

Bombay High Court

Abdul Wahid Abdul Gaffor Khatri ... vs M/S.Safe Heights Developers ... on 24 February, 2018 Bench: K.R. Sriram

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMPANY JURISDICTION

COMPANY APPEAL NO.22 OF 2013
IN
CLB/COMPANY PETITION NO.52 OF 2012

1) Abdul Wahid Abdul Gaffor Khatri)
Director, B/110, Jaan Mohmed Apartment)
Fairdeal Road, Off. S.V.Road, Jogeshwari)
(West) Mumbai-400 102)

2) Abdul Aziz Mohd. Husain Qureshi)
Director, B-305, Basera Apartment)
FDC Road, Jogeshwari (West))
Mumbai-400 102)

3) Shahid Abdul Wahid Khatri)
B/110 Jaan Mohmed Apartment,)
Fairdeal Road, Off. S.V.Road,)
Jogeshwari (West), Mumbai-400 102)....Appellants/
Org.Petitioners

V/s.

1) M/s.Safe Heights Developers Pvt. Ltd.)
Nirman House, L.P. Poddar Marg,)
College Road, Nasik-422 005, Maharashtra)

2) Ashutosh Jayant Joshi)
Additional Director, Bungalow No.35,)
Park Street, RSC 2, Sardar Patel Nagar,)
MHADA Versova, Andheri (West))
Mumbai-400 053)

3) Deepak Navnitray Mehta)
Director, Flat No.201, B/4, Sector-2)
Shanti Nagar Mira Road (East), Dist.Thane)

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)

4) Nemichand Lalitprasad Poddar)
Additional Director, Poddar House, Patil)
Colony Lane No.3, College Road,)
Nashik 422 005)

5) Jaiprakash Sitaram Goel)
Additional Director, Shop No.302, 4th Floor)
Sun Mahu Commercial Complex,)
Pune-411 001, Maharashtra)

6) Mahendra Nemichand Poddar)
Director, Poddar House, Patil Colony,)
Lane No.3, College Road, Nashik-422 005)

7) Vipul Nemichand Poddar)
Director, Poddar House Patil Colony)
Lane No.3, College Road, Nashik-422 005)

8) Hitesh Nemichand Poddar)
Director Poddar House, Patil Colony)
Lane No.3, College Road, Nashik-422 005)

9) Amit Jaiprakash Goel)
Director, 5, San Mahu Complex,)
Opp.Poona Club, Bund Garden Road,)
Camp, Pune-411 001)

10) Atul Jaiprakash Goel)
Director, 5, San Mahu Complex)

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Opp. Poona Club, Bund Garden Road)
Camp, Pune-411 001)

11) Rajesh Dhanji Savla)
Director, 102, Abhipsa Kamla Nehru Road)
No.2, Kandivli (West), Mumbai-400 067)

12) Jayant Dattatraya Joshi)
Additional Director, Bungalow No.35,)
S.V.P.Nagar, Near Lokhandwala Complex) Andheri (West) Mumbai-
400 053)....Original Respondent
Nos.1 to 12.

Mr.Abhishek Khare a/w Ms.Prapti Kedia i/by Khare Legal Chambers for appellants. Mr.Rohaam Cama
i/by Hafeezur Rahman for respondent nos.1, 2, 4 to

12.

CORAM : K.R.SHRIRAM, J

RESERVED ON : 14.2.2018

PRONOUNCED ON : 24.2.2018

Judgment :1 The present appeal has been filed under

Section 10 F of

the Companies Act 1956 and impugns the order dated 18.12.2012 passed by the Company Law Board (CLB) in the petition filed by the appellants, inter alia, under Sections 397 and 398 of the Companies Act 1956 alleging oppression and mis-management on the part of respondent nos.2 to 10.

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The brief facts as it appears from the appeal memo are as under :-

(i) On 4.7.2005 respondent no.1 company was incorporated. The authorized, issued and paid up equity share capital of respondent no.1-Safe Heights Developers Pvt. Ltd. (the Company) at the time of incorporation was Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each. Appellant no.1 and appellant no.2 and respondent no.2 and respondent no.3 were the first directors and shareholders of the company at the time of incorporation and account was opened in the name of the company on 7.7.2005 with Samata Sahakari Bank Ltd. in which appellant no.1 and respondent no.2 were the signatories.

(ii) On 27.6.2006 an account was opened in the name of company with HDFC Bank, Goregaon branch in which appellant no.2 and respondent no.2 were joint signatories. Respondent no.2 resigned from office of director on 2.11.2006 which was accepted by Board and form 32 was filed accordingly with Registrar of Companies (ROC).

