IN THE HIGH COURT OF JUDICATURE AT MADRAS.

DATED: 21/05/2002

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THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

C.M.A.No.923 of 2000 and C.M.A.No.924 of 2000

C.M.A.No.923 of 2000

1. M/s.Micromeritics Engineers Pvt. Ltd.
2. S.Sounder
3. Mrs.Vasantha Kumari
4. S.Siddarthan
5. Velayutham ..... Appellants.

-Vs-

S.Munusamy ..... Respondent

C.M.A.No.924 of 2000:

1.Microparticle Engineers Private Ltd.
2.S.Soundar
3.Mrs.Vasantha Kumari
4.Siddarthan.
5.R.Velayutham.
... Appellants.

vs.

Mrs.Senthamarai Munusamy
... Respondent

The C.M.As. are filed against the order of the Company Law Board, Principal Bench, Chennai dated 21.5.2000 in C.P.Nos.68 and 69 of 1998 . In both C.M.As.

!For appellant :: Mr.T.V.Ramanujam, Sr.counsel for Mr.W.C.Sridhar.

^For respondents :: Mr.R.Murari

:JUDGMENT

The appeals are filed against the order of the Company Law Board, Principal Bench, sitting at Chennai dated 21.5.2000 made in C.P.Nos.68 and 69 of 1998. The respondents in C.P.No.6 9 of 1998 are the appellants in C.M.A. No.923 of 2000 and the respondents in C.P.No.68 of 1998 are the appellants in C.M.A. No.924 of 2000. The petitioner in C.P.No.69 of 1998 is the respondent in C.M.A.No.923 of 2000 and the petitioner in C.P.No.68 of 1998 is the respondent in C.M.A.No.924 of 2000.

2. The appeals deal with two companies, viz., M/s. Micromeritics Engineers Pvt. Ltd. and M/s.Microparticle Engineers Pvt. Ltd. As far as Microparticle Engineers Pvt. Ltd. is concerned, it was incorporated on 13.1.1992 under the Companies Act, 1956 (hereinafter referred to as `the Act'). The respondent in C.M.A.No.924 of 2000, by name, Senthamarai Munusamy along with S.Sounder, the second appellant and one Nalini Chandrasekar were holding shares in the said company and all of them were holding 99 0 shares each. Later on, Nalini Chandrasekar transferred her shares equally to the second appellant Sounder and the respondent Senthamarai Munusamy with the result the second appellant Sounder was holding 1485 shares out of 2970 shares initially allotted by M/s.Microparticle Engineers Pvt.Ltd.

3. The respondent Senthamarai Munusamy approached the Company Law Board stating that on perusal of the records of the Registrar of Companies, she found that further shares were alleged to have been allotted on 16.4.1997 to the close relatives of the second appellant, Sounder. According to the respondent Senthamarai Munusamy, the allotment was ex facie illegal and invalid, and hence, she approached the Company Law Board for oppression of her rights as a member of the company.

4. Before considering the issues raised in the appeal, it is relevant to mention here that M/s. Microparticle Engineers Pvt. Ltd., as already observed, was incorporated on 13.1 .1992 under the provisions of the Act and having its registered office at 298, 4th Floor, Khaleel Shiraji Estate, Fountain Plaza, Pantheon Road, Egmore, Chennai-8 and the authorised share capital of the company is Rs.5,00,000/- consisting of 5,000 equity shares of Rs.100/- each and the paid up capital of the company is Rs.3 lakhs. The main objects of the company are to manufacture, produce, treat, process, manipulate, trade, etc. Its ancillary objects are set out in the memorandum of association. According to the respondent Senthamarai Munusamy, she was the promoter and a Director of the company, M/s.Microparticle Engineers Pvt. Ltd. and subscribed her name in the memorandum of association as promoter. I have already set out the shares held by the second appellant, Sounder as well as the respondent Senthamarai Munusamy along with one Nalini Chandrasekar.

5. In 1985, the husband of the respondent herein, by name, Munusamy, who is the respondent in the other appeal in C.M.A.No.924 of 2000, along with one Chandrasekar and Sounder, second appellant herein, formed a partnership firm in the name and style, M/s.Micromeritics Engineers Pvt. Ltd. and its nature of business, inter alia, was the manufacture and supply of machines for mixing, dispersion and size reduction and the company was catering mainly to the requirement of printing ink, paint and ceramic industries. The business of the firm, M/s.Micromeritics Engineers Pvt. Ltd. expanded resulting in the acquisition of assets and in 1992, M/s.Micromeritics Engineers Pvt. Ltd. the first appellant was incorporated to take over the business o f the firm, M/s. Micromeritics Engineers Pvt.Ltd. It is relevant to mention here that M/s.Micromeritics Engineers Pvt. Ltd. took over the business of the

associate firm, M/s.Micromeritics Engineers Pvt. Ltd.
6. The case of the respondents in both the matters before the Company Law Board was that both the companies, viz., M/s. Micromeritics Engineers Pvt. Ltd. and M/s.Microparticle Engineers Pvt. Ltd. are really partnership business firms and the management, day-to-day administration and effective continuance of the companies depended upon the mutual trust and confidence which each director and shareholder had upon the other. The respondents Senthamarai Munusamy and Munusamy approached the Company Law Board on several allegations and it is not necessary to set out the same and the main reason which the Company Law Board weighed for granting the relief sought for was regarding the allotment of shares in favour of appellants 3 to 5, by name, Vasantha Kumari, S.Siddarthan and R.Velayutham and induction of appellants 4 and 5 as Directors on 1.5.1998 and the removal of the respondents Senthamarai Munusamy and Munusamy as Directors on 2.5.1 998 which, according to the Company Law Board, constituted a chain of acts of oppression against the respondents. The Company Law Board took the view that in the Board Meetings held on 18.4.1998 and 25 .4.1998 to consider the induction of additional Directors and to accept the resignation of the respondents from directorship of the companies, there was no quorum and hence the decision to convene Extraordinary General Meeting on 1.5.1998 was invalid. The Company Law Board took the view that the decision taken in the Extraordinary General Meeting was invalid and the quorum was maintained in the Extraordinary General Meeting only as a result of allotment of shares to appellants 3 to 5. The Company Law Board held that the allotment of shares to ap pellants 3 to 5 was invalid and the decision taken to accept the resignation of the respondents in the Board Meeting held on 2.5.1998 was also invalid as there was no quorum for the meeting. As far as the letter of resignation of one of the respondents is concerned, it was not valid and the Company Law Board took the view that the allotment of shares in favour of appellants 3 to 5 was invalid and appellants 4 and 5 could not hold any share in the companies. As far as the Board Meeting held on 14.4.1997 is concerned, the Company Law Board took the view that the Board did not find that any notice of the Meeting was sent to the respondent and in the absence of proof of notice, the Company Law Board was inclined to hold that even assuming that there was a Meeting on 14.4.1997, there might not have been quorum to transact any business and hence, the business transacted without quorum was invalid. As far as the allotment of shares in the Board Meeting held on 14.4.1997 is concerned, the Company Law Board found that there are contradictions as the minutes indicated that the company had received application for allotment of shares along with the amount due, whereas in the counter statement filed before the Company Law Board it has been stated that appellants 3 to 5 were having credits in the books of the companies which were set off against the allotment of shares. The Company Law Board also found that there was no document produced by the appellants in respect of receipt of allotment money by the companies and there was no evidence regarding additional funds. The Company Law Board found that both the companies did not act bona fide in the allotment of shares in favour of appellants 3 to 5. The Company Law Board therefore came to the conclusion that appellants 3 to 5 are not holding any qualifying share in the companies and they cannot be regarded as additional Directors. The Company Law Board also noticed that in the minutes, the Board has recorded its appreciation of the services rendered by the respondent Senthamarai Munusamy during her tenure

as a Director of the company, but in the counter a contra-statement has been made that the respondent Senthamarai Munusamy never entered the company premises and nor was she involved in the company affairs. In this view of the matter, the Company Law Board felt that it is not necessary to go into the other submissions made. The Company Law Board held that the alleged act of financial mismanagement was not substantiated by the respondents herein. The Company Law Board has also not accepted the plea of appellants 2 to 5 that the Company Law Board should wait till the outcome of the civil suit instituted by the parties. The Company Law Board ultimately held that the allotment of shares on 14.4.1997 in favour of appellants 3 to 5 are invalid and appellants 4 and 5 cannot be regarded as additional Directors and the removal of the respondents from the directorship on 2.5.1998 was invalid and these would constitute a chain of acts of oppression against the respondents herein. The Company Law Board held that by the act of the second appellant the respondents have been reduced to minority shareholders and excluded from the management and control of the companies and only the relatives of the second appellant were benefitted by the allotment of shares. In this view of the matter, the Company Law Board has passed the following order:

"(a) setting aside the allotment of shares impugned in these petitions in favour of respondents 3 to 5 and rectify the register of members of the Companies;

(b) setting aside inclusion of the respondents 4 and 5 as directors of the Companies;

(c) setting aside the resolutions dated 2.5.98 removing the petitioners from the office of director of the Companies; and

(d) reconstituting the Board of Directors of the Companies with immediate effect with the petitioners and the 2nd respondent as directors of the Companies."

The Board ultimately held that appropriate order that would be passed in the case would be that the second appellant herein should take one company and the respondents should take another company and run the respective companies independently for which a lot would be taken in the presence of the Bench of the Company Law Board and in this view of the matter, the Company Law Board disposed of both the Company petitions and it is against the order, the present C.M.As. have been filed.

