[2025] 9 S.C.R. 383 : 2025 INSC 1065

Mrs. Shailja Krishna
v.
Satori Global Limited & Ors.

(Civil Appeal No(s). 6377-6378 of 2023)

02 September 2025

[Dipankar Datta* and K. Vinod Chandran, JJ.]

Issue for Consideration

Whether the company petition decided in favour of the Appellant by the NCLT was maintainable u/ss.397 and 398, Companies Act, 1956 Act; assuming that the company petition was maintainable, whether the NCLT had jurisdiction to decide whether the gift deed is valid or not; if the answer to the aforesaid question is in the affirmative, were the facts on record and the law such so as to support the finding of the NCLT that the gift deed is invalid; whether the Appellant was able to prove that she has been a victim of mismanagement and oppression by the Directors of the Company.

Headnotes†

Companies Act, 1956 Act – ss.397-399 – NCLT decided the company petition in favour of the Appellant – Order set aside by NCLAT – Whether the company petition u/ss.397 and 398 was maintainable in view of the bar created by s.399:

Held: The company petition was maintainable – Findings returned by the NCLT and more particularly having noticed the allegations of fraud and coercion as well as fabrication of documents, which were proved to its satisfaction by the Appellant, the reasons assigned are concurred with. [Para 24]

Companies Act, 1956 Act – ss.397, 398, 286 – Company petition filed by Appellant was decided by NCLT in her favour whereby *inter alia* she was restored as an Executive Director of the first respondent-Company; Board resolutions dtd.15.12.2010 and 17.12.2010 were set aside; the gift deed in question was held invalid and the subsequent share transfer in favour of the fourth respondent-her mother-in-law was declared null and void – Order set aside by NCLAT holding that NCLT erred in declaring the Gift Deed invalid when serious allegations of

* Author

fraud, coercion, and forgery were raised – Whether the NCLT had jurisdiction to decide whether the gift deed is valid or not; if yes, whether the finding of the NCLT that the gift deed is invalid is supported by the facts on record and the law and; whether the Appellant was able to prove that she was a victim of mismanagement and oppression by the Directors of the Company:

Held: The NCLT/CLB possess a wide jurisdiction to decide all such matters that are incidental and/or integral to the complaint alleging oppression and mismanagement – Tribunal ought to bring an end to the complaints of oppression and mismanagement and must also provide a solution to the problems – In the instant case, admittedly, the determination of whether the gift deed is valid or not is central to the decision herein and, therefore, the NCLT did have full jurisdiction to decide whether the gift deed is valid or not, or whether it is against the provisions of the 1956 Act and/or internal regulations of the Company, including but not limited to the AoA and the MoA – If a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its Board of Directors in a *mala fide* manner, the said act must ordinarily be considered to be an act of oppression against the said member – Appellant was the victim of oppression and mismanagement because the circumstances surrounding the gift deed and the subsequent transfer of shares are seriously questionable and are invalid and; the board meetings were conducted in a *mala fide* manner and against both the statutory requirements of the 1956 Act and the internal regulations of the Company – Gift deed and share transfer forms were invalid – Share transfer set aside – The Board Meetings held on 15.12.2010 and 17.12.2010 were also invalidly conducted and the resolutions purportedly passed therein, including the acceptance of the Appellant's alleged resignation, do not warrant any validation by this Court – Interference by NCLAT with the judgment and order of the NCLT was unnecessary – Order of NCLAT set aside and that of the NCLT is restored – Companies Act, 2013. [Paras 29-31, 39, 42, 53, 55]

Companies Act, 1956 Act – s.286 – Board meetings dtd.15.12.2010 or 17.12.2010, if were invalid:

Held: Yes – Clauses 30 and 61 of the AoA r/w s.286 mandate that notice of every board meeting must be served on all Directors –

Appellant, who continued as a Director during the relevant period, was never served with notice of either of the meetings dtd.15.12.2010 or 17.12.2010 – Moreover, such notices and/or proof of service of such notices were never produced before the NCLT, even the minutes of the meetings were also not produced – Hence, the requirement of notice being mandatory, non-service thereof renders the meetings invalid – Furthermore, on the issue of quorum, clause 53 of the AoA mandates that every Board Meeting of the Company must have a quorum of at least two validly appointed Directors – Admittedly, on 15.12.2010, the Appellant was a Director holding 98% shareholding in the Company and the only other Director was the third respondent – Hence, in the absence of the Appellant, the meeting did not have the requisite quorum – Further, since the alleged induction of the fifth respondent as an Additional Director in the meeting of 15.12.2010 was itself illegal, he could not be deemed to be a validly appointed Director, and his presence in the subsequent meeting dtd.17.12.2010 could not have cured the defect of quorum – Thus, both meetings were vitiated for want of proper quorum – Board Meetings held on 15.12.2010 and 17.12.2010 were invalid. [Paras 48, 51-53]

Words and Phrases – Oppression – Meaning, discussed.

