 398, 111 & 111A of the Companies Act, 1956

In the matter of

**Mr. Ozhukil Padinjarepet Achuthan Kutty Shanthi and 8 Ors.**

**Vs.**

**M/s. Punarjani Securities Limited and 11 Ors.**

*Order delivered on 4<sup>th</sup> of October, 2017*

CORAM :

**K.ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ, MEMBERS(JUDICIAL)**

*For the Petitioner(s)*

*: Mr. R. Sankaranaryanan Sr. Counsel and  
Mr. A.M. Sridharan and Mr. S. Vijaya Prashanth, Counsels*

*For the Respondents 1 & 12*


*: Mr. S. P. Murali Krishnan, Counsel*

*For the Respondent 2 to 11*

*: Ms. Sushmita Udayshankar, Hema Srinivasan  
and Mohamed Javed Sherif, Counsels*

**ORDER**

Per : CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration is the Company Petition No. 56/2015 filed under Sections 397, 398, 111A, 111 of the Companies Act, 1956 before the then Company Law Board (CLB), Chennai. After the constitution of NCLT, the same has been transferred to this Bench and renumbered as TCP 177/2016. There are 9 

Petitioners and 12 Respondents in the Petition. The Respondent No.12 seems to be sailing with the Petitioners.

2. The 1<sup>st</sup> Respondent company under the name and style of M/s. Punarjani Securities Limited was incorporated on 07.03.2012 with Registrar of Companies, Kerala, Ernakulam. The 1<sup>st</sup> Respondent Company is an unlisted public limited company. The Registered Office of the company was situated at Jayashree Castle, Room No.27/7 C, Karunakaran Nambiar Road, Thrissur-680 020. The Board of the 1<sup>st</sup> Respondent company shifted the Registered Office to the Aswini Hospital premises with effect from 15.07.2015. The authorised capital of the 1<sup>st</sup> Respondent company is Rs.45,00,00,000/- divided into 45,00,000 equity shares of Rs.100 each. The present issued, subscribed and paid up capital of the 1<sup>st</sup> Respondent company is Rs.43,43,50,000/- divided into 43,43,500 equity shares of Rs.100 each. The main object of the company is to carry on business of

buying, selling, and dealing in all types of shares, debentures, stock, Government securities and to act as investment consultants, share brokers subject to obtaining such permissions as may be required. The 1<sup>st</sup> Respondent company is the holding company of two subsidiaries viz., M/s. Aswini Hospital Limited and M/s. Aswini Health Care Limited. The Petitioners are collectively holding 7,57,110 equity shares of Rs.100 each amounting to Rs.7,57,11,000 constituting 17.43% of the issued and paid up capital of the 1<sup>st</sup> Respondent company. Therefore, the Petitioners are fulfilling the requirements under Section 399 of the Companies Act 1956 for filing the Petition under the provisions mentioned hereinabove.

3. It has been submitted by the Petitioners that they have been elected as the Directors of the 1<sup>st</sup> Respondent company in the Extraordinary General Meeting (EOGM) convened and held for the purpose of election of the directors on 15.06.2015 by an independent chairmen appointed by the CLB. However, it is alleged that the Respondent Nos. 2 to 11

at an EOGM purportedly held on 27.07.2015 removed the Petitioners from the office of the Directors as well as forfeited the shareholdings of some of the Petitioners including the Petitioner Nos. 1, 2 and 5 along with the shareholdings of the other members/shareholders and the same is challenged in this Petition. It has also been mentioned in the Petition that the Respondent Nos.2, 3 and 12 are elected as Directors of the 1<sup>st</sup> Respondent company in addition to the Petitioners at the EOGM held on 15.06.2015 convened for the purpose of election of the Directors by an independent chairman appointed by the then CLB. It has further been submitted by the Petitioners that the Petition is filed for the purpose to set at naught the alleged illegalities perpetrated by the Respondent Nos.2 to 11 by filing false, fabricated documents with the Registrar of Companies, Kerala, Ernakulam to prevent the Board of Directors duly constituted. It is on record that the Respondent Nos. 2, 3 and 8 and one Mr. A. C. Premanandan have filed the Company Petition before the CLB under Sections 397 and 398 of the Companies


Act, 1956 as CP No. 34/2015, wherein on the consent of the Petitioners and the Respondents, the then CLB passed an order on 11.05.2015 by appointing Shri S. M. Ameerul Millath as independent chairman to convene and hold EOGM of the 1<sup>st</sup> Respondent company for the purpose of electing the directors thereon. Pursuant to which, the Petitioners were elected as Directors along with the Respondent Nos.2, 3 and 12, thereby the Board of Directors was constituted consisting of 12 persons. The independent chairman submitted his report dated 20.06.2015 by recording observation that there was 96.87% of polling and a total of 132 shareholders attended in person and a total of 190 proxies voted.