7. By consent of both the parties, the C.M.As. were heard together. Mr.T.V.Ramanujam, learned senior counsel appearing for the appellants in both the appeals submitted that there is no material to show that the affairs of the company were conducted in the manner prejudicial to the interest of the public or in any manner oppressive to the interest of any member of the company. According to him, section 397 of the Companies Act is not attracted as nothing has been done in the manner prejudicial to the public interest or in the manner oppressive to the interest of any member of the company. He has

also submitted that section 398 is also not attracted by reason of the alleged change in the constitution of the Board and there is nothing to show that the affairs of the company were conducted in the manner prejudicial to the interest of the members or public. Learned senior counsel submitted that the allotment of shares is valid. He submitted that the resolutions dated 24.2.1997 and 20.3.1997 were not challenged though copies of the resolutions were produced before the Company Law Board and a reference has been made in the written arguments. Learned senior counsel submitted that the provisions of section 195 of the Companies Act are attracted and a presumption has to be drawn in favour of the validity of the resolutions. He therefore submitted that there was absolutely no material to show the burden was discharged, and hence the presumption would operate. He also submitted that the non-production of the original minutes is immaterial as there was no notice issued for the production of the original minutes book. His main submission was that the respondent has not challenged the resolutions dated 24.2.1997 and 20.3.1997. Learned senior counsel submitted that the delay in filing the resolutions with the Registrar of Companies has no effect at all and the copies of the resolutions have been filed in May, 1998 and the company petition has been filed in November, 1998 after having made inspection of the records available with the Registrar of Companies, but the respondents have not challenged the resolutions dated 24.2.1997 and 2 0.3.1997. Learned senior counsel submitted that the resolution dated 14.4.1997 was passed bona fide and the presumption under section 195 would operate. As regards the payment of share moneys, even assuming that there are certain discrepancies that would not make the resolutions invalid. According to the learned senior counsel, the mere alleged discrepancies in the resolution would not make the resolutions invalid attracting the provisions of sections 394 and 395 of the Companies Act. His submission is that the allotment of shares in favour of respondents 3 to 5 was bona fide and within the jurisdiction of the Directors and it cannot be regarded as an act of oppression. As regards the balancesheet, learned senior counsel submitted that non-signing by one of the Directors is not a matter of oppression, but however, it is an isolated act and not an act of oppression.

8. Learned senior counsel referred to section 53 of the Companies Act and submitted that as per the requirement of section 53 of the Act, notice was sent by certificate of posting. He submitted that Munusamy has been attending the Office and he referred to various documents to show that he has signed the declaration and attended the Office. He therefore submitted that one of the Directors was present and when he failed to cooperate and attend the meeting, he cannot take advantage of his own wrong. As far as the convening of the Extraordinary General Meeting is concerned, he submitted that when one of the Directors was not cooperating with the remaining Director, on the basis of the principles laid down under section 169 of the Companies Act, the second appellant has convened the Extraordinary General Meeting. Learned senior counsel submitted that the petitioner in each of the company cases has been given notice and they have not sent any reply raising objections. He submitted that the act of the second appellant did not amount to oppression. Mr.T.V.Ramanujam, learned senior counsel submitted that the Company Law Board has not considered the material evidence in this case and minutes book was relied upon for certain other purposes and it has chosen to ignore the minutes book altogether. He submitted that the explanation of

Munusamy was accepted and the findings of the Company Law Board are contrary to law and without any evidence. Learned senior counsel submitted that the relief granted was without jurisdiction as there are two different companies and it is not open to the Company Law Board to allot to one group one company and separate orders should have been passed regarding the relief. Learned senior counsel submitted that the Company Law Board was wrong in setting aside the allotment of shares and no grounds have been made to interfere under sections 397 and 398 of the Companies Act. Learned senior counsel submitted that the civil suit is pending and the Company Law Board should have awaited the outcome of the civil court.

9. Mr.Murari, learned counsel for the respondent, on the other hand, submitted that no question of law is involved. His main submission was that the Company Law Board has considered the material evidence and on the basis of appreciation of evidence, the finding has been arrived at and therefore no question of law is involved in this matter. Learned counsel submitted that presumption under section 195 of the Companies Act cannot be availed of as original minutes book was not produced and the minutes book produced is no t the one which was maintained during the regular course of business. Learned counsel submitted that the provisions of sections 397 and 398 of the Act are fully attracted on the facts of the case as there was continuous course of action of conduct to oppress the respondents and therefore the provisions of sections 397 and 398 are fully attracted. He submitted that the respondents have trusted the second appellant and permitted him to operate the company's bank accounts in the interest of the company but the moneys were diverted for other purposes. He referred to the resolutions passed, the date of filing of resolutions with the Company Law Board and the notice and reply by the counsel, and submitted that only from the reply, the respondent came to know that there was allotment of shares illegally and only from the reply it was found that the allotment of shares was made by resolution dated 16.4.1997 to the kith and kin of the second appellant. Leaned counsel submitted that no certificate of posting was produced in respect of meeting held on 14.4.1997 and it was found as a fact that notice was not given to the respondent. He also referred to the terms of the resolutions and submitted that the resolution ex facie clearly shows that no meeting was held and the return of the allotment was also not filed within 3 0 days from the date of allotment. As far as the resolutions dated 20 .3.1997 and 24.2.1997 are concerned, the appellants have not referred to the resolutions dated 20.3.1997 and 24.2.1997 in the counter affidavit and in the counter filed before the Company Law Board they referred to the resolution dated 14.4.1997 and since no reliance was placed on the resolutions dated 20.3.1997 and 24.2.1997, the question of challenging the same did not arise. He also submitted that the copies were produced before the Company Law Board and it does not mean that the respondent has to challenge each and every one of the resolutions. His submission was that when the presumption under section 195 of the Act is not available, it is not necessary that evidence should be adduced as the appellants' documents clearly establish that the minutes books were fabricated. As far as the meeting held on 18.4.199 8 is concerned, no notice was sent and in the absence of any evidence for the despatch of the letter, learned counsel submitted that the Company Law Board held that no notice was sent. Learned counsel further submitted that even if the notice was sent, it is not possible to hold the meeting with a single

Director and it is not open to the Single Director to convene the Extraordinary General Meeting on 1.5.1 998 for the purpose of introducing additional directors and for accepting the alleged resignation of the respondents. Learned counsel submitted that under the regulation 75 of the Table-A of the Schedule I to the Companies Act there was no quorum and the regulation also does not apply. As far as section 169 is concerned, it deals with general body meeting and it is not relevant for the purpose of the case. Since the respondent has not agreed that the meeting could not be held on 1.5.1998, the appointment of additional directors and the special resolutions passed on 1.5.1998 are all void. Learned counsel submitted that the facts clearly establish that the actions taken by the second appellant are without any basis and the only intention was to take over the control of the company. Learned counsel submitted that the respondents have not submitted the resignation and the Company Law Board has accepted as a fact that there was no resignation at all. Learned counsel submitted that the passing of resolution accepting the alleged resignation clearly shows that the second appellant has adopted the means to exclude the respondents from the company which would constitute oppression of the management. As far as the relief granted by the Company Law Board is concerned, the Company Law Board has very wide power and in exercise of the power the Company Law Board directed one party to sell the shares of one company to the other party and when the company Law Board found that there are two companies, it directed the appellants to take one company and directed the respondent to take another company. As far as the pendency of the civil suit is concerned, learned counsel submitted that the respondents were aware of the civil suit only after the filing of the petition before the Company Law Board and the petition was filed before the Company Law Board only in 1998 and only after the filing of the petition, the respondent came to know of the institution of the civil suit. Learned counsel submitted that the Company Law Board has jurisdiction under sections 397 and 398 of the Act and the pendency of the suit is not a bar for the Company Law Board to consider the matter. Learned counsel submitted that the second appellant has used the dubious method to exclude the respondents from the company to put them in financial loss and various acts of the second appellant clearly show that the second appellant have indulged in the act of oppression and mismanagement of the company and the Company Law Board has rightly come to the conclusion that the petition is liable to be ordered and it has done so.

10. I have carefully considered the submissions of the learned counsel for the parties. It is necessary to set out here the jurisdiction of this Court in appeal under section 10F of the Act. This Court in an appeal under Section 10F filed against the order of the Company Law Board is empowered to decide any question of law arising out of the order of the Company Law Board and the terms of the section clearly show that on the question of fact, this Court is not entitled to reappraise the evidence let in before the Company Law Board. The Delhi High Court in MOHD. JAFAR v. NAHAR INDUSTRIAL ENTERPRISES LTD. (19 97) 4 COMP.LJ 201), following the decision of the Supreme Court in the case of C.I.T. v. Scindia Steam Navigation Co. Ltd. (1961) 42 ITR 5 89), held that an appeal lies before the High Court from out of the decision of the Company Law Board on any question of law arising out of the order passed by the Company Law Board and when a question of law was neither raised before the Company Law Board, nor considered by it, it would not be a question arising out of its order notwithstanding that it might

arise on the findings given by it. This Court in MALLESWARA FINANCE & INVESTMENTS CO. v. C.L.B. (82 Comp. Cases 836) has held that an appeal under section 10F before this Court can be entertained on a question of law that arises out of that order and on the question of fact, the appeal does not lie. This Court also held that the question whether the increase in share capital is proper or not is a pure question of fact and no appeal is maintainable against the decision arising out of the question. Therefore it is clear that the findings rendered by the Company Law Board on the increase in share capital and the allotment of shares to various relatives of the appellant-2 and inclusion of appellants 4 and 5 as directors of the company and removing the respondents from the office of the Directors of the company and reconstitution of the company's Board are all questions of fact as the findings have been rendered on materials on record and they are supported by evidence. Though the appeal is liable to be rejected on the very short ground, however, considering the elaborate arguments advanced by Mr.T.V.Ramanujam, learned senior counsel for the appellants, this Court is inclined to go into the merits of the submissions.

11. As far as the powers of the Court under section 397 and 398 of the Companies Act are concerned, the Supreme Court in the case of NEEDLE INDUSTRIES (INDIA) LTD. AND OTHERS v. NEEDLE INDUSTRIES NEWEY (INDIA) HOLDINGS LTD. AND OTHERS (AIR 1981 S.C. 1298) has discussed the powers of the Court and reiterating its earlier decision in the case of S.P.Jain v. Kalinga Tubes (1965) 2 SCR 720, 737: AIR 1965 SC 153 5, 1545),laid down the law as under:-

" The fact that by the issue of shares the Directors succeed, also or incidentally, in maintaining their control over the Company or in newly acquiring it, does not amount to an abuse of their fiduciary power. What is considered objectionable is the use of such powers merely for an extraneous purpose like maintenance or acquisition of control over the affairs of the company. If the shares are issued in the larger interest of the Company, the decision to issue shares cannot be struck down on the ground that it has incidentally benefited the Directors in their capacity as shareholders. The mere circumstance that the Directors derive benefit as shareholders by reason of the exercise of their fiduciary power to issue shares, will not vitiate the exercise of that power. ....