Case Law Cited

Radharamanan v. Chandrasekara Raja **[2008] 5 SCR 182** : **(2008) 6 SCC 750;** *Kamal Kumar Dutta v. Ruby General Hospital Ltd.* **[2006] Supp. 4 SCR 462 : (2006) 7 SCC 613;** *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.* **[2021] 12 SCR 903 : (2021) 9 SCC 449;** *Shanti Prasad Jain v. Kalinga Tubes Ltd* **[1965] 2 SCR 720 : 1965 SCC OnLine SC 15;** *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* **[1981] 3 SCR 698 : (1981) 3 SCC 333;** *Hind Overseas (P) Ltd. v. Raghunath Prasad Jhunjhunwalla* **[1976] 2 SCR 226 : (1976) 3 SCC 259;** *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan* **[2004] Supp. 4 SCR 334 : (2005) 1 SCC 212;** *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad* **[2005] 1 SCR 624 : (2005) 11 SCC 314;** *V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd.* **[2008] 3 SCR 184 : (2008) 3 SCC 363;** *Sri Parmeshwari Prasad Gupta v. Union of India* **[1974] 1 SCR 304 : (1973) 2 SCC 543 – relied on.**

V.B. Rangaraj v. V.B. Gopalakrishnan & Ors. **[1991] Supp. 3 SCR 1 : (1992) 1 SCC 160 – referred to.**

Scottish Co-Operative Wholesale Society Ltd. Appellant v. Meyer **(1958) 3 All ER 66 (HL);** *Elder v. Elder and Watson* **(1952) Scottish Cases 49;** *In re H. R. Harmer Ltd.* **[1959] 1 WLR 62 – referred to.**

Books and Periodicals Cited

A. Ramaiya, Guide to the Companies Act, 2013, vol. 3, at 4020 (18th ed. LexisNexis 2015).

List of Acts

Companies Act, 1956; Companies Act, 2013; Domestic Violence Act, 2006; Specific Relief Act, 1963.

List of Keywords

Section 397 and 398, Companies Act, 1956 Act; Mismanagement and oppression; Fraud; Company petition maintainable; NCLT/ Company Law Board (CLB) possess wide jurisdiction; Gift deed invalid; Gift deed against AoA; Jurisdiction of NCLT; NCLT has jurisdiction to decide whether the gift deed is valid or not; Victim of mismanagement and oppression; Complaint alleging oppression and mismanagement; Share transfer in favour of mother-in-law not allowed in AOA; Out of love and affection; Share transfer forms suspect; Share transfer set aside; Ousted as Director without due process; Fraud; Coercion; Forgery; Satori Global Limited; Share transfer form; Gift deed and share transfer forms invalid; Board Meetings invalid; Restored as Executive Director of the Company; Extra-Ordinary General Meeting (EOGM); Form 7C; Extension of validity by RoC; Induction as Additional Director illegal; Not a validly appointed Director; Internal regulations of the Company; Board meetings vitiated for want of proper quorum; Board meeting did not have the requisite quorum; Defect of quorum not cured.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 6377-6378 of 2023

From the Judgment and Order dated 02.06.2023 of the National Company Law Appellate Tribunal at Delhi in CAAT Nos. 379 and 395 of 2018

Appearances for Parties

Advs. for the Appellant:
Dhruv Mehta, Sr. Adv., Ankur Mittal, Bimal Bhabhda, Ms. Muskan Jain, Keith Varghese, Ms. Jutirani Talukdar.

Advs. for the Respondents:
S Niranjan Reddy, Gopal Sankaranarayanan, Sr. Adv., Ashutosh Jha, Ashutosh Gupta, Gaurav Rana, Oleander D Singh, Shivam Tomar, Ms. Sansriti Pathak, Ms. Meha Aggarwal, Aman Prasad, Shourya Dasgupta, Ms. Trisha Chandran.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

The Appeals

1. National Company Law Tribunal, Allahabad Bench[1] allowed a company petition[2] filed by Mrs. Shailaja Krishna[3] under Sections 397 & 398 of the Companies Act, 1956[4] by its judgment and order dated 04.09.2018. In appeals thereagainst[5], the National Company Appellate Tribunal, Principal Bench at New Delhi[6] *vide* its common judgment and order dated 2nd June, 2023 set aside the said judgment and order of the NCLT and allowed two sets of appeals of the respondents. These civil appeals assail the said appellate judgment and order of the NCLAT.

Brief Facts

2. The first respondent - "Satori Global Limited"[7] - a private limited company was earlier known as Sargam Exim Private Limited. The

1 NCLT
2 CP. IB No. 107/ND/2013
3 Appellant
4 1956 Act
5 Company Appeal (AT) No. 379/2018
6 NCLAT
7 Company

COMPANY, incorporated on 13.04.2006, primarily engaged in trading of paper. Sargam Exim Private Limited's transition to Satori Global Limited will unfold as we proceed to narrate the facts.

3. At the time of incorporation in 2006, the authorized share capital of the COMPANY was Rs. 2 crores divided in to 20,00,000 equity shares of Rs. 10 each. The subscribed and paid-up capital of the COMPANY initially was Rs. 3 lac divided into 30,000 equity shares of Rs. 10 each.

4. The Appellant and the second respondent – Mr. Ved Krishna – the Appellant's husband were the original promoters of the COMPANY. The Appellant initially subscribed to 5,000 equity shares, while the second respondent subscribed to the remaining 25,000 shares. In December 2006, the second respondent transferred 24,500 shares to the Appellant, thereby increasing her shareholding to 29,500 shares. The remaining 500 shares of the second respondent were transferred to the third respondent-Mr. Nirupam Mishra.

5. Subsequently, an additional 10,000 shares were issued to the Appellant. By the end of financial year 2006-2007, she held 39,500 shares of the COMPANY out of a total of 40,000 equity shares of the issued and paid-up share capital, representing more than 98% of the COMPANY's shareholding.

6. On 01.02.2007, the second respondent resigned from the directorship of the COMPANY. His resignation was accepted at the board meeting and the third respondent was inducted as Director of the COMPANY in his place.