4. The Petitioners in relation to 34 proxy forms lodged by the Respondents 2 to 11 with the independent chairman has complained that the proxy forms were attested by one Shri Naresh Kumar being Vice Consul, Consulate General of India, Dubai UAE, who was not employed in Dubai Consulate, and hence,

the attestation was fake. With regard to which the independent chairman sent an e-mail to Mr. K. Muraleedharan, Deputy Consul General of India, Dubai seeking his comments duly attaching scanned copies of the proxy forms said to be attested by Shri Naresh Kumar for verification along with a scanned copy of the attested proxy by another official of Consulate Shri Pradeep Kumar. The Deputy Consul General informed that Shri Naresh Kumar had left Dubai Consulate on 02.11.2013 on transfer basis as second secretary in the Embassy of Kathmandu and informed that all the documents said to be attested by Shri Naresh Kumar were totally fake.

5. However, the CLB vide its Order dated 07.07.2015 disposed of the Petition No. 34/2015 by recognising the Petitioners and Respondent Nos.2, 3 and 12 as Directors of the 1<sup>st</sup> Respondent company. Consequently, the Petitioners have filed the e-forms DIN 12 with Registrar of Companies, Kerala, Ernakulam, the copies of which have also been placed

on file as annexure A5. It has been stated by the Petitioners in the Petition that the Respondent Nos. 2 and 3 developed an animosity with the Petitioners on their being elected as Directors of the 1<sup>st</sup> Respondent company and on 29<sup>th</sup> morning of July, 2015 at 10.30 A.M., came to Aswini Hospital Limited with more 30 Gundas and told that they are as new directors appointed in the 1<sup>st</sup> Respondent company. They forcibly taken all statutory record of the company including DIN application forms, share application forms, original certified true copies of the chairman's report, company seal, minutes book of board and general meetings and attendance registers filled up as well as blank share certificate etc., with regard to which the Petitioners filed a complaint with the concerned Police authorities and the investigation is in progress.

6. The Petitioners submit that the Respondents except the Respondent No. 12, filed DIN 12 with the Registrar of Companies, Kerala, Ernakulam stating 

therein that the Petitioners and the Respondent No.12 have been disqualified under Section 164 of the Companies Act 2013 to act as Directors of the 1<sup>st</sup> Respondent company. But the Petitioners and the Respondent No.12 have not earned any disqualification as alleged by the Respondents and the documents filed with the ROC is a false documents. The Respondents have also attached a copy of the notice of EOGM purportedly held on 27.07.2015 wherein the item No.1 was to remove the Petitioners from the office of the directors on the false allegations that the Petitioners have given false information for obtaining DIN which the Petitioners and the Respondent no.12 denied. It is also stated in the Petition that the notice of EoGM dated 01.07.2015 was of the period during which the CP No. 34/2015 was pending before the CLB and the Respondents did not make even a whisper about the convening of the EOGM purportedly held on 27.07.2015 and the Petitioners have not received the notice of the EOGM purportedly held on 27.07.2015. Based on this, the Petitioners submitted that the

scripted story that a notice was issued on 01.07.2015 and EOGM was held on 27.07.2015 are nothing but a fraudulent representations and the meeting *per se* void and the forfeiture of 13,53,555 equity shares of Rs.100 each amounting to Rs.13,53,55,500/- belonging to as many as 73 shareholders is also null and void.

7. The Petitioners specifically stated that in the notice of removal, the agenda in relation to the appointment of directors is missing and in the notice to the appointment of directors, the agenda in relation to removal of directors and forfeiture of shares are missing. Moreover, the Respondents in the extract of resolution electing the Respondent Nos.2 to 11 as Directors forged the signature of the 1<sup>st</sup> Petitioner for certifying the resolution when, according to them, the 1<sup>st</sup> Petitioner is removed from the office of the director by item No.1 of the EOGM purportedly held on 27.07.2015.