What the Directors did was clearly in the larger interests of the Company and in obedience to their duty to comply with the law of the land. The fact that while discharging that duty they incidentally trenched upon the interests of the majority could not invalidate their action. The conversion of the existing majority into a minority was a consequence of what the Directors were obliged lawfully to do. Such conversion was not the motive force of their action. The Directors in the instant case did not exercise their fiduciary powers over the shares merely or solely for the purpose of destroying an existing majority or for creating a new majority which did not previously exist. The Directors exercised their power for the purpose of preventing the affairs of the Company from being brought to a grinding halt."

Learned senior counsel therefore submitted that the power to issue shares can be exercised to create sufficient number of shareholders to enable the company to exercise statutory powers or to enable it to comply with legal requirements. There can be no quarrel over the proposition of law and the question whether there is oppression has to be decided on the facts of each

case.
12. It is the case of the appellants that the Board Meetings were held on 24.2.1987 and 20.3.1997 and in the meetings, the Board has authorised to issue further shares for a sum of Rs.7.50 lakhs to such persons and whether they are holders of equity shares or not. The submission of Mr.T.V.Ramanujam, learned senior counsel is that the respondents have not questioned the Board Meetings dated 24.2.1997 and 20.3.1997 at all. I am accepting the submission of Mr. Murari, learned counsel that the appellants have not referred to the Board's resolutions dated 24.2.1997 and 20.3.1997 in the counter affidavit filed before the Company Law Board. I have gone through the counter affidavit filed by the appellants before the Company Law Board and they have not referred to the earlier resolutions passed on 20.3.1997 and 24.2.1997. The Company Law Board had no opportunity to go into the question of validity and genuineness of the resolutions dated 20.3.19 97 and 24.2.1997. Though in the typed-set of papers filed before the Company Law Board the copies of the resolutions were enclosed, in the absence of any reference to the same in the counter affidavit filed before the Company Law Board, I am not able to accept the submission of Mr.T.V.Ramanujam that on the basis of the resolutions dated 24.2.1 9 97 and 20.3.1997, the Directors have decided to increase the share capital by the issue of further shares and the further issue of shares were made in pursuance of earlier resolutions. Though in the arguments, learned counsel appearing for the appellants before the Company Law Board has referred to the resolutions dated 24.2.1997 and 20.3.19 9 7, the Company Law Board has not referred to the resolutions at all as no plea was raised in the counter affidavit filed before the Company Law Board regarding the two resolutions. Therefore I hold that since the appellants have not relied upon the resolutions dated 20.3.199 7 and 24.2.1997 in the counter affidavit filed before the Company Law Board, it is not now open in the appeal to contend that the shares were allotted in pursuance of the two resolutions. As already observed, the validity of the resolutions or genuineness of the resolutions was not tested or decided and it is a pure question of fact and therefore it is not open to the appellants to contend that on the basis of the earlier resolutions the shares were further allotted.
13. It is also relevant to mention here that in the resolution passed on 14.4.1997, there is no reference to the meetings held on 24 .2.1 997 and 20.3.1997 and the Minutes merely says that the minutes of the previous meeting was placed before the Board of Directors and the same was approved. As far as the resolution dated 14.4.1997 is concerned, no meeting was held on 14.4.1997 and no notice for the Board Meeting was sent to the respondents. It is also relevant to notice here that unlike other meetings, the appellants have not produced any Certificate of Posting for the despatch of notices in respect of the meeting purported to have been held on 14.4.1997. As a matter of fact, the Company Law Board has found that the notice for the meeting allegedly held on 14.4.1997 was not sent to the respondents. I therefore hold that the Company Law Board was perfectly justified in holding that no such meeting was held on 14.4.1997.
14. The submission of Mr.T.V.Ramanujam, learned senior counsel is that under the provisions of section 195 of the Companies Act, the Minutes of the Meeting held on 14.4.1997 is presumed to be valid and since the respondents have not produced any evidence, the Company Law Board was not correct in holding that the presumption under section 1 9 5 of the Companies

Act cannot be drawn. As far as the presumption under section 195 of the Companies Act is concerned, the presumption would apply where there is compliance of the provisions of section 19 3 of the Companies Act. Under section 193 of the Companies Act, the entries of minutes of the Board meeting shall be made in the book kept for that purpose with its pages consecutively numbered, and the same shall be kept for 30 days of the conclusion of the meeting. Section 193 also provides that each page of the minut es book shall be initialled or signed and last page of the minutes shall be dated and signed by the Chairman of the Board meeting. The appellants have not produced the original minutes book and only a copy of the minutes book was produced before the Company Law Board and a perusal of the copy of the minutes book shows that no page numbers were given and there are no initials as required under section 193 of the Companies Act. Therefore the requirements of section 193 of the Companies Act have not been complied with and hence, the presumption under section 195 of the Companies Act cannot be drawn.

15. Mr.T.V.Ramanujam, learned senior counsel submitted that the argument against the presumption as to the minutes book was raised only before this Court and according to him, the original minutes book is available and pages therein were numbered consecutively. However, the appellants have not produced the same before the Company Law Board and hence, it is impermissible for them to rely upon the provisions of section 195 of the Companies Act. His submission is that had the respondents raised objection against the presumption before the Company Law Board, the appellants would have an opportunity to produce the same before the Company Law Board. However, when the appellants are relying upon the entries in the minutes book for the allotment of shares and to show that the meetings were validly held, the onus is on them to produce the original minutes book before the Company Law Board. I hold that since they have failed to discharge the burden, the burden does not shift to the respondents, though they question the resolution.

16. Mr.T.V.Ramanujam, learned senior counsel submitted that it is not open to the respondents to rely upon one portion and to question another portion of the minutes book. The submission of the learned senior counsel is not acceptable as the appellants who rely upon the resolutions to produce the original minutes book before the Company Law Board and establish that shares were validly allotted in favour of other appellants. Another important aspect is that a perusal of the copy of minutes book produced before the Company Law Board does not show that page numbers were given consecutively, and hence, the requirement of section 193 of the Companies Act has not been fulfilled.

17. Mr.T.V.Ramanujam, learned senior counsel for the appellants submitted that the respondents have not produced any evidence against the resolution dated 14.4.1997 and in the absence of any evidence, the presumption under section 195 of the Companies Act would apply. The submission is also not acceptable as the appellants have not produced the original minutes book. First, the appellants have to make out a case for drawing the initial presumption and only if they satisfy that the initial presumption is available to the appellants, the respondents are required to let in evidence to rebut the presumption. Since the initial presumption is not available to the appellants, the failure on the part of the respondents to let in evidence to rebut the presumption is not a vitiating factor.

18. In this connection it is relevant to notice the decision

of the Supreme Court in Needle Industries (India) Ltd. case (51 C.C.743 at p.787) where the Supreme Court held that the fact that oral evidence was let-in in some cases does not mean that it must be let-in in all cases or that without it, the matters in iss ue cannot be found upon. The Supreme Court noticed the decision in Punt v. Symons & Co. (1903) 2 Ch 506 (Ch D), Fraser v. Whalley (1864) 7 1 ER 361 and Hogg v. Cramphorn Ltd. (1967) 1 Ch 254: 37 Comp. 157 (Ch D) and held that in those cases the breach of fiduciary duty was inferred from affidavit evidence.

19. Further, in MALLESWARA FINANCE & INVESTMENTS CO. v. C.L.B. (82 C.C.836), a Division Bench of this Court held that it is not necessary that oral evidence should be taken before the Company Law Board to substantiate the case of fraud. The following observation of the Division Bench of this Court is relevant for the purpose of this case:-

" It is also contended by the appellants' counsel that ti is a case where there is an allegation of fraud and no evidence is taken and no attempt was also made by the petitioners to substantiate the same by adducing evidence. The said argument also cannot hold good for the reason that before the Company Law Board all parties have participated in the proceedings on the basis of affidavits and counteraffidavits, and findings have been arrived at on that basis. It is always not essential that oral evidence should be taken to substantiate the case of fraud. It was also held in Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. (1981) 51 Comp Cas.743: AIR 1981 SC 1298, it was held in that case that if there is ample material on the on the record in the case in the form of affidavits, correspondence and other documents on the basis of which proper and necessary inference can be safely drawn, oral evidence is not necessary. In the same case, at paragraph 52, it was held that the person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder. If this act is proved, the power of the Company Law Board to invoke section 397 of the Companies Act will be justified."

20. One of the submissions of Mr.T.V.Ramanujam, learned senior counsel is that the Company Law Board has committed a serious error in not construing the resolutions dated 20.3.1997 and 24.2.1997. I have already dealt with the matter. In my view, the Company Law Board had no occasion to consider the prior resolutions dated 20.3.1997 and 2 4.2.1997. Though the copies of those resolutions have been produced before the Company Law Board, the appellants did not choose to place reliance on the resolutions dated 20.3.1997 and 24.2.1997 and hence, it is not now open to the appellants to contend that the Company Law Board has not referred to the resolutions dated 20.3.1997 and 24.2.19 9 7. In my view, it is a factual matter, whether Board meetings were held on 20.3.1997 and 24.2.1997 and whether resolutions were validly passed on 20.3.1997 and 24.2.1997 and when the factual matter was not referred to before the Company Law Board, it is not open to the appellants herein to refer to those resolutions and contend that on the basis of those resolutions further shares were allotted.