7. In the same year, the company made a long-term investment in M/s Yash Papers Ltd. (now known as Pakka Limited) by acquiring 10 lakh equity shares of the said company of Rs 10 each including 30 lakh equity warrants of Rs 11 each of which Rs 1.10 per warrant was paid. The balance sheet for the year 2007 reflected a holding of approximately 33,34,500 shares in M/s Yash Papers Ltd., representing around 14% of its shareholding.

8. On 15.12.2010, the fifth respondent was inducted as an additional director in the COMPANY. Subsequently, on 17.12.2010, the Appellant is stated to have resigned from the COMPANY. Her resignation was accepted at a board meeting attended by the third respondent and the fifth respondent.

9. On the same day, that is, on 17.12.2010, a gift deed was executed in Faizabad through which the Appellant purportedly transferred her entire shareholding in the COMPANY to the fourth respondent – Mrs. Manjula Jhunjhunwala – her mother-in-law out of love and affection.

10. The Appellant's entire shareholding was transferred to fourth respondent *vide* Share Transfer Form dated 01.10.2010 and the validity of which was allegedly extended up to 12.11.2011.

11. Around 2009-2010, the Appellant and the second respondent drifted apart resulting in a strained marital relationship.

12. On 05.02.2011 and then again on 25.03.2011, the Appellant lodged police complaints alleging that she had been coerced into signing some blank documents. On or about 15.06.2011, the second respondent left India for the USA, where he instituted divorce proceedings against the Appellant.

13. In the meantime, a meeting of the Board of Directors was convened wherein notice was issued for an Extraordinary General Meeting ("EoGM") to be held on 20.06.2011. The second respondent was re-appointed as Director of the COMPANY and, at the said EoGM, the COMPANY was converted into a public limited company under the name Satori Global Limited.

14. Appellant thereafter lodged her third police complaint on the same lines as the first two. She also addressed communications to the Registrar of Companies[8] and the Ministry of Corporate Affairs[9], informing them of the circumstances. On 18.11.2011, the alleged transfer forms were utilised to effect transfer of her shares in favour of the fourth respondent.

15. Appellant also filed a petition under the Protection of Women from Domestic Violence Act, 2006 against the second and the fourth respondent. Later that year, she came to know that her name has been removed from the list of shareholders and instead, the fourth respondent was shown to have acquired her shareholdings. This led to filing of another complaint by the appellant, which resulted in registration of FIR No. 105/2013 against the second to fifth

8 RoC

9 MoCA

respondents under Sections 406, 419 and 420 of the Indian Penal Code, 1860[10].

16. Subsequently, the fourth respondent also filed an FIR against the appellant under Section 406, IPC alleging breach of trust with regard to the family jewellery belonging to the fourth respondent wherein she claimed that on 17.12.2010, the appellant changed her bank locker from a joint locker that she held with the second respondent to a locker singly held by her.

17. Amidst these circumstances, the appellant filed a company petition[11] before the Company Law Board, New Delhi[12] which was ultimately allowed with costs by the NCLT, *vide* its judgment and order dated 04.09.2018. The Board resolutions dated 15.12.2010 and 17.12.2010 were set aside. NCLT restored the appellant as an Executive Director of the COMPANY and declared her as the lawful owner of 39,500 equity shares, holding the share transfer dated 18.11.2011 in favour of the fourth respondent null and void. The COMPANY was directed to reinstate the appellant as Director, and the fourth respondent ordered to return the share certificates within 15 days. NCLT found overwriting and manipulation in the share transfer form, and noted that it was executed after its validity had expired. RoC was found to be lacking the power under Section 108(1-D) of the 1956 Act to extend its validity in such circumstances. NCLT also found Form 7C to be incomplete and the extension of validity by RoC doubtful, warranting inquiry by the MoCA.

18. Aggrieved thereby, two separate appeals were carried to the NCLAT – one by the COMPANY and the fifth respondent[13] and the other by the fourth respondent[14]. NCLAT, as noted at the beginning of this judgment, allowed the appeals and held the company petition to be not maintainable.

IMPUGNED JUDGMENT

19. NCLAT set aside the judgment and order of the NCLT on the ground that it did not have jurisdiction to decide issues of fraud, manipulation and

10 IPC

11 Company Petition No 107/ND/2013

12 CLB

13 Company Appeal (AT) No. 379 of 2018

14 Company Appeal (AT) no. 395 of 2018

coercion; more so, in the exercise of its summary jurisdiction when examination of elaborate evidence is required. Hence, the appropriate course of action available to the Appellant was to approach the civil court under Sections 31 and 34 of the Specific Relief Act, 1963[15] for cancellation of the disputed gift deed.

ARGUMENTS

SUBMISSIONS OF THE APPELLANT

20. Learned senior Counsel for the Appellant, Mr. Dhruv Mehta advanced extensive arguments in support of his contention that the impugned judgment and order of the NCLAT is unsustainable in law and hence, liable to be set aside; and prayed that the judgment and order of the NCLT be restored. A brief synopsis of his argument is as follows:

    a. The Companies Act, 2013, particularly Section 242 thereof, empowers the NCLT to look into acts of oppression and mismanagement even when they involve fraudulent transfer of shares.

    b. NCLAT travelled beyond its jurisdiction by re-appreciating factual findings, particularly on issues of fraud, coercion, and oppression, which squarely fell within the province of the NCLT.

    c. The bar under Section 399 of the 1956 Act which, *inter alia*, provides for the requirement of 10% of the shareholding for a member to initiate an action under this said section does not stand in the way, since the Appellant was a member of the COMPANY at all material times and the impugned Gift Deed being vitiated by fraud could not divest her of her membership. In addition to this, Section 399 of the 1956 Act has consistently been interpreted liberally, to ensure that minority shareholders are not rendered remediless.

    d. The affairs of the COMPANY were being conducted in a manner which was oppressive to the Appellant and prejudicial to public interest. Appellant had been excluded from participation in management and her name was wrongly removed from the register of members, resulting in her ouster as Director without following due process.