8. The Petitioners plead that in the notice attached in relation to the appointment of Respondent Nos. 4 to 11 as directors of the 1<sup>st</sup> Respondent company, the said Respondents are being appointed by a single resolution which itself is in violation of Section 162 of the Companies Act, 2013. It has further been submitted by the Petitioners that the Respondent Nos. 2 and 3 have withdrawn a sum of Rs.30 Lakhs and Rs.35 Lakhs respectively from the accounts of the 1<sup>st</sup> Respondent company maintained with the South Indian Bank Ltd., Thrissur, Kerala. A copy of the Bank statement for the period from 17.08.2012 to 24.08.2012 is attached as evidence in support of the factum of withdrawal of money. As a consequence, when the directors withdraw the money from a public limited company without prior approval of the Central Government, the concerned director vacates the office of the director. This was the ground for the purpose of which the Respondents Nos. 2 and 3 vacated the office of the directors which resulted in filing of CP 34/2015 by the Respondents and the money so drawn by the

Respondent Nos.2 and 3 have not been returned to the 1<sup>st</sup> Respondent company. Besides this, there are similar types of allegations levelled against the Respondents pertaining to the mismanagement of the affairs of the 1<sup>st</sup> Respondent company by the Respondent Nos. 2 to 11. In the premises, the reliefs that have been sought by the Petitioners are as follows :-

*a. To declare that the Extraordinary General Meeting purportedly held on 27.07.2015 as illegal, non-est, null and void;*

*b. To declare that the removal of the Petitioners from the office of directors at the said Extraordinary General meeting purportedly held on 27.07.2015 as illegal, non-est, null and void and consequently declare that they continue to be the directors of the company;*

*c. To declare that the forfeiture of 13,53,555 shares of Rs.100 each fully paid-up held by the 73 members/shareholders (including the Petitioners P1, P2 and P5) in the company as*

*null and void and consequently declare that these 73 members continue to be the members of the company;*

*d. To declare that the election of Respondents 4 to 11 as directors of the company in the Extraordinary General meeting purportedly held on 27.07.2015 is illegal, non-est, null and void;*

*e. To declare that the Respondents 2 to 11 are not the fit and proper persons to occupy the office of directors in the company and*

*f. To direct the Respondents 2 to 11 to return all the records and papers which they have forcefully taken away from the company.*

9. Respondents 1 to 11 filed counter stating that the Petition is not maintainable as the Petitioners are not entitled to file the present Petition under Sections 397, 398, 111 and 111(A) of the Companies Act, 1956. Because, the Petitioners without disclosing their residential status, illegally acquired the shares in the 1<sup>st</sup> Respondent company. It is further averred that the

Petitioners are not the shareholders at the time of filing the Petition since their shares have been cancelled due to non-disclosure of their residential status at the time of subscription, and thereby, are not entitled to file the present Petition. It is also alleged that the Petitioners in order to control and take over the management of M/s. Aswini Hospital Limited, has invested the equity share capital of the 1<sup>st</sup> Respondent company. The 1<sup>st</sup> Respondent company has no other activity other than the investments made in the subsidiary company i.e. M/s. Aswini Hospital Limited and M/s. Aswini Health Care Limited. It has also been admitted by the Respondents that the then CLB appointed an independent Chairman for convening a meeting for the purpose of election of Directors on 15.06.2015. It is submitted by the answering Respondents that had it been disclosed to the independent Chairman appointed by the then CLB, the 1<sup>st</sup> Petitioner and other NRIs would have not been elected as Directors of the 1<sup>st</sup> Respondent company, due to which the meeting and election of the 1<sup>st</sup> Respondent company was convened