21. The submission of Mr.T.V.Ramanujam, learned senior counsel proceeds on the basis that the earlier resolutions dated 20.3.1997 and 24 .2.1997 are valid resolutions, but however, they have not been challenged by the respondents and therefore, it is not open to the respondents to

challenge the subsequent resolution dated 14.4.1997. The appellants have not produced the Certificate of Posting for despatching the notices of the meetings dated 24.2.1997 and 20.3.1997. The appellants have also not produced the original minutes book. In the counter affidavit filed before the Company Law Board, the appellants have not referred to the Board meetings dated 24.2.1997 and 20.3.1997 . Had the case of the appellants been that the resolutions passed in the said Board meetings were the basis for allotment for shares to other appellants, the appellants should have raised the same in the first available opportunity, viz., in the counter affidavit filed before the Company Law Board. Hence, I hold that the Company Law Board has not committed any error in not referring to the resolutions dated 24.2.1 997 and 20.3.1997. Equally, it is not open to the appellants to rely upon the resolutions passed in the Board meetings stated to have been held on 24.2.1997 and 20.3.1997.

22. Mr.T.V.Ramanujam, learned senior counsel relied upon the decisions of this Court in MURUGESAN v. SUBRAMANIA GOUNDER (1997 (III) CTC 478). That case was dealing with the presumption in regard to consideration of section 118(a) of the Negotiable Instruments Act, and in that case, this Court held that there must be cogent and satisfactory evidence from the side of the defendant to shift the burden on the plaintiff and the defendant must place convincing material to discharge the burden of proof placed on the defendant. I am of the view the decision has no application at all to the facts of the case as it is the duty of the second appellant herein to discharge the burden when he relies upon the resolutions.

23. Another decision relied upon by Mr.T.V.Ramanujam, learned senior counsel is the decision of this Court in PRIYACHANDRAKUMAR v. P.P.FUND LTD. (83 C.C.150) wherein this Court held the minutes are prima facie evidence under section 193 read with section 195 of the Companies Act and the onus of dislodging the presumption is on the person who has challenged the resolution on the ground of malpractice or misdeed. In my view, the decision has no application as in that case proper minutes were produced before the Court and in that context, it was held that that the burden is on the person who is challenging the minutes.

24. On the other hand, in BALASUNDARAM v. NEW THEATRES CARNATIC TALKIES (77 C.C.324), AR.Lakshmanan,J. (as His Lordship then was) has held that section 193 of the Companies Act provides that every company shall cause minutes of all proceedings of every general meeting of its board of directors or of every committee of the board to be kept by making, within 30 days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered and if the presumption is not available under section 193 of the Companies Act, the presumption under section 195 of the Companies Act is also not available. I am of the view the ratio laid down in Balasundaram's case would squarely apply to the facts of the case as the appellants have not produced the original minutes book with its pages consecutively numbered and once the presumption under section 193 of the Companies Act is not available, the presumption under section 195 of the Companies Act is also not available to the appellants.

25. In B.SIVARAMAN v. EGMORE BENEFIT SOCIETY LTD. (75 C.C.198), this Court has reiterated and laid down the law as under:-

Under section 195 of the Companies Act, 1956,where the minutes of the proceedings of the company are duly recorded and signed, a presumption is drawn that the meeting has been duly called, held and all proceedings

thereat have duly taken place and the consequent appointments of directors have been validly made. This presumption is rebuttable, but the onus of proof to dislodge the presumption is cast on the person who challenges the resolution or the entering of the minutes on the ground of malpractice of misdeed."

26. According to the above decision, where minutes are duly recorded and signed, then the presumption can be drawn and it is a rebuttable presumption. On the facts of the case, since the second appellant is not able to invoke the aid of section 193 of the Companies Act, it is not open to them to invoke the provisions of section 195 of the Companies Act. Besides, there are circumstances to show that not much reliance can be placed on the resolution dated 14.4.1997. The minutes of the resolution dated 14.4.1997 show that the Board has resolved that 7500 equity shares of Rs.100/- each would be allotted to the appellants 3 to 5 from whom applications were received for allotment of equity shares along with the amount due thereon. The resolution proceeds on the basis that the appellants 3 to 5 have enclosed call money along with share applications. However, the stand taken by the appellants in the counter-affidavit before the Company Law Board shows that shares were allotted out of the amount lying to their credit in the company books and the same was adjusted against allotment of shares. The above contradictory stand was probably taken as the appellants were not in a position to place before the Company Law Board any evidence for generation of additional funds by the issue of shares to the allottees. The appellants have also not produced any evidence as regards the receipt of money by the company. It is also significant to notice that the appellants have not produced account books before the Company Law Board to show that certain amounts were lying to the credit of the allottees which were duly adjusted. The apparent conflict between the resolution dated 14.4.1997 and the stand taken by the appellants before the Company Law Board clearly discloses that the resolution dated 14.4.1997 is not a valid resolution at all. Moreover, under section 75 of the Companies Act, whenever allotment of shares is made, the company shall, within 30 days thereafter file a return stating allotment number, nominal amount of shares comprised in the allotment, etc. and under the proviso, the company shall not show in such a return any shares as having been allotted for cash, if cash has not actually been received in respect of such allotment. Admittedly, the appellant company had not filed any return within 30 days from the date of allotment, viz., 14.4.1997, but the return was filed after a long delay, viz., in May, 1998.

27. Another significant aspect is that the minutes of the resolution dated 14.4.1997 contains the statement that share certificates would be issued to the allottees to be duly signed by Sounder "along with another Director". On 14.4.1997 there were only two Directors and when there were two Directors, the proper wordings in the resolution should have been, "share certificate would be signed by Sounder along with other Director" and the employment of the expression, " another Director" clearly shows that the resolution dated 14.4.1997 is ante-dated and no meeting was held on 14.4.1997 for allotment of shares. Once I hold that no meeting was held on 14.4.1997 and the resolution dated 14.4.1997 is not valid, even accepting the case of Mr.T.V. Ramanujam, learned senior counsel that the earlier resolutions dated 24.2 .1997 and 20.3.1997 are valid resolutions, the allotment of shares on

14.4.1997 in favour of appellants 3 to 5 who are close relatives of the second appellant is invalid. Hence, I do not find any justifiable reason to take a different view from the finding of the Company Law Board that no Board meeting was held on 14.4.1997 and there was no proof for service of notice for the meeting held on 14.4.1997. I find that the finding of the Company Law Board is based on materials on record and there is nothing to indicate that the conclusion of the company Law Board with regard to the alleged meeting dated 14.4.1997 is in any way unreasonable or wrong.

28. It is also significant to notice that the company, Microparticle Engineers Pvt. Ltd. in the letter dated 18.12.1998 has referred to the Board meeting held on 16.4.1997 whereas no such meeting was held on 16.4.1997, but the meeting was alleged to have been held on 1 4.4.1997. The company has repeated the date 16.4.1997 in more than one place, not only in the form, but also in the letter enclosed, to the Registrar of Companies.

29. Mr.T.V.Ramanujam, learned senior counsel for the appellants has not disputed the discrepancies, but submitted that it would not constitute an act of oppression. I will consider the question of oppression later when I consider the question whether there is a chain of events which led the Company Law Board to draw an inference that there is an act of oppression.

30. Learned senior counsel for the appellants submitted that under section 75 of the Companies Act, there is a power to condone the delay and when all earlier resolutions prior to the impugned resolution were filed in May, 1998, the delay is not a vitiating factor. No doubt, if considered in isolation, the delay may not be material, but when considered in association with attendant circumstances of the case, the delay in filing the impugned resolution with the Registrar of Companies assumes much importance.

31. It is also relevant to notice the minutes of the Board meeting dated 22.9.1997. The statement of the minutes dated 22.9.1997 reads as if the balance sheet of the company, Micromeritics Engineers P. Ltd. was approved and signed by the second appellant as well as the respondent. The balance sheet for the company produced before the Company Law Board does not show that it was singed by the respondent in the appeal. The same is the position in the case of the other company, Microparticle Engineers P.Ltd. As already held by me, it is not open to the appellants to draw presumption under sections 193 and 195 of the Companies Act in respect of the minutes of the meeting held on 22 .9.1997.

32. The next important event is the meeting of the Board of Directors held on 18.4.1998. The appellants have no doubt produced a copy of the notice for the Board meeting held on 18.4.1998. The appellants have also produced the Certificate of Posting for the despatch of notice for the meeting held on 18.4.1998. Mr.T.V.Ramanujam, learned senior counsel relied upon the decision of the Mysore High Court in ACHAMMA v. FAIRMAN (AIR 1970 Mysore 77) and submitted that the notice for the Board meeting was sent by Certificate of Posting and hence, the presumption under section 114 of the Evidence Act can be drawn in the instant case. The Mysore High Court after referring to section 27 of the Mysore General Clauses Act, 1899, held as under:-

"It is contended by the respondent's counsel that in this case the very fact that the registered letter has come back with the endorsement as

mentioned above, shown that the contrary has been proved, namely that there has been no due service effected on the tenant; on the other hand, it is submitted that the service should be deemed to be effected if the four conditions are fulfilled namely, sending the letter by registered post, it being properly addressed, pre-paid and the letter contains the document; the contrary that is required to be proved to take away the presumption is with reference to the four requirements referred to above. It appears to me that this contention is not without force. It is only to meet the contingency of a person who is to be served with the notice trying to evade it, that the service shall be deemed to have been effected if the four conditions are fulfilled. If the contrary to be proved has reference to the actual service, then provision of section 27 could be rendered useless by the addressee avoiding to receive the letter or even refusing the registered letter. "

In my view, the decision in Achamma's case has no application at all as under section 114 of the Evidence Act though a presumption can be drawn, but when the respondent denies the same, it is for the appellant to prove by proper evidence that notice was properly despatched and sent by Certificate of Posting.

33. Learned senior counsel for the appellants also referred to the decision of the Calcutta High Court in JADABPORE TEA CO. v. BENGAL DOOARS NATIONAL TEA CO. (55 C.C. 160) wherein the Calcutta High Court held that the question whether presumption of receipt of letter under Certificate of Posting could be drawn or not would depend upon the facts and circumstances of the case.