15 1963 Act

e. Gift Deed dated 17.12.2010 is invalid:

i. in view of Clause 16 read with Clause 2(c) of the Articles of Association[16]. Clause 16 of AoA of the COMPANY allows the transfer of shares of a member by way of a gift to a specific category of persons only, namely, 'Members, Wife, Husband, Son, Daughter-in-law, Son-in-law, Father, Mother, Brother, Sister, Uncle, Nephew, Niece or Cousin'. Clause 2(c) of the AoA lays down that the right to transfer the shares of the COMPANY shall be and is restricted in a manner and to the extent provided in the AoA. Hence, Clause 16 of AoA must be read in the context of and along with clause 2(c) and cannot be read in isolation. This way the transfer in favour of the mother-in-law by way of 'gift' is not permitted under the AoA of the COMPANY.

ii. because it was obtained under fraud, coercion, and undue influence. The second respondent had obtained the signatures of the Appellant on blank papers and later forged it, as the Appellant was not in the city of Faizabad on the relevant date.

f. Board meetings dated 15.12.2010 and 17.12.2010 are invalid:

i. because they were conducted in clear violation of the AoA of the COMPANY and the provisions of the 1956 Act.

ii. clause 53 of the AoA stipulates that every board meeting should have a quorum of at least 2 members. However, in the present factual milieu, on the date of the board meeting dated 15.12.2010 the quorum was not complete as the Appellant never attended this meeting. The COMPANY at that point of time had only two directors, the Appellant and the third respondent.

iii. quorum was also not met in the meeting dated 17.12.2010 as inclusion of the fifth respondent as a director via the board meeting dated 15.12.2010 has no legal sanction.

iv. clauses 30 and 61 of the AoA mandate that the notice of a meeting must be served on the members either personally

16 AoA

or by sending a registered post on the registered address. This position is also supplemented by Section 286 of the 1956 Act. Even though the Appellant was a director of the COMPANY throughout the duration of these meetings, she never received any notices for the board meetings held on both 15.12.2010 and 17.12.2010, nor was any proof of service of notices on her produced before the NCLT.

v. no minutes of the meeting have been produced regarding these meetings, which violate Section 193 of the 1956 Act.

g. Share Transfer Forms were fraudulently prepared:

i. share Transfer Form was issued on 01.10.2010 and was only valid for 2 months, i.e., till 01.12.2010 as per Section 108 (1A) of the 1956 Act, whereas share transfer form was allegedly signed by the Appellant on 17.12.2010, when the form had already expired. Moreover, the Appellant was not even there on the said date.

ii. form 20B of 2012 itself shows that the shares were transferred only on 18.11.2011, whereas the Share Transfer Form stipulated that the extended period for transfer was only up to 12.11.2011. Realizing that the transfer on 18.11.2011 was beyond the permissible period, the respondents tampered with and overwrote the Share Certificates, altering the date from 18.11.2011 to 10.11.2011 solely to bring it within the extended period, thereby fabricating the very basis of the alleged transfer and rendering the transaction illegal, null and void *ab initio*, and incapable of conferring any rights upon the respondents.

iii. in any event, the extension granted by the RoC up to 12.11.2011 cannot cure or validate the Share Transfer Form, as the execution/signature of the Appellant thereon had already expired on 01.12.2010, thereby rendering the alleged transfer wholly illegal and void.

iv. extension of validity of the Share Transfer Form under Section 108(1D) of the 1956 Act through Form No. 7C, is fraught with serious inconsistencies and illegalities, inasmuch as the said Form does not even bear a date, the particulars of payment are conspicuously absent in

Column No. 10, and the reason for seeking extension has been vaguely stated as "misplaced", which by no stretch of interpretation can fall within the statutory purview of Section 108(1D) that restricts extension only to "avoid hardship".

v. further, the second respondent is shown to have attended and signed the documents relating to the AGM dated 24.09.2011; however, this is demonstrably false for the simple reason that as per the second respondent's own sworn affidavit filed before the District Court of Idaho, USA, he had left India on or about 15.06.2011 and was continuously residing in the USA until 31.10.2011, during which period he had also initiated divorce proceedings there. Consequently, he could not have been physically present in India or attended the AGM on 24.09.2011, and the documents purporting to bear his signature on that date are fabricated and unreliable.

vi. moreover, the Form is not even signed by the mother-in-law, who was the transferee, but instead by some other person, thereby rendering the entire process of extension invalid, *non-est* and incapable of conferring any legal sanctity to the alleged transfer.

h. The COMPANY was purportedly converted from a Private Limited Company into a Public Limited Company and its name was changed to Satori Global Limited through an alleged Extraordinary General Meeting (EOGM). However, no notice of such meeting was ever issued to or served upon the Appellant. Through this EOGM, 5 (five) new shareholders were added to the register and no notice was served on the Appellant.