and conducted by way of EoGM on 27.07.2015 to remove the Petitioner Nos.1 to 9 and Respondent No.12 and elected Respondent Nos.2 to 11 as Directors of the 1<sup>st</sup> Respondent company which was being done in view of the invalid meeting held on 15.06.2016 of the 1<sup>st</sup> Respondent company. There are other allegations that the 1<sup>st</sup> Petitioner announced that the 8<sup>th</sup> Respondent was removed from his Directorship from the Board of Directors of the subsidiary company and filed the resolution with the ROC showing that the 8<sup>th</sup> Respondent ceased to be a Director on the alleged ground of related party transaction w.e.f.01.04.2015. Similarly, one more allegation is that the Petitioners stated that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were also ceased to be the Directors of the 1<sup>st</sup> Respondent company on the ground that they had withdrawn the money from the said company with effect from 1<sup>st</sup> April 2015 and the resolution passed on 1<sup>st</sup> February, 2015 were forced by the 1<sup>st</sup> Petitioner. It is further alleged that the 1<sup>st</sup> Petitioner has ulterior motive to hijack the 1<sup>st</sup> Respondent company had colluded with other

members who are R12, R14 and R15 and robbed the minutes books and other statutory registers, documents, etc. of the 1<sup>st</sup> Respondent company which was kept in the doctor's room at the hospital with regard to which an FIR was filed and the matter was under investigation. Under para 12 of the counter, it has been stated that against the unwarranted acts of the 1<sup>st</sup> Respondent, Respondent Nos.2, 3 and 8 have filed CP No.34 of 2015 wherein the then CLB appointed an independent Chairman for convening the EoGM for the election of Board of Directors to the 1<sup>st</sup> Respondent company. During the course of meeting, Respondents No.2 and 3 raised the issue of residential status of the Petitioners and their two daughters, which in turn affects the *locus standi* of the Petitioners in the entire transactions and this has not been recorded by the independent Chairman. Thus the Chairman failed to take into consideration the issue of residential status of the petitioner thereby allowed them to participate in the meeting and contest the elections. It has further been averred that the election of Directors had not

been done properly and sufficient notice for calling the nominations for election of Directors along with deposits as prescribed were not deposited in the bank account of the 1<sup>st</sup> Respondent company thereby there is no sufficient compliance for calling the nominations and hence the proceedings of the election held on 15.06.2015 are not in accordance with the provisions of the Act. It has further been mentioned that the independent Chairman omitted to mention the share/percentage of votes of both the panels got. On the contrary, he reported that the voting percentage is 99.68% which resulted in misleading the CLB. Because, the Chairman ought to have mentioned as to how much percentage of voting each panel got.

10. The answering respondents stated in the counter that a criminal complaint has been made by the respondents against the Petitioner and his daughters and apprehended the consequences of facing the criminal complaint and consolidation of shares due to the non-disclosure of the residential status. The Petitioner approached the 2<sup>nd</sup> Respondent for


settlement of the matter and the 1<sup>st</sup> Petitioner promised and assured to restore the Directors who were removed earlier and wanted to take back his investments in the 1<sup>st</sup> respondent company and the holding company. Therefore, upon the consensus arrived at, the 1<sup>st</sup> petitioner called for a Board meeting on 1<sup>st</sup> July 2015 at 10.30 a.m. wherein it was decided to issue the notice calling for EoGM on 27.07.2015 and the notice was sent to shareholders. The EoGM was held on 27.07.2015 and the Respondents 2 to 11 were elected as Directors and the shares of the petitioner along with others have been forfeited. Accordingly, the Petitioner filed the required Form with the ROC. Therefore, when the Petitioner sat for settlement talks he levelled allegations that the Respondents had managed the 1<sup>st</sup> Respondent company in an oppressive manner, fraud perpetrated on the shareholders which is baseless and false. It has further been submitted by the answering respondents that all the shareholders who were attending the meeting on 27.07.2015 agreed unanimously consented to pass a single resolution in



relation to the 1<sup>st</sup> Respondent company for appointing Respondents No.2 to 11 as Directors. Therefore, there is no contravention as stated by the petitioner in the petition. It is further controverted by the answering respondents that Dr.Velayutham deposited a sum of Rs.30,00,000/- towards share application money and wanted the money to meet his personal requirements. Therefore, the Board, vide its resolutions dated 14.08..2012, authorised him to withdraw the said money, because the shares were not allotted. Therefore, there is no violation of the provisions of the Companies Act as stated by the petitioner in the petition. The said money has been deposited as reflects from the ledger account of 3<sup>rd</sup> Respondent maintained by the 1<sup>st</sup> Respondent company. The subscription of chit series with Gokul Chits is also denied stating that it has no relevancy with the matter as has been alleged by the petitioner. The answering respondents also denied the allegations levelled by the Petitioners in relation to the purchase of medicines and equipment required by the subsidiary companies at the

higher rates giving the reason that the purchaser of medicines and equipment were made at the prevailing market price due to the proximity of the distribution centres so that the immediate requirements of the hospital can be met. Therefore, the 1<sup>st</sup> Respondent company has not made any undue favour. At the end, the respondents submitted that the declaration of dividend is the discretion of the Board of Directors to use the funds in the interest of the company and the shareholder. Therefore, whatever profits earned has been transferred to the reserves and surplus in the best interest of the company and its shareholders thereby there is no act of oppression and mismanagement in relation to the affairs of the 1<sup>st</sup> Respondent company and prays to dismiss the petition.

11. The petitioners 1 to 3 filed a rejoinder denying the allegations made in the counter filed by the answering respondents and reiterated the averments made in the petition stating that the Respondents No. 1 to 11 are

usurpers of the office of the Directors against the will of the shareholders who have overwhelmingly voted in the EoGM held on 15.06.2015 under the independent Chairman appointed by the then CLB and stated that the digital signatures of the 1<sup>st</sup> petitioner was forged by the Respondents by hijacking the website of ROC, Kerala, Ernakulam in filing the E-forms DIR-12 in Ashwini Hospitals Ltd and also forged the signatures of Vice Consul and seal of the Consulate of India, Dubai in proxy forms and trespassed into Ashwini Hospitals Ltd along with Goondas and forcibly took away all the documents, records and manhandled the Directors and staff with regard to which FIRs have been filed and the same were under investigation. It has specifically been stated in the rejoinder that the company petition is maintainable. Because, the petitioner has challenged the illegal forfeiture of shares that has been done by Respondents No.2 to 11 in the EoGM purportedly held on 27.07.2015 in relation to the 1<sup>st</sup> respondent company. It has further been specifically stated that the shareholders have participated and voted in the 

AGM held during 2013-14. The Board comprising R2, R3, R8 and one Mr.A.C.Premanandan (brother of R2) and Mr.Vijayaraghavan R.V. have verified the application form given by these 73 shareholders and made allotment of shares to them. Thereafter, the Form No.2 notifying the allotment of shares including 73 shareholders was filed with the ROC, Kerala at Ernakulam and all the e-forms-2 have been digitally signed by the 2<sup>nd</sup> Respondent, save two forms-2 filed on 30.07.2012 for allotment made on 03.07.2012 and 21.07.20`12 which was digitally signed by Vijayaraghavan R.V. It has been submitted by the petitioner that there is no bar under the Companies Act or under the Foreign Exchange Management Act on the Non Resident Indian for becoming a shareholder of a company registered in India and these 73 shareholders have given correct residential areas in the share application forms.

12. In the rejoinder, the Petitioner made it clear that Respondent Nos. 2 to 11 have not raised any issue in in

relation to the residential status of the Petitioner and other shareholders in the meeting held under the independent chairman, so the issue raised now is afterthought. All the NRI shareholders have made contribution towards the share capital from their resident accounts and not from NRI accounts. It has further been stated that the 1<sup>st</sup> Respondent company is a public limited company consisting of 344 shareholders and by the money contributed by these shareholders in the form of capital has only been utilised for acquiring the shares of Ashwin Hospitals Ltd. Therefore, neither the Petitioners' group nor the respondents group' can make claim that the Respondent company or Ashwin Hospitals Ltd., is belonging to them as both of these companies belonging to all the 344 shareholders. The Petitioner along with Respondent No.12 has having only 18.25% shareholdings, certainly cannot control the company with these percentage. Therefore, the allegations levelled by the respondents in the counter that the petitioner intended to take over control and

management of M/s. Ashwini Hospitals Ltd., is highly misplaced.