34. Learned senior counsel referred to the decision of the Madhya Pradesh High Court in PARMANAND CHOUDHARY v. SMT. SHUKLA DEVI MISHRA (67 C.C. 45) where the Madhya Pradesh High Court held that the notice sent under Certificate of Posting is a proper service and members wishing to be served notice by registered post must deposit sufficient sum therefor with company and if they fail to deposit the sum, the members cannot claim that the notice must be served on them by registered post. The decision has no application as the second appellant has not proved that the notice of the meeting was sent by post and in the absence of any proof of posting, the decision is not applicable.

35. A Division Bench of this Court in MALLESWARA FINANCE & INVESTMENTS CO. v. C.L.B. (82 C.C. 836 at 881), after referring to the provisions of section 53(2) of the Companies Act laid down the law as under:-

" The said argument of learned counsel presupposes that the document is sent by post. It is only a matter of presumption. A presumption can be drawn only when there is no other evidence available. In this case, the primary evidence regarding the posting of the letter is not produced. The best evidence that can be produced in this case is the despatch register of the company, and the books of account showing the expenses incurred by the company for posting the letters, etc. none of these documents is produced. When the primary evidence is not produced, a presumption on the basis of section 53(2) of the Companies Act cannot be made use of since the posting of the letter is in dispute. Only if a document is sent by post, the presumption under section 53 of the Companies Act can arise. When there is no evidence regarding the posting of the letter, the document relied on by the appellant cannot be made use of."

Applying the law laid down by the Division Bench of this Court, there is no evidence regarding the posting of the notice. The appellants have not produced the despatch register of the company, nor the books of account showing that the expenses were incurred by the company for posting the letters. This Court held that if the primary evidence is not proved, the presumption on the basis of section 53(2) of the Companies Act cannot be drawn as the posting of the letter is itself in dispute. Even assuming that the notice was sent for the meeting held on 18.4.1998, the meeting suffers from a serious infirmity as only one Director was present in the meeting held on 18.4.1998. The same infirmity prevails in respect of the Board meeting held on 25.4.19 98 as only one Director was present in that meeting also.

36. The second appellant, Sounder convened the Extraordinary General Meeting of the company giving a short notice and the meeting was scheduled to be held on 1st May, 1998 at the registered Office of the company to appoint some additional Directors. Clause 25 of the Articles of Association of the Company, Microparticle Engineers Private Limited reads as under:-

" 25. The provision of Regulations 47 to 63 both inclusive of Table 'A' shall apply subject to the following exceptions and provisions namely:

a) The quorum for a General Meeting shall be two members present in person.

b) The Board of Directors may at any time, wherever they think fit call for extraordinary General Meetings.

c) An Annual General Meeting may be called by giving not less than 21 day's notice and any other General Meeting may be called by giving not less than 7 day's notice provided that any general meetings may be called after giving shorter notice than the notice required above, if consent thereto is accorded in the case of an Annual General Meeting, by all members entitled to vote thereat and in the case of any other meeting, by members of the company holding not less than 95 percent of that part of the paid up share capital which gives the right to vote on the matters to be considered at the meeting.

d) xxxx "

According to the above Clause of the Articles of Association, Extraordinary General Meeting of the company, Microparticle Engineers Private Limited may be called by giving not less than 7 days notice. The Articles of Association are the same in the case of other company, viz., Micromeritics Engineers Pvt. Ltd. Under the above Clause of the Articles of Association, the Extraordinary General Meeting should be convened after giving not less than 7 days notice. As far as the meetings held on 18.4.1998 and 25.4.1998 are concerned, I have already found that only one Director was present in those meetings and it is not a case falling within the Regulation 75 of Table A of Schedule-I to the Companies Act relating to the regulations of management of a company limited by shares. It is not a case of a continuing Director acting notwithstanding the vacancy in the Board as the respondents continued to be the directors and hence, the Regulation 75 of Table A of Schedule-I to the Companies Act is not applicable.

37. The second appellant has not approached the Company Law Board under section 186 of the Companies Act stating that it would be impracticable to call for the meetings of the company as then, it would be open to the Company Law Board to direct convening of Extraordinary General Meeting and a single member would constitute a quorum. Hence, there is no

difficulty in holding that the meetings held on 18 .4.19 98 and 25.4.1998 are invalid and once they are invalid, notices calling for Extraordinary General Meetings in the meeting held on 25.4.199 8 are also invalid.

38. Mr.T.V.Ramanujam, learned senior counsel referred to section 16 9 of the Companies Act. However, the provisions of section 169 of the Companies Act have no application at all as it is not a case of calling for Extraordinary General Meeting on requisition of members holding at least 1/10th of paid-up capital and to exercise the power under section 169 of the Companies Act, the meeting must be a valid meeting and there must be a proper quorum for the meeting also. Moreover, according to the Articles of Association, the notice period of 7 days can be shortened when the members holding not less than 95% paidup capital and having right to vote have agreed to reduce the notice period to less than seven days. Admittedly, the respondents have not agreed at all and hence, the period of seven days' notice contemplated in the Articles of Association cannot be reduced.

39. This Court in NAGAPPA v. MADRAS RACE CLUB (AIR 1951 Madras 831) has held that the expression, 'not less than 21 days' means that there should be interval of 21 clear days and in computing this period the date of the meeting and the date of service of notice should be excluded. The following observation of the Division bench of this Court is relevant for the purpose of this case:

"Under this proviso it would be seen that the requirement as to 21 days' notice may be dispensed with by an agreement of all the members entitled to attend & vote & not merely of all the members entitled to vote & present in person or proxy at the meeting. It requires therefore an agreement of all the members of the Club in order to dispense with the requirement of 21 days' notice. The proviso in other words indicates the intention on the part of the Legislature that the provision in Sub-s. (2) is mandatory & that it can be dispensed with only by the agreement of all the members. it is not enough that the members present at the meeting indicated either expressly or impliedly they consented to or acquiesced in shortening the period of notice. An express consent of all the members to waive the notice has not been established in this case. Even if the members present agreed to waive the defect in the notice the meeting would not be a valid meeting. The plaintiffs therefore are not precluded from raising the contention that the notice contravened the provision of Sub-s (2) of S.8 1."

40. Mr.T.V.Ramanujam, learned senior counsel referred to the decision in SHAILESH HARILAL SHAH v. MATUSHREE TEXTILES LTD. (AIR 199 4 Bombay 20) where a Division Bench of the Bombay High Court held that the provisions regarding length of notice is directory and not mandatory. The Bombay High Court referred to the decision of this Court in NAGAPPA v. MADRAS RACE CLUB (AIR 1951 Madras 831) and dissented from the view expressed by this Court. It has not been brought to the attention of this Court that any higher Court or any larger Bench of this Court has taken a different view from the view expressed by this Court in Nagappa's case. I am therefore of the view that when there is a direct decision of a Division Bench of this Court, I am bound by the decision of this Court. Hence, I hold that the meeting convened on 1 .5.1998 is not valid as there is no valid notice for the said meeting.

41. The appellants have not produced the minutes of the meeting, but only the extracts of the resolutions passed have been produced

before the Company Law Board. As rightly pointed out by Mr.Murari, learned counsel for the respondents that the meeting and the further proceedings on 2.5.1998 were held without jurisdiction as the appellants 3 to 5 were not shareholders and they could not attend the Extraordinary General Meeting on 1.5.1998.

42. Mr.T.V.Ramanujam, learned senior counsel referred to certain proceedings and submitted that the respondent, Munusamy attended the office on his behalf and on behalf of his wife. He referred to certain documents and his case is that the Company Law Board has not considered the evidence. He referred to certain documents and the balance sheet to show that the respondent, Munusamy has attended the office even after 14.4.1997. Even accepting the submission of Mr.T.V. Ramanujam, learned senior counsel that the respondent, Munusamy has attended the office after 14.4.1997, in my view, that is not a material factor when this Court upholds the finding of the Company Law Board that no meeting was held on 14.4.1997. Hence, the reliance placed on certain records and the balance sheet subsequent to 14.4.1997 is of no consequence.

43. Another submission of the learned senior counsel is that after 14.4.1997 there was an inordinate delay on the part of the respondents in approaching the Company Law Board. This submission is also not acceptable as it is the case of the respondents that only after the reply from the second appellant, the respondents came to know that in May, 1998 certain copies of resolutions passed were produced before the Registrar of Companies, as if the meeting was held on 16.4 .1997 and then only the respondents came to know that shares have been allotted to the second appellant's wife, brother and father-in-law. It is the case of the respondents that only after the receipt of reply from the second appellant's counsel, the respondents came to know about the alleged resolution dated 14.4.1997. Hence, it cannot be stated that there was a delay on the part of the respondents in approaching the Company Law Board. It is also significant to notice that the Extraordinary General Meeting was held on 1.5.1998 and thereafter the resolution passed in the meeting held on 14.4.1997 was sent to the Registrar of Companies, and after exchange of notices, the respondents have approached the Company Law Board.

44. Another submission of Mr.T.V.Ramanujam, learned senior counsel is that when the Company Law Board has found that the second appellant has not diverted the money, there is no act of oppression. Learned senior counsel referred to the Board's resolutions dated 30.1 .1992 and 17.11.1986 and submitted that the resolutions empower the second appellant to operate the bank accounts of the company. According to the learned senior counsel, the company i s a running concern. In my view, it is not necessary to go into the question at all as it was found by the Company Law Board that the allegation regarding diversion of funds has not been established. The question whether there is a chain of events constituting oppression would be decided separately.

45. Mr.T.V.Ramanujam, learned senior counsel also submitted that the respondents should have approached the Civil Court after receipt of notice for the Board meeting held on 18.4.1998. I have already held that the appellants have failed to prove that the notice dated 1 3.4.1998 was sent for the meeting held on 18.4.1998 and the notice for the adjourned meeting were posted, and in the absence of proof that the notices were posted, it is not possible to accept the submission of Mr.T.V.Ramanujam, learned senior counsel

that the respondents should have approached the Civil Court earlier against the introduction of additional Directors. On the other hand, it is the definite case of the respondents which is found accepted by the Company Law Board that only after the registration of minutes of the meeting alleged to have been held on 14.4.1997 was made, the respondents came to know about the meetings held on 14.4.1997, 18.4.1998, 25.4.1998 and 1.5.19 98.

46. Mr.T.V.Ramanujam, learned senior counsel also submitted that the finding of the Company Law Board regarding the resignation of the respondents, Munusamy and Senthamarai Munusamy is perverse. I am unable to accept the submission. When the respondents have denied their signatures in the resignation letters, it is for the second appellant to prove the signatures of the respondents in the letters of resignation of Munusamy and Senthamarai Munusamy. Copies of the letters of resignation have not been produced before the Court. In my view, the Company Law Board is correct in holding that the Extraordinary General Meeting held on 1.5.1998 is invalid as the meeting was convened only after allotment of shares in favour of appellants 3 to 5 which was invalid and there was no quorum for the meeting. I have already held that no meeting was held on 14.4.1997 and hence, the question of allotment of shares in favour of appellants 3 to 5 does not arise. Therefore, even accepting that there were letters of resignation from the respondents, the Board meeting held on 2.5.1998 is invalid and there was no quorum for that meeting and hence, the question of acceptance of the resignation does not arise. The Company Law Board has given an additional reason that the letters of resignation are stated to have been received in the month of April, 1997. The Company Law Board in summary proceedings has rightly held that the resignation letters of the respondents were not validly accepted as there was no valid meeting on 2.5.1998 and there was no quorum for the meeting held on 2.5.1998 when the resignation letters were said to have been accepted.

47. The other submission of Mr.T.V.Ramanujam, learned senior counsel is that the second appellant has already filed civil suit in June, 1998, but the respondents evaded service and filed the petition before the Company Law Board in November, 1998. He therefore submitted that when the matter is before the Civil Court, the Company Law Board should await and abide by the decision of the Civil Court. I am unable to accept the submission of the learned senior counsel as in V.M. RAO v. RAJESWARI RAMAKRISHNAN (1976 (1) MLJ 393) the Division Bench consisting of Ramaprasada Rao and S.Ratnavel Pandian,JJ. held that the Civil Court functioning under the normal common law cannot usurp the powers of a Company Court whose jurisdiction springs from an enactment of Parliament and adjudge common law rights on a priori considerations. I am of the view that the above dictum laid down by the Division Bench of this Court would apply and nothing precluded the Company Law Board from proceeding with the company petition merely because a suit was instituted by the second appellant herein. Further, it is the case of the respondents that they approached the Company Law Board even before the receipt of summons in the suit.

48. The next submission of Mr.T.V.Ramanujam, learned senior counsel is that there is no act of oppression and the acts referred to by the Company Law Board are isolated acts and they are bona fide acts. He submitted that even assuming that the Extraordinary General Meeting and resolution passed thereat are invalid, it would not amount to an act of oppression.

Learned senior counsel besides relying upon the decision of the Supreme Court in NEEDLE INDUSTRIES (INDIA) LTD. AND OTHERS v. NEEDLE INDUSTRIES NEWEY (INDIA) HOLDINGS LTD. AND OTHERS (AIR 1981 S.C. 1298), referred to the decision of the Supreme Court in S.P.JAIN v. KALINGA TUBES (1965) 2 SCR 720) and also the decision of the Andhra Pradesh High Court in R.KHEMKA v. DECCAN ENTERPRISES PVT. LTD. (100 C.C. 211) and submitted that the res pondents were aware of the additional issue of share capital, but they did not participate and hence, it is not open to them to allege oppression. Learned senior counsel relied upon the following passage of the decision of the Andhra Pradesh High Court in Khemka's case (100 C.C. 211):

" There is no definition of "oppression" as such in the Companies Act, 1956, but events shall have to be shown in such a manner so as to depict a continuous state of affairs which would lead the court to come to the conclusion that the affairs of the company and the management thereof are being conducted in a manner oppressive to some members of the company. An isolated act of indiscipline or indifference or even deprivation by itself would not bring home the charge of oppression. There shall have to be a continuity of a burdensome, harsh and wrongful conduct. As a matter of fact, the conduct of the oppressor towards the oppressed shall have to be such as to evince an existing element of absence of fair dealing or lack of probity. The issue for increased share capital is a genuine requirement of the company in order to fulfil its obligation. It is for the company to decide which method is to be applied for the purpose of increased share capital and not for the court to suggest what would have been better for the company. The jurisdiction of the court to interfere in the ordinary administration is restrictive in nature and unless it is shown that there are mala fides involved, the question of any interference would not arise."

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" ... that although the appellant complained of not having received notices of board meetings for over 18 months, it could not be expected in the normal course of events that he would allow 18 months to elapse before lodging a complaint to that effect. Moreover, the company's letter to the appellant categorically recorded that all notices, agendas and other documents in connection with the meetings of the board of directors and the shareholders of the company held during the period mentioned in the letter dated March 25, 1985, were duly sent to each of the directors of the company including the appellant. The records depicted that from March, 1983, the appellant never attended any of the meetings of the company, and had prayed for leave of absence. The facts showed that the appellants had started a competing business and diverted orders there."

49. Learned senior counsel also referred to the decision of the Bombay High Court in SHAILESH HARILAL SHAH v. MATUSHREE TEXTILES LTD. (AIR 1994 Bombay 20) and submitted that the appointment of additional directors by the Board would amount only to an irregularity which cannot be questioned by individual shareholders. Learned senior counsel also referred to the decision of the Calcutta high Court IN RE BENGAL LUXMI COTTON MILLS LTD. (35 C.C. 187) and submitted that to prove oppression and mismanagement it is not enough to allege that the company's affairs are being conducted in such a manner that a winding up order would be appropriate but it must be shown that

such an order would unfairly prejudice the applicant or other members. Learned senior counsel relied upon the above decision for the proposition that it is not open to the respondents to avail the remedy under sections 397 and 398 of the Companies Act.

50. Mr.Murari, learned counsel for the respondents, on the other hand, relied upon the decision of the Supreme Court in Needle Industries (India) Ltd. case (51 C.C.743 : A.I.R.1981 S.C. 1298) and submitted that the second appellant has used fiduciary powers solely for the purpose of destroying the existing majority and not in the interest of the company and hence, sections 397 and 398 of the Companies Act are squarely attracted. Mr.Murari, learned counsel also referred to the decision of this Court in Malleswara Finance and Investments Co. P. Ltd. case (82 C.C.836) and submitted that the conduct of the second appellant clearly shows that he has allotted shares in favour of his wife, brother and father-in-law to reduce the respondent group into minority and there is a continuous course of activities and hence, the provisions of sections 397 and 398 of the Companies Act are squarely attracted.

51. Section 397 occurs in Chapter VI of the Companies Act under the heading, "Prevention of oppression and mismanagement". Section 397 empowers the Company Law Board to grant relief in the case of oppression where any member of the company is making complaint that the affairs of the company are being conducted in the manner prejudicial to the public interest or in the manner oppressive to any member or members and the Company Law Board has the power, when it is satisfied that the affairs of the company are being conducted in the manner oppressive to any member or members of the company, to pass such an order as it deems fit. Section 398 of the Companies Act, inter alia, empowers a member of the company to approach the Company Law Board in the case of any material change taking place in the management and control of the company by alteration in the Board of directors or managers or ownership of the company shares, and by such conversion or change, the affairs of the company was conducted in the manner prejudicial to the interest of the company.

52. In my view, on this point, the Supreme Court in SHANTI PRASAD v. KALINGA TUBES LTD. (AIR 1965 S.C. 1535) has laid down the law. The Supreme Court after referring to the relevant provisions of the Companies Act, held that the Court has the power to make such orders under section 397 read with 402 of the Companies Act, as it thinks fit, if it comes to the conclusion that the affairs of the company are being conducted in the manner oppressive to any member or members and that to wind up the company would unfairly prejudice such member or members but that otherwise the facts might justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. The Supreme Court held that the law has not defined the expression, 'oppression' for the purpose of section 397 of the Companies Act and unless the Court decides on the facts of each case that there is oppression calling for action for such oppression, the order would not be made. The Supreme Court after noticing its earlier decisions and also the English decisions laid down the law as under:-

" These observations from the four cases referred to above apply to S.397 also which is almost in the same words as S.210 of the English Act and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority

shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of S.3 97 . It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing upto the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and ere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to S.397."

53. In Needle Industries (India) Ltd. case (51 C.C. 743: A.I.R.1981 S.C.1298) the Supreme Court after noticing various decisions laid down the law as under:-

" Neither the judgment of Bhagwati,J. nor the observations in Elder (1952) SC 49, are capable of the construction that every illegality is per se oppressive or that the illegality of an action does not bear upon its oppressiveness. In Elder a complaint was made that Elder had not received notice of the board meeting. It was held that since it was not shown that any prejudice was occasioned thereby or that Elder could have bought the shares had he been present, no complaint of oppression could be entertained merely on the ground that the failure to give notice of the board meeting was an act of illegality. The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a mala fide intention or that such violation was burdensome, harsh and wrongful. But a series of illegal acts following upon one another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed. This may usefully be illustrated by reference to a familiar jurisdiction in which a litigant asks for the transfer of his case from one judge to another. An isolated order passed by a judge which is contrary to law will not normally support the inference that he is biassed; but a series of wrong or illegal orders to the prejudice of a party are generally accepted as supporting the inference of a reasonable apprehension that the judge is biassed and that the party complaining of the orders will not get justice at his hands.

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It is clear from these various decisions that on a true construction of S.397, an unwise, inefficient or careless conduct of a director in the performance of his duties cannot give rise to a claim for relief under that section. The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal

and proprietary rights as a shareholder. It may be mentioned that the Jenkins Committee on Company Law Reform had suggested the substitution of the word "oppression" in s.210 of the English Act by the words "unfairly prejudicial" in order to make it clear that it is not necessary to show that the act complained of is illegal or that it constitutes an invasion of legal rights (see Gower's Company Law, 4th Edn., p.668). But that recommendation was not accepted and the English law remains the same as in Meyer (1 959) 29 Com Cas 1 (HL) and in H.R.Harmer Ltd., In re (1959)1 WLR 62; 29 Comp Cas 305 (CA) as modified in Re Jermyn St.Turkish Baths (1971) 3 All ER 184; 41 Comp Cas 999. We have not adopted that modification in India."

54. In Malleswara Finance and Investments Co.P.Ltd. case (82 C.C.83 6) this Court after noticing the decision of the Calcutta High Court in Gluco Series Pvt. Ltd., In re (1987) 61 Comp Cas 227 Cal) and the decision of the Chancery Division in Punt v. Symons & Co. (1903) 2 Ch.506 (Ch D) and the decision of the Supreme Court in Nanalal Zaver v. Bombay Life Assurance Co. Ltd. (1950) 20 Comp Cas 179: AIR 1950 SC 1 72), held as under:-
" ... it is well established that directors of a company are in a fiduciary position vis-a-vis the company and must exercise their power for the benefit of the company. If the power to issue further shares is exercised by the directors not for the benefit of the company but simply and solely for their personal aggrandisement and to the detriment of the company, the court will interfere and prevent the directors from doing so. The very basis of the court's interference in such a case is the existence of the relationship of a trustee and cestui que trust as between the directors and the company. As stated earlier, the petitioner have stated that there was no necessity to increase the capital since there was no plant or machinery. Why the share capital was increased is not explained. We further find from the records in C.P./C.M.P.No.92 of 1992 in this case that Malleswara to whom the additional shares were pledged, is a company controlled by the fifth respondent. From the above facts, it is clear that the eighth respondent and his employees who are the directors of the fifty respondent-company did not act in good faith and their action was detrimental to the company, and the same has affected its proper management and also the rights of the shareholders, and a case for winding up is proved."

55. In my view, in the light of the above legal principles, the question has to be decided whether there are acts of oppression by the second appellant. As observed by the Supreme Court in Needle Industries (India) Ltd. case, cited supra, it is not the law that the power to issue shares can be used only if there is a need to raise additional capital and it is clear the power to issue the additional shares can be used for other reasons. For example, to create a sufficient number of shareholders to enable the company to exercise statutory powers or to enable it to comply with legal requirements, the fiduciary power given to the director can be exercised for the purpose of the company and it is not limited for raising additional capital, but the power to raise additional capital should be fairly and justly exercised for the benefit of the company as a whole and the power should not be exercised to bring the affairs of the company under the control of a powerful director either himself or with his relatives or friends.
56. In construing whether there is any oppression or not, an

isolated act cannot be looked into. Though an isolated act may be contrary to law or was done with mala fide intention, that would not be sufficient for any member of the company to approach the Company law Board complaining that his rights as a member of the company are oppressed. On the facts of the case, there is a series of illegal acts followed by one another from which the Company Law Board came to the conclusion that the acts would form part of a same transaction and the object is to cause oppression to the rights of the respondents as members of the company. In so far as the Board meeting held on 14.4.1997, I have already found that no notice was sent to the respondents. The recitals of the minutes clearly show that shares have been allotted for raising share capital, but the appellants have made a contradicting statement before the Company Law Board. The second appellant has not produced even the original minutes book and there was an inordinate delay in filing the minutes with the Registrar of Companies under section 75 of the Companies Act.

57. The meeting dated 14.4.1997 was followed by another meeting dated 18.4.1998 presided only by the second appellant which is not a valid meeting at all. The said meeting was further adjourned to 25.4.1 998. Even on 25.4.1998, the second appellant alone attended and it was an one man meeting. The Rajasthan High Court in MAHARANI YOGESHWARI KUMARI v. LAKE SHORE PALACE HOTEL (1995) 3 Comp LJ 418) has held that for a meeting there must be at least two persons and even for the adjourned meeting, quorum must be there. In the adjourned meeting held on 25.4.1998, only the second appellant was present and hence, both the meetings are illegal. The second appellant has not availed the provisions of the Companies Act and approached the Company Law Board for convening Extraordinary General meetings stating that there was non-co-operation from the respondents. On the other hand, the stand taken by the appellants before this Court is that the respondents are co-operating and attending the office which is contrary to the minutes of the meetings held on 18.4.1998 and 25.4.1998 which were signed by the second appellant stating that the respondents are not co-operating. In this connection, it is also relevant to notice the observation made by the Company Law Board regarding the minutes of the Board meeting said to have been held on 2.5.1998 wherein the Board has recorded the invaluable services rendered by the respondent in C.M. A.No.924 of 2000, Senthamarai Munusamy during her tenure as Director of the company, but whereas the specific allegation in the counter affidavit is that the said respondent never entered the company premises and never took active part in the affairs of the company which are contradictory with one another and hence, both cannot be true. Further, following the meeting dated 25.4.1998, there was a hurriedly convened Extraordinary General Meeting on 1.5.1998 wherein the appellants 4 and 5 were appointed as additional directors. The second appellant has misused his fiduciary power as a director solely for the purpose of destroying the existing majority and creating a new majority which did not previously exist. The appellants have not produced any material to show the need for increase of the share capital. In other words, the power to raise further share capital was exercised by the second appellant not for the benefit of the company, but solely to promote his own interest.

58. The Supreme Court in Needle Industries (India) Ltd. case (51 C.C. 743) approved the test laid down by the Privy Council in Howard Smith Ltd. v. Ampol Petroleum Ltd. (1974) AC 821 (PC) whether the issue of shares was simply for the benefit of a Director. On the facts of the case, I

hold that the Company Law Board was perfectly justified in holding that there is a chain of events which were directed solely against the respondents and the acts were not done for the benefit of the company. There is a clear breach of trust by the second appellant and the interest of the company is not promoted. I therefore hold that the Company Law Board was correct in holding that the allotment of shares on 14.4.1997 in favour of appellants 3 to 5 and the inclusion of appellants 4 and 5 as additional directors and removal of respondents as directors would constitute a chain of events leading to oppression of the rights of the respondents as members of the first appellant company. The second appellant, by the acts done, have reduced the respondent group to minority shareholders and they have been excluded from the management also. Therefore the Company Law Board was justified in holding that the intention of the second appellant was to gain control over the functions of the company irrespective of the fact that there was a violation of the provisions of the Companies Act as well as the Articles of Association of the company. Hence, I do not accept the submission of Mr.T.V.Ramanujam, learned senior counsel that the acts are to be treated as individual acts and they have no connection whatsoever with one another. On the other hand, I find that there is a close inter-link and nexus between one act and another and there is a chain of events which were directed against the respondents to exclude them from the management of the first appellant company and with a view to gain control over the affairs of the company by the second appellant and his close relatives to whom shares have been allotted and the Company Law Board was correct in holding that the facts warrant an order of winding up of the company under section 397 of the Companies Act but to protect the interest of the shareholders, the order was passed.

59. Learned senior counsel also submitted that the view of the Company Law Board is not correct as the Company Law Board instead of allotting one company to each party, should have granted option to the appellants to purchase shares. Learned senior counsel referred to the decision of the Karnataka High Court in DEVARAJ DHANRAM v. FIREBRICKS AND POTTERIES (79 C.C. 722) where it was held that majority shareholders are to be given option to purchase shares of the minority shareholders. He also referred to the decision of the Company Law Board in RAMAKRISHNA RAO v. L.R.R. HATCHEERIES (99 C.C. 327) where the Principal Bench of the Company Law Board directed purchase of the petitioner's shareholdings by the respondent at a value to be determined by an independent valuer. Yet another decision relied upon by the learned senior counsel is the decision of the House of Lords in SCOTTISH CO-OPERATIVE, LTD. v. MEYER (1958) 3 ALL E.R. 66) where the House of Lords ordered for the purchase by majority shareholders of minority shareholders' shares. The other decisions relied upon by the learned senior counsel are all cases decided by the Company Law Board, viz. ASHISH DAS GUPTA v. SATVINDER SINGH (2000 C.L.C. 1225) and PUSHPA PRABHUDAS VORA v. VORAS EXCLUSIVE TOOLS PVT. LTD. (2000 C.L.C. 1319) where the Company Law Board, instead of cancelling allotment of further shares and appointment of additional directors, directed for the purchase of shares of the petitioner therein. Learned senior counsel also referred to the decision of this Court in NAGAPPA v. MADRAS RACE CLUB (AIR 1951 Madras 831) and the decision of the House of Lords in EBRAHIMI v. WESTBOURNE GALLERIES LTD AND OTHERS (1972) 2 ALL ER 492) and the decision of the Company Law Board in YASHOVARDHAN SABOO v. GROZ-BECKERT SABOO (83 C.C. 371) where it was held

that even the oppression is not established, the Company Law Board has the power to grant relief to do substantial justice between the parties. It was also held that the majority can be given the option to buy the shares belonging to the minority.

60. On the other hand, Mr. Murari, learned counsel for the respondents referred to the decision of the Supreme Court in COSMOSTEELS P. LTD. v. JAIRAM DAS GUPTA (48 C.C. 312) and the decision of the Bombay High Court in BENNET COLEMAN & CO. v. UNION OF INDIA (47 C.C. 92) and the decision of a Division Bench of this Court in SYED MD. ALI v. SUNDARAMOORTHY (AIR 1958 Madras 587) and the decision of the Calcutta High Court in SISHU RANJAN DUTTA v. BHOLA NATH PAPER HOUSE LTD. (53 C.C. 883), and submitted that the powers of the Company Law Board are wide and when the oppression is established, it is open to the Company Law Board to allot one company to the respondent group and another company to the appellant group by directing the parties to purchase the shares. Learned counsel submitted that the discretion was rightly exercised by the Company Law Board and hence, there are no grounds to interfere.

61. In COSMOSTEELS P. LTD. v. JAIRAM DAS GUPTA (48 C.C. 3120) the Supreme Court dealt with the powers of the Company Court to dispose of the petition under sections 397 and 398 of the Companies Act. The Supreme Court also held that the Company Court has a wide power. The Supreme Court held that the scheme of sections 397, 398 and 402 of the Companies Act appears to constitute a code by itself for granting relief to oppressed minority shareholders and for granting appropriate relief, a power of widest amplitude, inter alia, lifting the ban on a company purchasing its shares under court's direction is conferred on the court.

62. The Bombay High Court in BENNET COLEMAN & CO. v. UNION OF INDIA (47 C.C. 92) has held as under:-

"... sections 397 and 398 are intended to avoid winding up of the company if possible and keep it pending while at the same time relieving the minority shareholders from acts of oppression and mismanagement or preventing its affairs being conducted in a manner prejudicial to public interest and, if that be the objective, the court must have power to interfere with the normal corporate management of the company, and to supplant the entire corporate management, or rather, mismanagement, by resorting to non-corporate management which may take the form of appointing an administrator or a special officer or a committee of advisers, etc., who would be in charge of the affairs of the company. The Court could even have a truncated form of corporate management if the exigencies of the case required it, and any truncated form of corporate management can never conform to all the provisions dealing with corporate management. It will all depend upon the facts and circumstances of each case as to how, in what manner and to what extent the court should allow the voice of the shareholders' directors on the board of directors to prevail over that of the other directors and the Court's orders in that behalf could not in any manner be curbed. Therefore, the position is clear that while acting under section 398 read with section 402 of the Companies Act, the court has ample jurisdiction and very wide powers to pass such orders and given such directions as it thinks fit to achieve the object and there would be no limitation or restriction on such power that the same should be exercised subject to the other provisions of the Act dealing with normal corporate management or that such orders and direction should be

in accordance with such provisions of the Act."

63. A Division Bench of this Court in SYED MD. ALI v. SUNDARAMOORTHY (AIR 1958 Madras 587) has held that when investigation is needed, it has the power to order investigation to regulate the future conduct of the company for providing against recurrence of abuses of power by the majority. The Calcutta High Court in SISHU RANJAN DUTTA v. BHOLA NATH PAPER HOUSE LTD. (53 C.C.883) has held that to put an end to the matter complained off in an application under sections 397 and 398, the court has ample power to pass any order according to law having regard to the facts and circumstances of the case so that the company and its shareholders and the interest of the public are well protected and no further prejudice may be caused to any of them.

64. The cases relied upon by Mr.T.V.Ramanujam, learned senior counsel are all instances where directions have been given for the purchase of the rights of minority shareholders by the majority shareholders and it cannot be stated that the power of the Company Law Board is limited only to direct purchase of shares by one group from another group. Under sections 397 and 402 of the Companies Act, the Company Law Board has the power to pass any order as it thinks fit to be just and equitable, if the circumstances warrant and therefore, when the Company Law Board has found that instead of directing purchase of shares by one group from another group, directed division of the companies among the parties so that complaints of abuse of power would be prevented in future, I hold that the Company Law Board has exercised its discretion keeping in mind the effective corporate management of both the companies, and if one group is excluded from the other company, there will be smooth functioning of both the companies separately. Hence, I hold that the Company Law Board has the necessary power to pass such an order and there are no reasons to interfere with the discretion exercised by the Company Law Board in directing division of the companies among the parties on the basis of lot.

65. Mr.T.V.Ramanujam, learned senior counsel for the appellants referred to the decision of this Court in M/s. ASHOKA BETELNUT COMPANY P. LTD. ETC. & 2 OTHERS v. M.K.CHANDRAKANTH (1997-1-L.W. 616) and submitted that there is no scope for invoking the principle of lifting the corporate veil, and relied upon the following passage:-

" ... It must also be noted that regarding the requirements of S.39 7 or S.398, there must be specific pleas by the petitioner. The Supreme Court has also held in the above referred to 46 C.C.91 itself that in an application for winding up of the Company under the just and equitable clause, allegations in the petitioner are of primary importance. The same observation will apply even to the present company petition.

10. In many decisions, it has been held that both conditions in clause (a) or clause (b) of sub-section (ii) of section 397 must exit before the Court can entertain an application under that section. Where there are no allegations followed by proof therefor to support a winding up, such a petition cannot be entertained. Further, it must also be proved that an order of winding up should not be made as it will unfairly prejudice the petitioner and other members (vide (i) Rattan Singh v. Moga Transport Co. (AIR 1959 Punjab 196), relying on Rajahmundry Electric Supply Corporation Ltd. v. A.Nageshwara Rao (AIR 1956 SC 213) and (ii) Nagavarapu Krishna Prasad v. Andhra Bank Ltd. ((198 3) 53 CC 73 (A.P.)). Further, the Supreme Court has

also observed in (1981) 51 C.C.743 (supra) 778-94 L.W.102 S.N. thus:-
"In an application under S.210 of the English Companies Act,
as under S.397 of our Companies Act before granting relief the court has to
satisfy itself that to wind up the company, will unfairly prejudice the
members complaining of oppression, but that otherwise the facts will justify
the making of a winding up order on the ground that it is just and equitable
that the company should be would up. "

66. I am of the view, the decision has no application as the
Company Law Board has not applied the principle of lifting the Corporate Veil
and hence, the decision in M/s.Ashoka Betelnut Company P.Ltd. case is not
applicable. Further, in the above decision this Court held that in an
application for winding up of a company under the just and equitable clause,
allegations in the petition are of primary importance. I hold that the tests
laid down by this Court in the above decision for invoking the provisions of
section397 of the Companies Act are fully satisfied.
67. Mr.T.V.Ramanujam, learned senior counsel also referred to
the decision of the Punjab and Haryana High Court in R.K.JAIN v. PUNJ. REGD.
(I. & S.) STOCKHOLDERS ASSN. (48 C.C. 401) wherein the Punjab and Haryana
High Court held that when the primary relief sought for in the petition is to
declare the meeting as illegal and void, the petition under the Companies Act
is not maintainable and the only remedy available to the petitioner is to file
a suit before the civil court. This decision has also no application. The
company petition has been filed by the respondents not to declare the meetings
and the election of appellants 4 and 5 as additional directions as void. The
company petitions were filed on the ground of oppression and hence, the
decision has no application.
68. Yet another decision that was relied upon by
Mr.T.V.Ramanujam, learned senior counsel is the decision of the Punjab and
Haryana High Court in NIRANJAN SINGH v. EDWARD GANJ PUBLIC WELFARE ASSN. (47
C. C.285) where the Punjab and Haryana High Court was dealing with the
question of maintainability of the suit filed for declaration regarding the
election of director. The Punjab and Haryana High Court held that the civil
court has jurisdiction to entertain the suit and the petition under section
257 read with sections 629A and 171 of the Companies Act is not competent.
The decision is distinguishable as the respondents have approached the Company
Law Board on the ground of oppression of their rights. A Division Bench of
this Court in V.M. RAO v. RAJESWARI RAMAKRISHNAN (1976-1-M.L.J. 393) has
held that the company court has the widest power which springs from an
enactment of Parliament and that power cannot be usurped by a civil court
functioning under the normal common law. Further, it is also relevant to
mention here that it is not the respondents who instituted the suit, but, on
the other hand, the second appellant instituted the suit for declaration that
the respondent Munusamy is not a director and for injunction. In my view, the
second appellant by instituting the suit cannot prevent the respondents from
approaching the Company Law Board when remedy is available under the
provisions of the Companies Act.
69. Learned senior counsel referred to some other decisions
also, viz., (i) PREM CHAND v. KRISHNA CHAND (AIR 1974 S.C. 702), (ii) SHREE

MEENAKSHI MILLS LTD. v. I.T. COMMR. (AIR 1957 S.C. 49), (iii) RAHMAT ILAHI v. MD. HAYAT KHAN (AIR (30) 1943 P.C.208), (iv) C. VASANTKUMAR RADHAKISAN VORA v. BOARD OF TRUSTEES OF THE PO RT OF BOMBAY (AIR 1991 S.C. 14), (v) D.S.THIMMAPPA v. SIDDARAMAKKA (1 996) 8 SCC 365), (vi) SANTHOSH HAZARI v. PURUSHOTTAM TIWARI (2001(1) C.T.C. 505), (vii) DAMADILAL v. PARASHRAM (AIR 1976 S.C. 2229), (viii) RAMACHANDRA v. RAMALINGAM (AIR 1963 S.C. 302) and (ix) SIR CHUNILAL V. MEHTA & SONS, LTD. v. THE CENTURY SPINNING & MANUFACTURING CO. LTD. (1962) S.C.R. (Suppl.) 549). I have gone through the decisions and I do not find any justifiable reason to interfere with the finding of fact rendered by the Company Law Board as the Company Law Board has rendered its finding on the materials on record. The appellants have not made out any case to show that inference drawn by the Company Law Board is not on the basis of material and no reasonable person would draw such an inference on the facts of the case.

70. Learned senior counsel referred to the decision of the Supreme Court in MALLESWARA FINANCE & INVESTMENTS CO. v. C.L.B. (82 C.C. 836) and I have already referred to the decision where the Division Bench of this Court held that appeal under section 10F of the Companies Act would lie only on question of law which arises on the order. On the facts and circumstances of the case, I do not find any question of law that arises, but I find that the finding of the Company Law Board that there was no meeting on 14.4.1997 is a pure finding of fact. I also find that the further findings of the Company Law Board that the meetings held on 18.4.1998 and 25.4.1998 are not valid meetings and the Extraordinary General Meeting held on 1.5.1998 is an invalid meeting and the allotment of shares in favour of appellants 3 to 5 is invalid and the election of appellants 4 and 5 as additional directors is invalid are all pure findings of fact. I therefore hold that the decision of the Company Law Board is just and proper and the Company Law Board has not exceeded its power and jurisdiction. I do not find any reason at all to interfere in the common order passed by the Company Law Board.

71. Accordingly, both the C.M.As. are dismissed. The respondent in each C.M.A. would be entitled to a sum of Rs.5,000/- each as costs.

Index: Yes
Website: Yes
na.
21-5-2002

To
The Company Law Board,
Principal Bench, Chennai.