SUBMISSIONS OF THE RESPONDENTS

21. Mr. Niranjan Reddy, learned senior counsel representing the COMPANY sought to defend the impugned judgment and order by submitting that:

a. NCLT fell into manifest error in proceeding to declare the Gift Deed invalid, particularly when serious allegations of fraud, coercion, and forgery were raised. Such questions involve adjudication of complex factual controversies which necessarily require a full-fledged trial involving oral evidence - examination of witnesses and cross-examination – a feature wholly absent

from proceedings before the NCLT under Section 155 of the 2013 Act, which grants it power only to rectify the register of members. The only competent forum to adjudicate upon the validity of the Gift Deed would be a civil court exercising jurisdiction under Sections 31 and 34 of the 1963 Act.

b. Moreover, the Appellant had no locus standi to institute the company petition under Sections 397 and 398 of the 1956 Act.

c. NCLT exceeded its jurisdiction:

   i. first, regarding the finding that the RoC did not have power to extend the validity of the Share Transfer Form, the transfer forms were initially presented to the RoC on 01.10.2010 and executed on 17.12.2010. Since the same were not submitted to the COMPANY within the statutory two-month period, an application was made under Section 108(1D) of the 1956 Act whereupon an extension was duly granted up to 12.11.2011. The transfer deed was thereafter submitted to the COMPANY on 10.11.2011, well within the extended time, thereby ensuring full compliance with the statutory framework. The finding of the NCLT, to the contrary, is unsustainable.

   ii. second, with respect to the finding on the validity of the Gift Deed, the NCLAT has correctly held that the NCLT lacked jurisdiction to adjudicate upon the same.

   iii. even otherwise, assuming arguendo that the Gift Deed was not validly executed and notarised, the NCLT erred in holding it forged without following due process. The notary was never examined, no oral evidence was recorded, and no opportunity of cross-examination was afforded to the parties. In the absence thereof, NCLT could not have returned findings on such disputed and complex issues.

   iv. NCLT's order dated 04.09.2018 reinstating the Appellant as Executive Director and directing rectification of the register of members was manifestly beyond jurisdiction. Rectification of register of members is governed by Section 111A of the 1956 Act. Appellant, however, did not invoke that provision, and in its absence, no relief as granted could have been granted. NCLT's direction, therefore, was

without jurisdiction, contrary to statute, and rightly interfered with by the NCLAT.

d. Resignation letter submitted by the appellant on 17.12.2010 was valid and effective. Under the 1956 Act, once a director submits a resignation, it takes effect immediately without requiring acceptance by the Board or service of acknowledgment upon the resigning director. The resignation was duly recorded in Form 32 filed with the RoC on 30.12.2010, and the same became a matter of public record. Appellant ceased to draw salary from the COMPANY after December 2010, unequivocally confirming her cessation of office.

e. Appellant, despite being a law graduate, claimed to have signed certain documents under threat and coercion but raised no immediate protest or complaint. Indeed, she filed no police complaint for nearly three months thereafter, citing the unconvincing excuse of being in Kolkata at the material time. Even when a complaint was lodged belatedly on 05.02.2011, wherein the police ultimately filed a closure report finding no offence being made out, the said report was duly accepted by the competent Magistrate. In addition to this, even the company petition before the CLB was filed after a delay of two and half years without any valid explanation for the delay, suggesting that it was an afterthought.

f. Notice of the meeting scheduled for 15.12.2010 was duly delivered at the Appellant's registered address and was received by her guard. Appellant, being the sole Executive Director (alongside the third respondent) cannot be heard to complain of non-receipt of notice.

g. AoA of the COMPANY contained no restriction on transfer of shares by way of gift. Article 16 of the AoA clearly permitted transfers by gift to any individual, including non-members.

22. Learned senior counsel for the fourth respondent, Mr. Gopal Sankarnarayanan, adopted the arguments advanced on behalf of the COMPANY but specifically stressed on the following points:

a. Allegations relating to fraud, coercion, and manipulation could not be adjudicated by the NCLT and squarely fell within the province of the civil courts under the 1963 Act.

b. At the material time, the appellant did not fulfil the tests present in Section 399 of the 1956 Act and, therefore, she was disentitled to file the company petition.

ISSUES

23. Having heard the parties and on consideration of the materials on record, the following points arise for determination:

a. Whether the company petition, decided in favour of the Appellant by the NCLT, was maintainable under Sections 397 and 398 of the 1956 Act?

b. Assuming that the company petition was maintainable, whether the NCLT had jurisdiction to decide whether the gift deed is valid or not?

c. If the answer to the above question is in the affirmative, were the facts on record and the law such so as to support the finding of the NCLT that the gift deed is invalid?

d. Whether the Appellant was able to prove that she has been a victim of mismanagement and oppression by the Directors of the COMPANY?

ANALYSIS

MAINTAINABILITY

24. Whether the company petition under Section 397 and 398 of the 1956 Act was maintainable in view of the bar created by Section 399 thereof was a specific issue before the NCLT. This issue was answered in favour of the Appellant by the NCLT by assigning reasons. NCLAT did not hold the company petition to be not maintainable; however, it proceeded to set aside the order of the NCLT on the ground noticed above. Respondents have not questioned the omission of the NCLAT to not dismiss the company petition on the ground of its non-maintainability; on the contrary, they have supported the same. Without anything more, this would have afforded good ground for us to answer this issue in favour of the Appellant. However, we do not wish to rest our conclusion on this issue merely on such a technicality.

25. We have perused the discussion of the NCLT while answering Issue No. II. Upon threadbare examination of the case pleaded by the

Appellant in the company petition as well as the materials on record vis-à-vis the applicable law, the NCLT held such petition maintainable. The findings returned by the NCLT and more particularly having noticed the allegations of fraud and coercion as well as fabrication of documents, which were proved to its satisfaction by the Appellant, we record our concurrence with the reasons assigned and hold the company petition to be maintainable.

DID THE NCLT HAVE JURISDICTION TO DECIDE WHETHER THE GIFT DEED IS VALID OR NOT?

26. This issue pertains to the central question in the current case. The gift deed has been challenged on various grounds, but before we proceed to decide on the merits, we would first decide whether the NCLT possesses jurisdiction to decide this issue itself.