13. It has also been submitted that the Respondents are making allegations against the independent Chairman appointed by the then CLB as a measure of afterthought and indulging in mud-slinging and if the Chairman did not consider their representation, nothing prevented the respondents from approaching the CLB before the conduct of the meeting held on 15.06.2015 and the cancellation of shares of these 73 shareholders/members are also challenging the petition as the cancellation of shares can only be done by the Hon'ble court under section 100 of the Companies Act by way of reduction of capital or by this Hon'ble Board under section 402 of the Companies Act, 1956 by way of buy back of shares. Therefore, it is obvious that the company did not buy back the shares of the 73 shareholders under section 77A of the Companies Act, 1956 or section 68 of the Companies Act, 2013. Thus, the respondents did not follow the

principles of natural justice before cancelling the shares of 73 members in the EoGM purportedly held on 27.07.2015. The Petitioner had also controverted the issue pertaining to misjoinder of party as Respondent No.12 on the ground that he was not present at the time of filing of the petition and therefore he is arrayed as Respondent so that he can present his case.

14. It has further been specifically stated that the validity of the meeting dated 15.06.2015 was decided by the judicial court such as CLB, civil court or the High Court and not by the Board of the 1<sup>st</sup> Respondent company. Because, the same was convened on the direction of the then CLB which has appointed an independent Chairman for conducting the same. In other words, the allegations levelled by the answering respondents have also been denied by the petitioners. Further, it is worthwhile to mention that the petitioner under para 15 of the rejoinder submitted that in fact the petitioner left for Dubai on 26.06.2015 and

returned to India only on 2.7.2015. So the averments that the petitioner has called for Board meeting on 1.7.2015 at 10.30 a.m. is a blatant lie. Therefore, no Board meeting of the 1<sup>st</sup> Respondent would have been held on 1.7.2015 and no decision could have been taken to convene the EoGM on 27.07.2015. None of the shareholders received notice of the EoGM purportedly held on 27.07.2015. The 1<sup>st</sup> Respondent company receives complaints from as many as 76 shareholders stating that they did not receive any notice of the EoGM purportedly held on 27.07.2015 and the respondents did not produce the proof of service of notice dated 1.7.2015 on 344 shareholders in respect of the EoGM purportedly held on 27.07.2015. The same is totally false and deserves to be declared as null and void. It is also on record as has been stated by the Petitioners in their rejoinder that the order dated 27.08.2015 made by the then CLB restored the Petitioners' positions as Directors with all powers as vested with them under the Articles and the law. And the termination of the services of Mrs. Ranjani was


within the powers of the Board. At the end, the petitioners reiterated that the appointment of R2 to R11 as Directors and cancellation of shares of 73 members, done without following the principles of natural justice and is contrary to law so be declared as null and void. The Respondents have filed sur rejoinder wherein they have denied the allegations levelled in the rejoinder by the Petitioner and reiterated the averments made in their counter.

15. From the factual details noted above, there emerge two issues which are as follows:-

- a) Whether the EoGM purportedly held on 27.07.2015 is in accordance with the law and legally tenable?
- b) Whether the forfeiture of the shares of the Petitioners and the Respondent No.12, including 73 shareholders, on 27.07.2015 is in accordance with the law and legally tenable?
- c) Relief.


16. In relation to the issue No. (a), it is on record that an EoGM was held and conducted for the purpose of election of the Directors on 15.06.2015 under the supervision of an independent chairman appointed by the then CLB. After fulfilment of the legal requirements, the Petitioners along with the Respondent Nos. 2, 3 and 12 were elected as Directors of the 1<sup>st</sup> Respondent Company in the said EoGM. The detailed report of the chairman was submitted to the then CLB. The CLB on 07.07.2015 disposed of the Petition No. 34/2015 by recognising the Petitioners and the Respondent Nos. 2, 3 and 12 as Directors of the 1<sup>st</sup> Respondent Company pursuant to which the Petitioners have filed e-forms, DIN 12 with the Registrar of Companies, Kerala, Ernakulam. If Respondent Nos. 2 to 11 had any legal objection in relation to the EoGM conducted on 15.06.2015, then, they could have approached to the then CLB to file their objections prior to the disposal of the Petition No. 34/2015. Now, the objections which the Respondent Nos. 2 to 11 have taken pertaining to the EoGM dated

15.06.2015 are afterthought. Therefore, convening, holding and conducting of the EoGM purportedly on 27.07.2015 was nothing but a total betrayal and disregard to the procedure established. Such an action *per se* has shown scant regard to the authority and the law.