(iii) On 6.11.2006 an Extra-ordinary General Meeting was called in which the authorized capital of the company was increased from Rs.2,00,000/- to Rs.5,00,000/-.

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(iv) On 14.3.2007 in another Extra-ordinary General Meeting the authorized share capital of the company was increased from Rs.5,00,000/- to Rs.55,00,000/-.

(v) On 3.9.2007 form 32 was filed by the company for appointment of respondent nos.3,4 & 5 as additional directors. On 3.9.2007 form no.2 was filed by respondent no.2 for allotment of 2,30,000 equity shares of Rs.10 each at par and 25,000 preference shares at par of Rs.10 each to himself.

(vi) On 3.9.2007 Resolution was passed by the company to shift the registered office of the company to a Fort office by filing form no.18. Thereafter registered office was shifted to Nasik.

(vii) On 7.9.2007 it is alleged by appellants that respondent no.2, to bring appellants share holding under minority, allotted 2,26,000 equity shares of Rs.10 each at premium of Rs.120 and 25,000 preference shares of Rs.10 each at par by filing form no.2 w.e.f 23.8.2007 to the family members and company in which respondent nos.4 & 5 were interested and this allotment was without any notice, meeting, knowledge and consent of Board of Directors. It is also alleged that on 15.12.2007 respondent KJ 6/33 CA22.13.doc no.2 again filed form no.2 for allotment of 24,000 equity shares of Rs.10 each at a premium of Rs.120 per share w.e.f. 22.9.2007 to one Geeta Constructions Pvt. Ltd. wherein respondent no.5 is an interested director.

(viii) On 5.11.2007, appellants caused a Show Cause Notice issued to respondent nos.2 & 3 calling upon them to explain their misconduct and activities detrimental to the interest of the company and to return the books of accounts, correspondence, original agreements, records and registers of the company.

(ix) On 7.11.2007 respondent no.2 replied stating that appellants had sold their stake in the Company and the matter was settled, with one Mr. Deepak M. Mehta, who was acting as mediator/escrow agent for the purpose. 3 It should be noted that the appellants' counsel made oral submissions and followed it with 49 pages of written submissions. I have to note that the written submissions filed on behalf of appellants far exceed what was argued before the court and raises new points which were not pressed before the court. Reliance has been placed on

several new judgments on points which were neither urged before the Company Law Board nor pressed before this Court when the matter KJ 7/33 CA22.13.doc was argued.

4 Broadly stated, the issues raised by the appellants were as under :-

- (a) By a rights issue in 2007, the shareholding of the Petitioners had been diluted; allegedly no notices were given for the meetings pertaining to the rights issue;
- (b) The Respondents had caused the registered office of the Company to be shifted on two occasions; allegedly no notices were given for the meetings pertaining to the shifting of the registered office; and
- (c) disputes pertaining to appointment and removal of directors.

5 The CLB has analysed in detail the various submissions made by the Appellants, and after considering the factual matrix, the submissions made on both sides and the position in law, passed a detailed, comprehensive judgment dismissing the Petition, but directing the Respondents to buy out the Petitioners' shareholding.

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Limited Scope of Section 10-F

1. It is well settled, as held, inter alia, by the Hon'ble Supreme Court in 1V.S. Krishnan & Ors .v. Westfort Hi-Tech Hospital Limited & Ors. and followed in 2Purnima Manthena & Anr. v. Renuka Datla & Ors that an Appeal under Section 10-F of the Companies Act, would lie only on a question of law. Section 10-F expressly states that the Appeal will lie only on a question of law arising out of the order. It is further held by the Hon'ble Supreme Court that the CLB is the final authority on facts, unless, such findings are perverse, based on no evidence or are otherwise arbitrary.

2. It is further well settled that an order passed by the CLB under Sections 397 and 398 is a discretionary order as held by the Hon'ble Supreme Court in V. S. Krishnan (supra) and in 3Sangramsinh P. Gaikwad v. Shantadevi P. Gaikwad. Being a discretionary relief, the Appellate Court, i.e. this Court ought not to interfere with the judgment or replace the same with its own exercise of discretion, particularly given the restrictive scope of Section 10-F.

6. The Hon'ble Madras High Court in the case of 4M. Palanisamy & Ors. v. S.V.T. Spinning Mills (P) Ltd & Ors. reiterated the 1 (2008) 3 SCC 363 2 (2016) 1 SCC 237 3 AIR 2005 SC 809 4 [2011] 101 CLA 346 (Mad.) KJ 9/33 CA22.13.doc aforesaid principles and held that as the CLB is the final authority on facts, while

exercising powers under Section 10-F of the Act, the Hon'ble High Court ought not to re-appreciate the evidence analysed by the CLB. Reliance was placed on the judgment of the Hon'ble Andhra Pradesh High Court in D.Ramkishore Vs. Vijaywada Shavebros Ltd. (2008) 86 CLA 285 (AP) which in turn had relied upon various judgments of the Hon'ble Supreme Court to hold that there was no jurisdiction under Section 10-F to entertain an Appeal on the grounds of erroneous findings of fact, however gross the error may seem to be. It was further held by the Hon'ble Andhra Pradesh High Court that absent a conclusion that the judgment was not supported by any evidence or that it was unreasonable and perverse, the decision of the CLB is final even though the Hon'ble High Court might not, on the same materials, have come to the same conclusion. 7 Shri Khare relied upon the judgment in 5Dale Carrington Invt Private Limited & Anr. v. P. K. Prathapan & Ors. to contend that the Hon'ble High Court could go into questions of fact. This contention is misplaced; in paragraph 36 of this judgment the Hon'ble Supreme Court held that the judgment of the CLB "was given in a very cursory and cavalier manner" and that the CLB has not gone into the issues which were germane for the decision of the controversy in-

5 (2005) 1 SCC 212

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involved in the case. This is not applicable to the detailed and comprehensive judgment rendered by the CLB in the present case. 8 The Appellants' submissions proceed on a fundamentally erroneous basis that the scope of this Court's jurisdiction under Section 10-F is not limited to adjudication of questions of law arising out of the order, but also extends to questions of facts in certain circumstances. This is a misreading of the judgments of the Hon'ble Supreme Court. It is clear that the scope of jurisdiction of this Court is restricted to a question of law and only if it can be held that a finding of fact is perverse and based on no evidence, then that perversity itself may be treated as a question of law. This is not to say that this Court would be required to minutely analyse the judgment of the CLB on all factual aspects and arrive at a conclusion that a particular fact ought to have been considered differently, or that some other conclusion ought to have been arrived at on the facts. This Court would truly be required to assess the judgment of the CLB holistically to ascertain whether the judgment is based on no evidence and is therefore perverse. In the present case, under no circumstances can it be said that the judgment of the CLB is either perverse or cursory or based on no evidence. The Appellants are attempting to treat the present proceedings as a First Appeal and are in effect seeking that this Court KJ 11/33 CA22.13.doc delve deeply into the facts and exercise its discretion to replace the discretionary judgment of the CLB. This is impermissible in law and is contrary to the judgments of the Hon'ble Supreme Court and High Courts which were cited on behalf of the Respondents. 9 In my view, the order of the CLB in the present case can in no circumstances be said to be either perverse, based on no evidence or arbitrary. The CLB has analysed the factual and legal position in depth and has arrived at a conclusion on facts that no case of oppression and / of mismanagement has been made out by the Appellants. From paragraphs 23 to 45 of the judgment at pages 84 to 95, the CLB has analysed all the issues raised including but not limited to:

service of notice by UPC (paragraphs 23 to 25); the Appellants having exited the Company after receiving the loan amount given by them, (paragraph 25); the rights issue and the reasons for the same being to in-

fuse funds into the Company (paragraphs 26 to 28); shifting of the registered office (paragraphs 29-30); termination of directorship being outside the ambit of sections 397 / 398 (paragraph 35);

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ing suppressed material facts (paragraphs 36 to 38); and gross delay and laches in the Appellants' having approached the CLB (paragraphs 39-40).

The above findings of fact cannot be interfered with by this Court in the exercise of the narrow jurisdiction under Section 10-F of the Companies Act, 1956.

10 Shri Khare submitted that there were various facts that the CLB, in the present case, ought to have noticed from the record but did not. Even if what Shri Khare says is correct, i.e., if it is the grievance of the Appellants that any material facts which were relied upon or any submission which was raised were not reflected in the judgment, it was incumbent upon the Appellants to draw the attention of the CLB to the same by filing a proper application for review or clarification. As held by the Hon'ble Supreme Court in 6Daman Singh v. State of Punjab, when no such application for review or clarification has been made, a party or its counsel is not entitled to submit to the superior court that a certain ground had been argued to which no reference is found in the judgment.

6 AIR 1985 SC 973

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Delay and Laches in filing the Petition

11. This Court, in the context of a similarly discretionary order under Section 111 of the Companies Act, 1956, in 7Sulochana Neelkanth Kalyani v. Takle Investments Co. & Ors., has held that exercise of such discretion could certainly be affected by inordinate and unexplained delay and laches and that any such delay may render granting of the relief inequitable, as there could be equities arising in favour of other parties as a

result of such delay and also such delay may give rise to a case of acquiescence, waiver or estoppel. These aspects would be for the CLB to assess and would depend upon the facts and circumstances of each case.

12. In the Petition filed by the Appellants before the CLB, the Appellants have set out the various acts, which according to them constituted oppression and mismanagement, including the rights issue and the shifting of the registered office. Thereafter it is the case of the Appellants that when they became aware of the purported conduct of Respondent Nos. 2 and 3 "then on 5th November 2007" they issued a show cause notice to Respondent Nos. 2 and 3. This show cause notice was followed by a letter on the same date addressed to Respondent Nos. 2 and 3. This letter was replied to by a letter dated 7th November 2007 (Bom.C.R.272 KJ 14/33 CA22.13.doc November 2007) addressed by Respondent No. 3 setting out, inter alia, that the Appellants had exited the Company after accepting their loan, and that the registered office of the Company had been shifted. In response, the Appellants, through Appellant No. 2, addressed a letter dated 6th December 2007, inter alia, threatening that the Appellants would take necessary action under the provisions of the Companies Act. As per the stated case in the Appellants' Rejoinder in the petition before CLB, the Appellants claimed that they conducted an ROC search and learnt of the acts of oppression and mismanagement in or about December 2007 - January 2008.

13. Pertinently, despite full knowledge from November 2007 - January 2008 of all the acts complained of in the Petition, no steps were taken by the Appellants to approach the CLB until July 2011 as noted by the CLB in paragraph 39 of the judgment. There was no explanation whatsoever from the Appellants to explain this significant delay aside from stating that they had preferred a representation to the Registrar of Companies. This explanation was rightly rejected by the CLB while noting that the reliefs which could be granted by the CLB could never have been granted by ROC, and therefore this could not be a reason for not approaching the CLB earlier.

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14. In the written submissions of the Appellants also, there is no cogent explanation for the Appellants' delay in approaching the CLB. It is simply contended that the alleged acts of oppression were continuing and culminated in the removal of the Appellants as Directors in 2011. Firstly, from the record before the CLB, as reflected in the judgment, the only ground to justify the delay pressed before the CLB, and indeed before this Court in arguments, was that the Appellants were prosecuting proceedings before the Registrar of Companies. No case of continuous oppression and/or mismanagement appears to have been pressed before the CLB and certainly not before this Court and it is impermissible to seek to introduce a new case in Written Submissions, particularly one which is on a factual basis. Even otherwise, there is no justification for the gross delay in

approaching the CLB, and the CLB in the exercise of its discretion has held that the delay was excessive. This exercise of discretion by the CLB ought not to be interfered with by this Court in its narrow jurisdiction under Section 10-F of the Companies Act, 1956.

15. Therefore, I find nothing wrong in the CLB concluding that on the ground of delay and laches alone, the Petition could have and ought to have been dismissed even without going into the allegations raised by the Appellants.

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Unclean Hands

16 The CLB has, after a detailed consideration of the Appellants' conduct, arrived at a finding of fact that the Appellants had suppressed material facts and had not come with clean hands, having indulged in various acts of misconduct as set out in the order, including running a parallel Board of Directors, holding meetings without any notice (as opposed to the Respondents having shown UPC records for service of notice for their meetings) and appointing / removing directors at their whim. The CLB has rightly noted that a party seeking relief in an equitable jurisdiction must itself act equitably (i.e., a person who wants equity must do equity), and has arrived at a conclusion that the Appellants have not acted equitably. 17 In their submissions, the Appellants have sought to deflect attention from their own defaults by alleging defaults on the part of the Respondents. The Appellants have not been able to deny the illegalities committed by them, but have simply alleged that the same yardstick was not applied to the Respondents. This stand is factually incorrect in as much as the Appellants did not give any notice for their meeting, whereas the Respondents had given notice by UPC. Even otherwise, it is the Appellants who have approached the CLB in the exercise of its equitable jurisdiction, and it is the Appellants who must KJ 17/33 CA22.13.doc show that they have acted equitably and with clean hands. It is no answer to contend that their illegalities are justified by alleged illegalities on the part of the Respondents, which in themselves have been denied.

In these circumstances, on this ground also, I see no reason to interfere in factual findings of the CLB ON THE THREE ISSUES RAISED 18 As stated earlier, the Appellants had broadly raised three issues of alleged oppression and mismanagement. It should be noted that they are issues of fact which have been conclusively decided by the CLB and as held in M.Palanisamy & Ors. (supra), the CLB is the final authority on facts.

The rights issue of shares and the service of notices by UPC:

19 Respondents, in their Affidavit in Reply to the Company Petition have set out at length the sequence of events pertaining to the rights issue of shares, the funds raised by virtue of the rights issue and the details of service of notices for various meetings in this regard. The Respondents have also placed on record the relevant

documents in relation to the rights issue, including the UPC register for KJ 18/33 CA22.13.doc service of notices on Appellant Nos. 1 and 2. The UPC register admittedly bears a stamp sufficient for service upon both Appellant Nos. 1 and 2 and no other party has raised a grievance that notices were not served upon them.

20 A grievance was raised by the appellants that the UPC proofs at pgs. 351 and 354 appear to be identical. While this is purely a factual matter which ought not to detain this Court, the Appellants ought to have pointed out that the UPCs at pgs. 351 and 354 pertain to communications both dated 19th February 2007, and therefore potentially the same UPC proof would be sufficient if both communications were forwarded under the same UPC certificate and/or in the same packet. These are factual matters, which if had been pressed before the CLB would duly have been answered by the CLB after hearing both sides, but this aspect was not urged, as is apparent from the judgment of the CLB.

21 In this context, the CLB has rightly held on the basis of Section 53 of Companies Act, 1956, that there arises a rebuttable presumption that the documents were served on the Appellants under certificate of posting. As held by the Hon'ble Supreme Court in the case of V. S. Krishnan (supra) relying on the judgment of the Hon'ble Supreme Court in 8M. S. Madhusoodhanan v. Kerala Kaumudi Private Limited, the burden was on the addressee, i.e., the Appellants herein, to rebut the statutory presumption and show that the notice had not been received by them. Admittedly in the present case no such attempt has been made by the Appellants to show that the notice was in fact not received by them. In the circumstances, it cannot be said that the CLB judgment is perverse or unreasonable or arbitrary on this score.

22 The Appellants have sought to rely upon certain judgments on the aspect of service of notice for meetings. Broadly stated, the said judgments only lay down the accepted proposition that notice of a meeting ought to be given to the shareholder / director. The said judgments have no application in the present case, as it is not the case of the Respondents that no notice was given, but in fact notices were sent by post under certificate of posting (UPC). As aforesaid, the rebuttable presumption under Section 53 having arisen, and having not been rebutted by the Appellants, the CLB has rightly held in favour of the Respondents in this regard. The judgments cited by the Appellants are dealt with hereunder:

8 (2004) 9 SCC 2004

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(i) Dr. T. M. Paul v. City Hospital (Pvt.) Ltd. & Ors. This

judgment only states that notice of a meeting ought to be given under Section 286, with which principle there can be no dispute. However, in the present case CLB has accepted that notices were in fact given under UPC.

(ii) Sri Parmeshwari Prasad Gupta v. The Union of India In this case, it was an admitted position that no notice was given to the director of the Company, which is completely different from the facts of the present case.

(iii) Mr. Satish Kumar Singh v. Omkaleshwar Colonisers Private Limited - again this judgment only lays down the principle that notice must be served, which has been done in the present case;

(iv) 12M/s. Micromeritics Engineers Pvt. Ltd. & Ors. v. S. Munusamy - in the facts of the case in question, there was no proof that the notice of the meeting was sent by post as held by the Hon'ble Madras High Court in the last sentence of paragraph 34. This is very different from the facts of the present case.

9 1998 SCC On Line Ker 367 10 (1973) 2 SCC 543 11 (217 SCC On Line NCLT 339 12 (2002-4-L.W.394) KJ 21/33 CA22.13.doc

(v) Malleswara Finance and Investments Co. P. Ltd. v.

Company Law Board and Others -in the facts of that case the CLB, after taking into consideration all the materials, held that there was no evidence of posting, which is opposite to the factual finding in the present case.

(vi) M. S. Madhusoodhanan v. Kerala Kaumudi Private Limited (supra) - This judgment in fact aids the Respondents and has been followed in the context of Sections 397 / 398 in V. S. Krishnan's case (supra) to hold that once a rebuttable presumption arises under section 53, the burden lies on the addressee, i.e., the Appellants herein to rebut the same.

Reliance was placed by the Appellants on paragraph 115 of M.S.Madhusoodhanan (supra) to contend that when the relationship between the parties was embittered the proof of service of notice by a certificate of posting must be viewed with suspicion. It is pertinent to note that in the present case, after the meeting of 14 th March 2007 as set out later, in which the Appellants have participated in raising the share capital, and until the issuance of the show cause notice on 5 th November 2007, (during which time the notices were sent by UPC) 13 (1994 SCC Online Mad 552) KJ 22/33 CA22.13.doc there is no record whatsoever to show that the relationships between the parties was in any manner embittered. During this period between March 2007 and November 2007 there was no embitterment whatsoever and it was during this period that the rights issue took place culminating on 22nd September 2007, as also the shifting of the registered office in April 2007 and July-August 2007. Hence, the notices sent for these meetings under UPC during this period, cannot possibly be required to be viewed with any suspicion on the ground of purported embitterment, or otherwise.

23 Before the CLB, the case of the Appellants was that the UPC notices were infirm and should not be relied upon because relations between the parties were embittered. Before this Court, it was urged that the UPCs could not be relied upon in respect of Board Meetings and that the presumption under Section 53 applied to general meetings of the company. This contention is misleading. While Section 53 does raise a presumption

in respect of notices for meetings of members of the company, under Section 286 of the Companies Act, 1956, there is no format provided for service of notices to Directors. The CLB has dealt with the argument which was urged, namely that the notice through UPC should not be presumed as sufficient proof of service; this argument of UPC notice for Board Meeting does not appear KJ 23/33 CA22.13.doc to have been urged before the CLB. Even otherwise, under Section 286 of the Companies Act, 1956 no specific mode of service is provided for. The UPC proofs were duly produced before the CLB even for meetings of the Board of Directors, and there was nothing placed on record by the Appellants to show that they were either not available at the time when the notices were served or that they could not or were not in a position to receive the same. Even otherwise, the CLB has rightly held that after knowledge of those resolutions being passed by November 2007 - January 2008, no steps were taken by the Appellants to approach the CLB for redressal of their grievances for close to four years. On the contrary, the Appellants held their own meetings without even attempting to send notices thereof to the Respondents; what has weighed with the CLB therefore is the inequitable conduct on the part of the Appellants and this factual finding cannot to be interfered with.

24 Even otherwise, the rights issue having been done in the interest of the Company with a view to infuse funds into the Company, can under no circumstances be said to be an act of oppression. The Hon'ble Supreme Court in the case of *Needle Industries (India) Limited v. Needle Industries Newey India Holdings Limited* - relied upon in *V. S. Krishnan* (supra), has held that if the shares are issued in 14 AIR 1981 SC 1298 KJ 24/33 CA22.13.doc the larger interest of the Company and bonafide with a view to enable capital to be raised, the rights issue cannot be termed as oppressive. 25 In the present case, in the meeting of the Board of Directors held on 14th February 2007 and confirmed in an EGM held on 14th March 2007 it was decided to raise the authorised share capital of the Company from Rs. 5,00,000/- to Rs. 55,00,000/-. The explanatory statement for the meeting held on 14th March 2007, placed on record by the Appellants themselves, bearing Appellant No.1's digital signature, expressly records that the shareholding was being increased as the Company "wishes to enhance its current business greatly", and that the present authorised capital of the Company was "very small and would be a constraint to the growth of the Company". Admittedly, validity of these meetings which were referred to in paragraphs ii(a) and (b) of the Respondents' Reply, and the Appellant Nos. 1 and 2's presence have been accepted in paragraph 6 of the Appellants' Rejoinder.

26 The rights issue was thus obviously contemplated as being the avenue for increasing the funds of the Company and for the growth of the Company. The CLB has recorded a finding of fact (in paragraph

28) that the rights issue was necessary for the growth of the Company and therefore the action of issuing the shares could not be termed as KJ 25/33 CA22.13.doc oppressive to the Appellants and/or mismanagement of the affairs of the Company.

27 Pertinently, despite being party to the above meetings, at no point did the Appellants seek to subscribe to the rights issue, and did not even make such enquiries for several years prior to filing the present Petition. The reason for this was clearly because the rights issue which commenced from April 2007, was not of interest to the Appellants, as the Appellants had received back the sum loaned by them to the Company to the tune of Rs.73,00,000/-. The Appellants had accepted back the loan as they did not desire to partake in the functioning of the Company.

28 The Appellants have no explanation for their having taken back their loan, save and except to contend that this was not reflective of their disinterest in the company. In this regard, the CLB has arrived at a finding of fact, based on the conduct of the Appellants and this finding ought not to be interfered with in exercise of jurisdiction under Section 10-F. As a matter of fact, after accepting their loan amounts back in or about March 2007, at no point did the Appellants write a single letter or demand to participate or show any interest in participating in the company until issuance of the show cause notice on 5th November 2007. If the Appellants truly desired to partake in KJ 26/33 CA22.13.doc the management of the company and felt that they had been wrongly prevented from doing so, any reasonable person would have approached the appropriate forum, i.e., the CLB in 2007 itself. However, no such steps were taken by the Appellants until July 2011. 29 In the circumstances, even on merits it cannot be said that the rights issue was either oppressive or done behind the back of the Appellants.

Shifting of registered office:

30 The Appellants have sought to raise certain factual contentions as to where the notices for the Registered Office shifting were posted from. These are all factual matters, which would turn on evidence as to where Respondent No.2 resided and where he posted the notices from. It is not necessary that the notices be posted only from the Post Office adjacent to the Registered Office of the Company. Be that as it may, this factual analysis is beyond the scope of this Court's jurisdiction under Section 10-F of the Companies Act, 1956. 31 The Appellants raised a grievance that the registered office of the Company was shifted from Jogeshwari to Sir P. M. Road in April 2007 and thereafter from Mumbai to Nashik in July - August 2007.

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It has to be noted that the jurisdiction of the ROC was not

changed, and there was no prejudice whatsoever caused to the Company by virtue of the change of the registered office. The sequence of events relating to the shifting of the registered office have been set out in paragraphs (i) to (iii) of the Reply filed by the Respondents in the CLB .

33 As laid down by the Hon'ble Supreme Court in 15 Hanuman Prasad Bagri v. Bagress Cereals Private Limited, shifting of the registered office by itself may not be a reason or a ground to be raised in a Petition under Sections 397 / 398 as long as the Company did not suffer much loss on account of the shifting and no case was made out to show that such exercise was undertaken to put oppressive pressure or pain upon the Petitioners. As in the case that was before the Hon'ble Supreme Court, there is nothing in the present case to show that any prejudice was/is caused to the Appellants or that any wasteful expenditure amounting to mismanagement was

incurred on behalf of the Company by shifting of the registered office. 34 Pertinently, it is the admitted position that the UPC amount paid was Rs.3/-. It is more than sufficient for service on Appellant Nos.1 and 2; the other Directors and Shareholders being part of the 15 [2001] 33 SCL 78 (SC) KJ 28/33 CA22.13.doc Respondent Group, may well have been served by other means - they have raised no objection as to service or receipt of the notices. Once again this aspect is purely factual and is being dealt with only in light of the contentions raised by the Appellants. The crucial factor re- mains that shifting of the Registered Office has caused no prejudice to the Company, and is not oppressive in the least. There is nothing to show that the shifting was done to prejudice the Appellants. 35 Thus this contention does not constitute oppression or misman- agement.

Directorial disputes 36 The Appellants have relied upon an RTI Application of 2012 to contend that no notice was received of the meeting for removal of the Appellants as Directors. It appears from the impugned judgment that this issue of the RTI Reply was not pressed before the CLB. Even otherwise, it is pertinent to note that in all the various allegations of not having received notice for various meetings, the Appellants have not sought to obtain any RTI on the delivery of notices for all the meet- ings which are the subject matter of dispute between 2007 and 2010, but have only purported to obtain an RTI for a meeting held in 2011. Be that as it may, the Appellants have been removed by resolutions KJ 29/33 CA22.13.doc and with appropriate Form 32's filed, to the satisfaction of the ROC. It is nobody's case that the ROC has thereafter raised any objections to the filing of the Forms or indeed to the manner of removal of the Ap- pellants.

37 As held by the Hon'ble Supreme Court in *Hanuman Prasad Bagri v. Bagress Cereals Private Limited* (supra) directorial disputes are bey- ond the jurisdiction of the CLB under Sections 397 and 398. Thus, the same cannot be raised before the CLB as rightly held by the CLB in paragraph 35 of the judgment.

38 Further the Company is not under any circumstances either a family company or a closely held quasi partnership, in which circum- stances potentially directorial disputes may be raised. The judgments relied upon by the Appellants in this regard will have no application to a company such as Respondent No.1. Further, it does not appear that this issue of 'quasi-partnership' was pressed before the CLB, and was not pressed in arguments before this Court. 39 The judgments placed in the Written Submissions, are, to a sub- stantial extent, on points not raised before the CLB or before this Court in the arguments canvassed by the Appellants. The said judg- ments pertain to several aspects which were neither pressed before the CLB or before this Court, and to the extent that the same are KJ 30/33 CA22.13.doc placed in reliance of a case not pressed before the CLB or this Hon'ble Court, the judgments ought to be disregarded. Nevertheless, the said judgments are broadly dealt with hereinbelow: 40 As regards 16Dushyant D.Anjaria Vs. M/s.Wall Street Finance Ltd. ; 17Yogendra Kumar Maheshwari Vs. Registrar of Companies; and 18P.Natarajan V/s. Central Government, of the Compilation are in cases which were not under Section 397/398. 41 As regards Dushyant D.Anjaria (supra), Yogendra Kumar (supra); P.Natarajan (supra) ; 19 Sishu Ranjan Dutta Vs. Bhola Nath Paper House Ltd.,; 20Harikumar Rajah V/s.Sovereign Dairy Ltd. (Mad) ; 21Hindusthan Co-operative Insurance Society Ltd. In re ; 22Sintex Industries Ltd., In re, pertain to appointment of (Addi- tional) Directors and the tenure thereof. The appointment and dura- tion of Directors is a matter beyond the scope of jurisdiction of the CLB, and in any case is not the grievance urged before this Court. 42 As regards 23Zora Singh V/s. Amrik Singh Hayer; 24Rajiv Ku- mar Singh V/s. Shree Narayan Developers P. Ltd. and Ors.;

Ashok Kumar and Ors. V/s. Shree Janki Cold Storage P. Ltd. and 16 2001(1)Mah. L.J.701 17 2011 SCC Online Gau 143 18 (2004) 1 CTC 340 19 (1983) 53 Comp Cas 883 20 (1999) 19 SCL 391 (Mad) 21 (1961) 31 Comp

Cas 193 (Cal) 22 (2010) 156 Comp Cas 367 23 (2009) 149 Comp Cas 328 (P&H) 24 (2010) 153 Comp Cas 370 (CLB) 25 (2010) 153 Comp Cas 222 KJ 31/33 CA22.13.doc Ors.; 26Swapan Dasgupta Vs. Navin Chand Suchanti, pertain to notices for meetings and the issue of UPC. This issue has been dealt with above. The judgments turn purely on the facts of their respective cases. In the present case, the CLB has arrived at a conclusion that the notices appear to have been served on the Appellants, and even in respect of the Board Meetings, it cannot be disputed that there are UPC proofs of the notices.

43 As regards Needle Industries India Ltd. (supra) ; 27Mrs.- Farhat Sheikh V/s. Esemen Metal Chemicals Pvt. Ltd. ; 28Rashmi Seth V/s. Chemon India Pvt. Ltd. ; 29Ram Babu V/s. Target Constructions Pvt. Ltd. and Ors. ; and 30Mrs.Gurpreet Gill V/s. Pump- kin Studio P. Ltd. & Ors., the same pertain to issue of shares. As set out earlier, the impending Rights Issue was to the knowledge of the Appellants; even otherwise, at no point had they sought to exercise their purported right of pre-emption as is now sought to be contended in the Appellants' Written Submissions. The Appellants in fact had accepted repayment of their loan by March 2007 and were clearly not interested in the functioning of the company. Pertinently, even after having full knowledge, as per their own case, in November 2007, the Appellants did not take steps to challenge the Rights Issue or to seek 26 (1988) 64 Comp Cas 562 (Cal) 27 (1996) 87 Comp Cas 290 CLB 28 (1995) 82 Comp Cas 563 (CLB) 29 (2009) 151 Comp Cas 71 (CLB) 30 (2010) 158 Comp Cas 195 (CLB) KJ 32/33 CA22.13.doc allotment of shares to them in the ensuing several years. In any event, the judgments relied upon take the position that if the Rights Issue is not bonafide but is only for the purpose of enabling a party to obtain a majority, then such action will constitute oppression; this is not so in the present case. The CLB has concluded that funds were required for which the Rights Issue was carried out, and therefore it cannot be said that the same was not bonafide. 44 As regards 31Sanjay Paliwal and Anr. Vs. Paliwal Hotels Pvt. Ltd., ; 32Rajesh Patil V/s. Moonshine Films Pvt. Ltd. ; 33M.L.Arora V/s. Green Valley Frozen Food Ltd. & Ors. ; and 34A.Kalyani V/s. Vale Exports P. Ltd., the same pertain to the allegation of continuous oppression and mismanagement, to justify the delay in filing of the Company Petition. As set out above, the contention of continuous oppression and mismanagement culminating in the removal of the Appellants as Directors in 2011, was not the ground urged before the CLB to justify the delay. The ground urged was as to the pendency of proceedings before the ROC, and it is in that context that the CLB has rightly held that the explanation for the delay is unjustifiable. Even otherwise, the explanation given by the Appellants cannot be countenanced, as the events of which they complained, had to a material extent, culminated in 2007 itself, and there is no justification for the delay in approaching the CLB.

45 In the circumstances, the Appeal ought to be dismissed as it does not give rise to any question of law. The factual findings are strictly matters which were within the province of the CLB. The CLB having exercised its discretion after analysing the evidence before it, this Court cannot to replace the discretionary order passed by the CLB with any contrary order.

46 Even otherwise, on the findings of delay/laches and unclean hands, the present Appeal ought to be dismissed as the CLB has rightly declined to exercise its equitable jurisdiction in favour of the Appellants.

47 As noted earlier, even on the merits, the Appellants' case is untenable and contrary to the record.

48 No case of oppression or mismanagement has been made out, and the Appeal ought to be dismissed, with costs which is fixed in the sum of Rs.2 lakhs. Appellants to pay this amount within 4 weeks by way of cheque drawn in favour of the advocate on record for Respondents.

(K.R.SHRIRAM,J) KJ