27. In ***Radharamanan v. Chandrasekara Raja***[17], this Court held that the CLB would be denuded of the power to provide the diverse reliefs present in the 1956 Act if the Court does not give effect to the wide jurisdiction conferred on the CLB in matters concerning Sections 397 and 398 thereof. The instructive passages read as follows:

> **23.** Sections 397 and 398 of the Act empower the Company Law Board to remove oppression and mismanagement. If the consequences of refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the company, would still the Company Law Board be powerless to pass appropriate orders is the question. If a literal interpretation to the provisions of Section 397 or 398 is taken recourse to, may be that would be the consequence. But jurisdiction of the Company Law Board having been couched in wide terms and as diverse reliefs can be granted by it to keep the company functioning, is it not desirable to pass an order which for all intent and purport would be beneficial to the company itself and the majority of the members? A court of law can hardly satisfy all the litigants before it. This, however, by itself would not mean that the Company Law Board would refuse to exercise its jurisdiction, although the statute confers such a power on it.

17 (2008) 6 SCC 750

24. It is now a well-settled principle of law that the courts should lean in favour of such construction of statute whereby its jurisdiction is retained enabling it to mould the relief, subject of course, to the applicability of law in the fact situation obtaining in each case.

25. In *Pearson Education Inc.* v. *Prentice Hall India (P) Ltd.* [(2007) 136 Comp Cas 294 : (2006) 134 DLT 450] as regards the jurisdiction of the Company Law Board and the High Court under Sections 397/398 and 402, a learned Single Judge of the Delhi High Court held: (DLT p. 466, para 27)

> '*27*. … Jurisdiction of the CLB (and ultimately of this Court in appeal) under Sections 397/398 and 402 is much wider and direction can be given even contrary to the provisions of the articles of association. It has even right to terminate, set aside or modify the contractual arrangement between the company and any person [see Sections 402(*d*) and (*e*)]. Section 397 specifically provides that once the oppression is established, the Court may, with a view to bringing to an end the matters complained of, make an order as it thinks fit. Thus, the Court has ample power to pass such orders as it thinks fit to render justice and such an order has to be reasonable. It is also an accepted principle that 'just and equitable' provision in Section 402(*g*) is an equitable supplement to the common law of the company to be found in its memorandum and articles of association.'
>
> (emphasis ours)

28. Speaking to the authority of the erstwhile CLB, this Court in ***Kamal Kumar Dutta v. Ruby General Hospital Ltd.***[18] held that the CLB while deciding petitions under Sections 397 and 398 of the 1956 Act exercises quasi-judicial power and as an original authority. The relevant paragraphs of the decision are reproduced hereunder:

18 (2006) 7 SCC 613

> **23.** ... There are no two opinions in the matter that when CLB exercised its power under Sections 397 and 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a court but it has all the trapping of a court. Therefore, CLB while exercising its original jurisdiction under Sections 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed.
>
> (emphasis ours)

29. In the landmark decision of ***Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.***[19], this Court eruditely delineated the jurisdiction of the Tribunal while passing orders on an application complaining of oppression and mismanagement which is that the Tribunal ought to bring an end to the complaints of oppression and mismanagement and must not only avoid providing solutions that tend to elongate the complaints, but must also provide a solution to the problems. The relevant passages from such judgment read as follows:

> **180.** Therefore, despite the law relating to oppression and mismanagement undergoing several changes, the object that a Tribunal should keep in mind while passing an order in an application complaining of oppression and mismanagement, has remained the same for decades. This object is that the Tribunal, by its order, should bring to an end the matters complained of.
>
> **181.** In other words the purpose of an order both under the English law and under the Indian law, irrespective of whether the regime is one of "oppressive conduct" or "unfairly prejudicial conduct" or a mere "prejudicial conduct", is to bring to an end the matters complained of by providing a solution. The object cannot be to provide a remedy worse than the disease. The object should be to put an end to the matters complained of and not to

19 (2021) 9 SCC 449

> put an end to the company itself, forsaking the interests of other stakeholders. It is relevant to point out that once upon a time, the provisions for relief against oppression and mismanagement were construed as weapons in the armoury of the shareholders, which when brandished in terrorem, were more potent than when actually used to strike with. While such a position is certainly not desirable, they cannot today be taken to the other extreme where the tail can wag the dog.
>
> **182.** The Tribunal should always keep in mind the purpose for which remedies are made available under these provisions, before granting relief or issuing directions. It is on the touchstone of the objective behind these provisions that the correctness of the four reliefs granted by the Tribunal should be tested. If so done, it will be clear that NCLAT could not have granted the reliefs of:
>
> **182.1.** Reinstatement of CPM.
>
> **182.2.** Restriction on the right to invoke Article 75.
>
> **182.3.** Restraining RNT and the nominee Directors from taking decisions in advance.
>
> **182.4.** Setting aside the conversion of Tata Sons into a private company.
>
> (emphasis ours)

30. The aforesaid decisions confirm the view that the NCLT/CLB possess a wide jurisdiction to decide all such matters that are incidental and/or integral to the complaint alleging oppression and mismanagement. Such power is, however, subject to any other legislative enactment specifically debarring the NCLT/CLB from exercising its powers in this respect.

31. In the instant case, it is an admitted fact that the determination of whether the gift deed is valid or not is central to the decision herein and, therefore, the NCLT did have full jurisdiction to decide whether the gift deed is valid or not, or whether it is against the provisions of the 1956 Act and/or internal regulations of the COMPANY, including but not limited to the AoA and the Memorandum of Association.