17. The ground on the basis of which the EoGM purportedly held on 27.07.2015 is that, the Petitioners and the Respondent No.12 have not disclosed their residential status. Such a ground is not legally tenable, because it was for the competent authority to look into the DIN numbers issued to the Petitioners and Respondent No. 12 on the basis of providing the wrong addresses, if any. There was no authority with the Respondent Nos. 2 to 11 to remove the Petitioners and Respondent No.12 as Directors of the 1<sup>st</sup> Respondent Company who were elected in duly convened EoGM held on 15.06.2015, that too, under the supervision of the independent chairman appointed by the then CLB. 


18. The Respondent Nos. 2 to 11 have put forth a defence that there has been some understanding between the Petitioner and Respondent No.2. The Petitioner did agree to get the Petitioners removed from the Board of Directors and to cancel their shares, based on which the purported EoGM was got conducted on 27.07.2015, and the DIN 12 were filed by the Petitioner with his signature to the ROC, which the Petitioner subsequently have denied stating that his signature was forged. Thus, there are serious contradictions in the counter filed. On one hand, it is stated that due to the non-disclosure of the residential status, the shares of the Petitioner and R12 including 73 shareholders were forfeited on 27.07.2015. On the other hand, it has been stated that an oral understanding between the Petitioner and the R2 was reached on the basis of which the EoGM was held on 27.07.2015 and the shares of the Petitioners and R12 including 73 shareholders were forfeited. However, this defence is highly improbable for the reason that no person will act against the self-interest by agreeing that

he may be removed from the Directorship and his shares should be forfeited, and then the same person will sign DIN 12 and file with the ROC. This is not only improbable but contrary to the human nature. Further, the Respondent Nos. 2 to 11 stated in the counter that the Petitioner has issued notice dated 01.07.2015 to call for the Board Meeting on 27.07.2015 at 10.30 A.M. But, the Petitioner left for Dubai on 26.06.2015 and returned to India only on 02.07.2015, this fact has been proved by showing the entries of his travel in his passport during argument. Further, the shareholders have not received notice of EoGM purportedly held on 27.07.2015 as the 1<sup>st</sup> Respondent Company has received 76 complaints from the shareholders stating that they did not receive any notice of said EoGM. Moreover, the Respondent failed to produce the proof of service of notice dated 01.07.2015 on 344 shareholders pertaining to the EoGM purportedly held on 27.07.2015. Therefore, the defence taken by the Respondent Nos. 2 to 11 is highly improbable and full of fallacy.

19. Besides the above, no material has been shown to demonstrate the fulfilment of the requirements of Section 284 (1) and (2) of the Companies Act, 1956, before removing the Petitioners and the Respondent No.12 from the Directorship of the 1<sup>st</sup> Respondent Company by the Respondent Nos. 2 to 11. The Respondent Nos. 2 to 11 failed to produce the copy of the 'special notice' containing the agenda for removal of the Petitioners and the Respondent No.12 as Directors of the 1<sup>st</sup> Respondent Company. The omission to serve a 'special notice' to the Directors sought to be removed constitutes denial of their statutory right of the reply, and in the absence of the notice to the Directors, any resolution for their removal is vitiated by such gross omission, and the same is neither *bonafide* nor in the interests of the 1<sup>st</sup> Respondent Company. Thus, the Respondent Nos. 2 to 11 seem to have made efforts to usurp the office of the Directors and to gain the control over the Board of Directors of the 1<sup>st</sup> Respondent Company. Therefore, the removal of the Petitioners and R12 from the office of the Directors of the 1<sup>st</sup> 

Respondent Company in the EoGM purportedly held on 27.07.2015 amounts to acts of oppression by the Respondent Nos. 2 to 11. Moreover, it is on record that the appointment of Respondent Nos. 4 to 11 as Directors of 1<sup>st</sup> Respondent Company was made by a single resolution which is in violation of the provisions of Section 162 of the Companies Act, 2013. Such election *per se* is void *ab initio*.

20. The above view is fortified by rulings given in the following cases:-


- i) **S. Vardarajan Vs. Udhyem Leasings and Investment Ltd.**, (2005) 125 Com. Cases 853;
- ii) **Manmohan Singh Koli Vs. Venture India Properties Private Limited**, 2005, 123 Comp. Case 198 CLB;
- iii) **M. Moorthy Vs. Drivers & Conductors Bus Service (P) Ltd.**, (1971) 71 Comp. Cases 136 (Mad), and 

iv) **M/s. Varshaben S. Trivedi Vs. Shree Sadguru Switch Gears Private limited, (2013)**  
116 CLA 153 CLB.

In the light of the above discussion and the case law cited, the issue number (a) stands decided in favour of the Petitioners and against the Respondents.

21. Now, we may proceed to examine the issue No. (b), which relates to the forfeiture of 13,53,555 shares of Rs.100 each fully paid-up by the 73 members/shareholders (including the Petitioner Nos.1, 2 and 5) in the EoGM purportedly held on 27.07.2015. At the outset, it may be stated that the Companies Act, 1956 does not contain any provision for forfeiture of shares. But, the companies normally make the provisions in the Articles of Association along with the procedure for forfeiting the shares only when the shares have already been allotted and not paid-up to the full extent of the face value and premium, if any. In this case, the Respondent Nos. 2 to 11 failed to show any of the provisions of the Articles of the Association


which could have authorised the Directors to forfeit the shares for non-disclosure of the residential status by the members.

22. Assuming that the Respondent Nos. 2 to 11 were Directors at the time of forfeiture of the said shares on 27.07.2015, and were authorised to cancel the shares. But legally, the Directors of the Company cannot utilise their fiduciary powers over the shares purely for the purpose of cancellation of the shares of the minority shareholders to improve their voting power. The court cannot allow to exercise such powers which might have been delegated by the company to the Board of Directors. Therefore, there was no authority with Respondent Nos. 2 to 11 to forfeit the shares of the Petitioner Nos. 1, 2 and 5 including 73 shareholders. The whole action is patently illegal, perverse and is declared as null and void. This view is fortified by the ruling given in **Rashmi Seth Vs. Chemon, (I) Private Limited & Ors.**, Re. 1995, Vol (82) Comp Cases. Thus, in view of the legal position stated above, issue No. (b) 

also stands decided in favour of the Petitioners including 73 shareholders and against the Respondent Nos. 2 to 11.

c) Relief:-


23. In the light of the factual and legal position stated above, we hold that the EoGM purportedly held on 27.07.2015 was illegal, and is declared as null and void.

24. We also hold that the removal of the Petitioners and the Respondent No.12 from the office of the Directors of the 1<sup>st</sup> Respondent Company in the EoGM purportedly held on 27.07.2015, is illegal, and is declared as null and void. We further declare that the Petitioners and R12 continue to be the Directors of the 1<sup>st</sup> Respondent Company, and also declare that the forfeiture of 13,53,555 shares of Rs.100 each fully paid-up held by the 73 members/shareholders (including the Petitioners 1, 2 and 5) in the EoGM purportedly held on 27.07.2015 is illegal and is 

declared as null and void. The said members/shareholders continue to be the members of the 1<sup>st</sup> Respondent Company. We also hold that the election of the Respondent Nos. 4 to 11 as Directors of the 1<sup>st</sup> Respondent company in EoGM purportedly held on 27.07.2015 is illegal and is declared as null and void. Although the prayer has not been made for rectification of the Register of Members under the provisions of Section 111 and 111A of the Companies Act, 1956, yet the Tribunal is all empowered to mould and add the relief in the facts and circumstances of the case. Therefore, the 1<sup>st</sup> Respondent Company is directed to enter the name of the Petitioner Nos. 1, 2 and 5 including 73 shareholders in the Register of Members, if their names happened to be omitted from the Register of Members of the 1<sup>st</sup> Respondent Company.

25. In terms of the above order, TCP No. 177/2016 stands disposed of. We impose costs on the Respondent Nos.2 to 11 to the tune of Rs.50,000/- which shall be paid to the Petitioners and R12. The

said Respondents shall pay the same from their own resources, within three weeks from the date the copy of this Order is received. The file shall be consigned to record after due completion.

  
(K. ANANTHA PADMANABHA SWAMY)  
MEMBER (JUDICIAL)  
PAM

  
(CH. MOHD. SHARIEF TARIQ)  
MEMBER (JUDICIAL)