Oppression And Mismanagement

32. We will take the third and fourth issues together as they both relate to the question of whether the appellant was a victim of oppression and mismanagement.

33. Oppression and mismanagement have been discussed a number of times by this Court in previous decisions. Oppression, in company law, can never have a straitjacket definition and takes within its fold various forms and actions. The dictionary meaning of the word oppression is any act exercised in a manner that is burdensome, harsh and wrongful[20].

34. The legal concept of oppression and mismanagement comes from the colonial law. In ***Scottish Co-Operative Wholesale Society Ltd. Appellant v. Meyer***[21]***,*** the House of Lords referring to the prior decision in ***Elder v. Elder and Watson***[22] noted the primary element of what constitutes oppression – that is, a *"lack of probity and fair dealing in the affairs of a company to the prejudice of some portion of its members"*.

35. Following ***Meyer*** (supra), Jenkins, L.J speaking for the Court of Appeal in ***In re H. R. Harmer Ltd.***[23], stated the word "oppressive" must be understood in its ordinary sense and the question must be whether in that sense the conduct complained of is oppressive to a member or members as such.

36. Hon'ble K.N. Wanchoo, J. (as his Lordship then was) speaking for a three judge Bench of this Court in ***Shanti Prasad Jain v. Kalinga Tubes Ltd.***[24] noted the three prior decisions above from English and Scottish jurisprudence with approval and noted that the law in this regard had not defined what oppression meant for the purposes of Section 397 read with Section 402 of the 1956 Act and would, therefore, involve a case-to-case examination of the facts to determine whether oppression had occurred.

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20 A. Ramaiya, Guide to the Companies Act, 2013, vol. 3, at 4020 (18th ed. LexisNexis 2015).

21 (1958) 3 All ER 66 (HL)

22 (1952) Scottish Cases 49.

23 [1959] 1 WLR 62

24 1965 SCC OnLine SC 15

37. In ***Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.***[25], this Court had the occasion to observe that while an isolated act may not amount to oppression and mismanagement, a series of actions one upon the other can justifiably lead to such a conclusion. The erudite words of Hon'ble Y.V. Chandrachud, CJI. speaking for the three-judge Bench are worth quoting:

> **49.** …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* [1952 SC 49] a complaint was made that Elder had not received the 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 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 biased; 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 biased and that the party complaining of the orders will not get justice at his hands.
>
> …

25 (1981) 3 SCC 333

> **52.** It is clear from these various decisions that on a true construction of Section 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 Section 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* [1959 AC 324 : (1958) 3 All ER 66 (HL)] and in *Re H.R. Harmer Ltd.* [1959 WLR 62 : (1958) 3 All ER 689 (CA)] as modified in *Re Jermyn St. Turkish Baths* [(1971) 3 All ER 184 (CA)] . We have not adopted that modification in India.
>
> (emphasis ours)

38. In ***Hind Overseas (P) Ltd. v. Raghunath Prasad Jhunjhunwalla***[26], this Court while dealing with oppression and mismanagement in a company formed by family members/close friends observed that the principle of "just and equitable" clause baffles a precise definition. It must rest with the judicial discretion of the court depending upon the facts and circumstances of each case. These are necessarily equitable considerations and may, in a given case, be superimposed on law. Whether it would be so done in a particular case cannot be put in the straitjacket of an inflexible formula.

39. In ***Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan***[27], this Court ruled that the acts of Directors in a private limited company are

26 (1976) 3 SCC 259

27 (2005) 1 SCC 212

required to be tested on a much finer scale in order to rule out any misuse of power for personal gains or ulterior motives. The Court also succinctly observed that while a right to do an act may be present to the Directors under Company Law, this right enjoins with it the duty to act fairly and in the overall interest of the company. It was, thus, held that if a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its Board of Directors in a *mala fide* manner, the said act must ordinarily be considered to be an act of oppression against the said member.

40. In the case of ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad***[28], this Court while setting aside the allotment of shares noted that the surrounding circumstances of the allotment are seriously suspect and do not satisfy the required standards of proof to sustain the same.

41. A profitable reference may also be made to the decision of ***V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd.***[29] wherein it was observed as follows:

> **14.** In a number of judgments, this Court considered in extenso the scope of Sections 397 and 398. The following judgments could be usefully referred to:
>
> **...**
>
> From the above decisions, it is clear that oppression would be made out:
>
> (*a*) Where the conduct is harsh, burdensome and wrong.
>
> (*b*) Where the conduct is *mala fide* and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-à-vis the others.
>
> (*c*) The action is against probity and good conduct.
>
> (*d*) The oppressive act complained of may be *fully permissible under law but may yet be oppressive* and,

28 (2005) 11 SCC 314

29 (2008) 3 SCC 363

therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is *mala fide* or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(*e*) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.

(*f*) As to what are facts which would give rise to or constitute oppression is *basically a question of fact* and, therefore, whether an act is oppressive or not is fundamentally/ basically a question of fact.

42. Applying the tests laid down in the aforesaid authorities, we have come to the conclusion that the Appellant was the victim of oppression and mismanagement in the instant case for two reasons: first, that the circumstances surrounding the gift deed and the subsequent transfer of shares are seriously questionable and must be declared invalid and secondly, the board meetings have been conducted in a *mala fide* manner and against both the statutory requirements of the 1956 Act and the internal regulations of the COMPANY. Both of these instances show that the affairs of the COMPANY were being conducted in a manner prejudicially affecting the Appellant.

GIFT DEED AND SHARE TRANSFER FORMS ARE INVALID

43. The gift deed is invalid first and foremost since it is against the AoA, specifically clause 16. The clause does not allow a transfer to the mother-in-law and, therefore, the gift deed cannot be called in aid to defeat the claims of the Appellant in the COMPANY. Any action taken which is not permitted by the AoA here cannot be sustained. One may usefully refer to ***V.B. Rangaraj vs V.B. Gopalakrishnan & Ors.***[30] for this proposition.

44. Further, as alluded to previously, the circumstances surrounding the gift deed are questionable since the deed specifically mentions it

30 (1992) 1 SCC 160

being purportedly executed by the Appellant to the fourth respondent out of "love and affection". However, what paints a divergent image is that the fourth respondent on 01.06.2013 lodged an FIR alleging that the appellant purportedly committed acts constituting breach of trust *qua* family jewellery on 17.12.2010, i.e., the very date that the Share Transfer Form was purportedly signed by the Appellant.

45. There is also considerable merit in the Appellant's argument that the share transfer forms are suspect. A bare perusal of the same discloses that (i) the share transfer form was purportedly signed by the Appellant after the extended period and such transfers cannot be upheld by this Court in good conscience and (ii) there is clear overwriting and mismatch of dates on the share transfer form. We have no hesitation to hold that the share transfer needs to be set aside on these grounds.

46. At this stage, however, we do not find this to be an appropriate case to decide whether the RoC had the power to extend and whether the extension in this case is valid, especially considering that we have already decided that the share transfer cannot be sustained. Moreover, the RoC not being impleaded as a party in these appeals, we cannot and must not venture into determining whether the actions of the RoC have been made as per the provisions of the respective Companies Act and rules thereunder.

BOARD MEETINGS WERE INVALIDLY CONDUCTED

47. With reference to the Board Meetings dated 15.12.2010 and 17.12.2010, we are of the considered view that it suffers from fundamental illegality and cannot be sustained in law. The same were undoubtedly conducted in violation of the AoA and the 1956 Act, on two counts.

48. *First*, on the issue of notice, clauses 30 and 61 of the AoA read with Section 286 of the 1956 Act, unequivocally mandate that notice of every board meeting must be served on all Directors. Specifically, clause 30 stipulates that *"twenty-one days' notice specifying the place, day and hour of a General Meeting shall be given to the members of the company"*. Mr. Mehta contended that the Appellant, who continued as a Director during the relevant period, was never served with notice of either of the meetings dated 15.12.2010 or 17.12.2010. Moreover, such notices and/or proof of service of such notices were never produced on record before the NCLT. Not only

that, the minutes of the meetings were also not produced. Hence, the requirement of notice being mandatory, non-service thereof renders the meetings invalid. Reliance placed by Mr. Mehta on ***Sri Parmeshwari Prasad Gupta v. Union of India***[31] is relevant here as it was held that absence of notice vitiates the entire proceedings of a board meeting.

49. Regarding the contention of Mr. Reddy that the notice was accepted by the security guard, the same has been urged to be rejected. The notice accepted by the guard was in respect of the Extra-Ordinary General Meeting (EOGM) which was held on 20.06.2011. This is admittedly not the subject matter of dispute. What we are concerned with are the meetings dated 15.12.2010 and 17.12.2010.

50. At this stage, we wish to highlight the contradictory stances taken by the respondents before the NCLT, the NCLAT and before us. Before the NCLT, the stance taken by the COMPANY is that notice for the EOGM was taken by the guard, and not for the meetings held on 15.02.2010 and 17.12.2010. The Appellant rightly contested the same in her rejoinder before the NCLT. Before the NCLAT in the appeal petition, the respondents do not even mention that a notice was sent and the same was accepted by the guard. The only plea they took is that since the Appellant resigned on 17.12.2010, no further notice was required to be sent to her. Before us, in the reply filed to the civil appeal, the COMPANY has taken the stand that the notice for the meeting dated 15.12.2010 was duly received by the guard. This inconsistent stand, we are sure, is only an untoward error, lest our observations be construed as casting imputations. That being said, no documentary proof has been attached to show that the guard accepted any notice for the meetings scheduled on 15.02.2010 or 17.02.2010. Therefore, the requirement of notice was not complied with.

51. *Secondly,* on the issue of quorum, clause 53 of the AoA mandates that every Board Meeting of the COMPANY must have a quorum of at least two validly appointed Directors. It is an admitted fact that on 15.12.2010, the Appellant was a Director holding 98% shareholding in the COMPANY and the only other Director was the third respondent. Hence, in the absence of the Appellant, the meeting did not have the requisite quorum.

31 (1973) 2 SCC 543

52. Additionally, since the alleged induction of the fifth respondent as an Additional Director in the meeting of 15.12.2010 was itself illegal, the fifth respondent could not be deemed to be a validly appointed Director, and his presence in the subsequent meeting dated 17.12.2010 could not have cured the defect of quorum. Thus, both meetings were vitiated for want of proper quorum.

53. In light of the above, we find that the Board Meetings held on 15.12.2010 and 17.12.2010 were invalid on both counts and the resolutions purportedly passed therein, including the acceptance of the Appellant's alleged resignation, do not warrant validation by us.

CONCLUSION

54. Collectively taken, all these actions of the COMPANY in serial fashion demonstrate clear oppression and mismanagement in its affairs. Probity is lacking which is prejudicial to the appellant.

55. Thus, interference by the NCLAT with the judgment and order of the NCLT, in our opinion, was quite unnecessary. Hence, we set aside the common appellate judgment and order of the NCLAT on the appeals of the respondents and restore that of the NCLT.

56. These civil appeals are, accordingly, allowed. Parties shall, however, bear their own costs.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey