IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2017

DELIVERED ON : 04.07.2017

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**

Com.Apel.Nos.3 and 4 of 2016
and Cros.Obj.No.39 of 2016
C.M.P.Nos.6828, 6864, 7563, 7564, 7575 and 7576 of 2016

1. Mr.M.Ethiraj
2. Mr.E.Shanmugam .. Appellants in Com.Apel.No.3/2016 /Respondents 2 and 3 in C.P. No.62/2014

M/s.S.V.Global Mill Limited,
No.106, Armenian Street,
Chennai-600 001. .. Appellant in Com.Apel.No.4/2016 /Respondent No.1 in C.P. No.62/2014

Vs

1. Sheetala Credit Holdings Pvt. Ltd.,
   B1/12, Safdarjung Enclave,
   New Delhi.

2. Satluj Credit and Holdings Pvt. Ltd.,
   B1/12, Safdarjung Enclave,
   New Delhi.

3. Twentieth Century APCO Leasing Pvt. Ltd.,
   3C, Camac Street,
   Kolkata, West Bengal.

4. Rajat Chankra Credit and Holdings Ltd.,
   B1/12, Safdarjung Enclave,
   New Delhi.

5. Calcom Credit and Holdings Pvt. Ltd.,
   B1/12, Safdarjung Enclave,
   New Delhi.

6. Mrs.N.Rajalakshmi .. Respondents 1 to 6 in Com.Apel Nos.3 and 4/2016/Petitioners 1 to 6 in C.P.No.62 of 2014 /Cross Objectors in Cros.Obj. No.39/2016

7. S.V.Global Mill Ltd.,
   No.106, Armenian Street,
   Chennai-600 001. .. Respondent No.7 in Com.Apel No.3/2016/Respondent No.1 in C.P.No.62 of 2014

8. Mr.Y.Satyajit Prasad .. Respondent No.8 in Com.Apel No.3/2016/Respondent No.4 in C.P.No.62 of 2014

9. Dr.K.Shivaram Selvakkumar .. Respondent No.9 in Com.Apel No.3/2016/Respondent No.5 in C.P.No.62 of 2014

10.Mr.R.Narayanan ** .. Respondent No.10 in Com.Apel No.3/2016/Respondent No.6 in C.P.No.62 of 2014

11.Mr.S.Natarajan .. Respondent No.11 in Com.Apel No.3/2016/Respondent No.7 in C.P.No.62 of 2014

7. Mr.M.Ethiraj .. Respondent No.7 in Com.Apel No.4/2016/Respondent No.2 in C.P.No.62 of 2014

8. Mr.E.Shanmugam .. Respondent No.8 in Com.Apel No.4/2016/Respondent No.3 in C.P.No.62 of 2014

9. Mr.Y.Satyajit Prasad .. Respondent No.9 in Com.Apel No.4/2016/Respondent No.4 in C.P.No.62 of 2014

10.Dr.K.Shivaram Selvakkumar .. Respondent No.10 in Com.Apel No.4/2016/Respondent No.5 in C.P.No.62 of 2014

11.Mr.R.Narayanan .. Respondent No.11 in Com.Apel No.4/2016/Respondent No.6 in C.P.No.62 of 2014

12.Mr.S.Natarajan .. Respondent No.12 in Com.Apel No.4/2016/Respondent No.7 in C.P.No.62 of 2014

1. Mr.M.Ethiraj,
   Chairman, SV Global Mill Limited,
   Residing at Old No.110, New No.66,
   Dr.Radhakrishnan Salai,
   Chennai-600 004.

2. Mr.E.Shanmugam,
   Managing Director, SV Global Mill Limited,
   Residing at New No.5, Old No.3,
   3rd Avenue, Boat Club Road,
   Chennai-600 028.

3. S V Global Mill Limited,
   with its registered office at
   No.106, Armenian Street,
   Chennai-600 001.

4. Mr.Y.Satyajit Prasad,
   Director, SV Global Mill Limited,
   Residing at 21, Raman Street, T.Nagar,
   Chennai-600 017.

5. Dr.K.Shivaram Selvakkumar,
   Director, SV Global Mill Limited,
   Residing at 875, J-1, 17th Main Road,

Anna Nagar, Chennai-600 040.

6. Mr.R.Narayanan,
Director, SV Global Mill Limited,
Residing at Old No.105 A, New No.10,
Janakpuri, 2nd Street,
Sankaran Avenue,
Chennai-600 042.

7. Mr.S.Natarajan
Director, SV Global Mill Limited,
Residing at No.7, Crescent Avenue,
Kesavaperumal Puram,
Chennai-600 028. .. Respondents in Cros.Obj.No.39/2016

** (Respondent No.10 has been
given up by the appellants)

* * *

Prayer in Com. Apel. No.3 of 2016 : Appeal filed under Section 10F of the Companies Act, 1956, praying to set aside the impugned order dated 10.03.2016, in C.P.No.62 of 2014, passed by the Company Law Board.

Prayer in Com. Apel. No.4 of 2016 : Appeal filed under Section 10F of the Companies Act, 1956, praying to set aside the impugned order of the Company Law Board, dated 10.03.2016, in C.P.No.62 of 2014.

Prayer in Cros. Obj. No.39 of 2016 : Cross Objections under Order XL1 Rule 22 of the Code of Civil Procedure, 1908 read with Section 10F of the Companies Act, 1956, praying to (a) hold that respondent No.7 company is in fact a quasi-partnership and to this extent the finding of the Company Law Board be reversed ; (b) direct that the applicant No.1 vacate the Boat Club Road Property and pay the fair rent for the period of illegal occupation ; (c) direct that the appellants vacate the

office of directorship of respondent No.7 Company with effect from 01.09.2012, as stipulated in Section 283(1)(i) of the Companies Act, 1956; (d) direct that respondent No.11 be reinstated as a Director of respondent No.7 Company till such time as the shares of these respondents are purchased in the manner set out in the order; and (e) pass such or further orders as this Court deems fit in the facts and circumstances of this case.

* * *

For Appellants in Com.Apel. No.3/2016/Respondents No.7 and 8 in Com.Apel. No.4/2016	: Mr.P.S.Raman, Senior Counsel for Mr.T.K.Bhaskar
For Appellants in Com.Apel. No.4/2016/Respondent No.7 in Com.Apel.No.3/2016	: Mr.Arvind P.Datar, Senior Counsel for
For Cross Objectors in Cros. Obj.No.39/2016/Respondents No.1 to 6 in Com.Apel.Nos.3 and 4/2016	: Mr.K.G.Raghavan, Senior Counsel for Mr.Anirudh Krishnan
For Respondents No.8 and 9 in Com.Apel.No.3/2016 & respondents No.9 and 10 in Com.Apel No.4/2016	: Mr.T.K.Seshadri, Senior Counsel for M/s.Adithya Reddy
For Respondent No.11 in Com.Apel.No.3/2016 and respondent No.12 in Com. Apel.No.4/2016	: Mr.R.Murari, Senior Counsel for M/s.Preeeti Mohan

C O M M O N J U D G E M E N T

1. The captioned appeals and one set of Cross Objections, have been placed before me, for adjudication.

1.1. The appeals filed being, Company Appeal Nos. 3 and 4 of 2016, assail the judgment and order of the Company Law Board (in short CLB), dated 10.03.2016.

1.2. The Cross Objections bearing No.39 of 2016 have been preferred by respondents 1 to 6 to assail some of the findings recorded in the impugned judgment and order of the CLB, in particular, the finding that respondent No.7, i.e., S.V.Global Mill Limited (in short "SVG") is not a quasi-partnership.

1.3. There are other objections also raised by respondents 1 to 6, to which, I will be making a reference, as I go along with the narration of facts and events.

2. Before I proceed further, let me indicate as to who are the main protagonists in the battle, which has ensued, with regard to the affairs of SVG.

2.1. The appellants, in Company Appeal No.3 of 2016 are, one, Mr.M.Ethiraj (Ethiraj) and his son Mr.E.Shanmugam (Shanmugam). For the sake of convenience, they would be referred to, collectively, as the "controlling group" and, individually, by their respective names, unless the context requires otherwise. For example, when, the context requires, the appellants in both Company Appeals would be collectively referred to as "appellants".

2.2. The controlling group holds 55% of the paid up equity share capital in SVG. Respondent Nos.1 to 5 are companies, which are controlled and managed by, one, Mr.S.Natarajan, who, stands impleaded as respondent No.11 in Company Appeal No.3 of 2016 and, as respondent No.12 in Company Appeal No.4 of 2016. Respondent No.6 is, one, Ms.N.Rajalakshmi, who is the wife of Mr.S.Natarajan. For the sake of convenience, respondent Nos.11 and 12 would be referred to as "Natarajan".

2.3. Natarajan, via his wife, respondent No.6/Ms.N.Rajalakshmi and respondent Nos.1 to 5 holds 18.98% of the equity share capital of SVG. Therefore, as would be evident, there are two major blocks, in which, shares of SVG are divided. The first block comprises of the controlling group, which holds 55% of the share. The second block comprises of respondent Nos.1 to 6, which includes Natarajan's wife and the five companies, in which, he has controlling interest, i.e., respondent Nos.1 to 5. This block, as indicated above, holds 18.98% of the equity share capital of SVG. Since, Natarajan is the face of this block, it will be referred to as the "Natarajan block", accordingly, unless context requires specific mention of respondent Nos.1 to 6.

2.4. These two (2) groups together control nearly 74% of equity share capital of SVG. The remaining 26% of the equity stake is

distributed amongst public shareholders. The record shows that the numerical strength of the public shareholders is 9014.

2.5. Therefore, the dispute in the present proceedings is really between the controlling group and the Natarajan block. The controlling group is aggrieved by the impugned judgment and order of the CLB, broadly, on the ground that even though the CLB returned findings of fact that there was no quasi-partnership in existence, and that, there was no deadlock in running and managing the affairs of SVG, it, passed directions to the effect that 18.98% of shares owned by the Natarajan block should be purchased either by the controlling group or, by SVG itself.

2.6. Moreover, for effectuating this direction, a further direction has been issued by the CLB, which is, that the fair price of the shares held by Natarajan block should be determined by arriving at a valuation as per the balance sheet of SVG, obtaining as on 31.03.2015.

2.7. For this purpose, CLB directed appointment of an independent valuer, in the manner, indicated in the impugned judgment. In addition thereto, there were two supplemental directions issued: First, that SVG would not extend loans or, make investments, in associate or related companies, till the report of the independent

valuer was submitted. Second, that SVG will obtain ratification from the shareholders, qua the decision taken at the Annual General Meeting ("AGM") held on 29.09.2012, with respect to the use of SVG's property, by its Managing Director, i.e.,Shanmugam, for his residential purposes. This property, which is owned by SVG is situate at New No.5, Old No.3, III Avenue, Boat Club Road, Chennai - 600 028 (hereinafter be referred to as the 'Boat Club Property').

2.8. Shanmugam, as would be obvious from what is stated above, is a part of the controlling group.

3. Apart from the controlling group, as noticed above, another appeal has been filed, this appeal has been preferred by SVG and, is numbered as: Company Appeal No.4 of 2016.

4. To be noted, the appeals were listed before Court, for the first time, on 18.04.2016, at which point in time, Cross Objections had not been filed. The Cross Objections were presented in the Registry, only on 01.06.2016. Therefore, on 18.04.2016, what was before the Court, in so far as the Natarajan block was concerned, was the caveat filed on its behalf, bearing No.1301 of 2016.

4.1. Thus, on the said date, after hearing counsel for the contesting parties, a protem arrangement was put in place, which is captured in paragraph 4 of the order passed on 18.04.2016:

".... 4. Counsel for the parties are agreed that the following protem arrangement can be put in place for the moment :

(i). The equity stake held by the respondents 1 to 6 in the Appellant Company (in Appeal No.4 of 2016) shall be valued in terms of direction contained in Clause (a) of paragraph 10.8 of the impugned order dated 10.03.2016, passed by the CLB.

(ii). The Valuer shall be appointed in terms of directions (a) and (b) contained in paragraph 10.8 of the impugned order of the CLB, with due intimation to the respondents 1 to 6, within a period of two weeks from the date of receipt of a copy of this order.

(iii). The fee of the Valuer shall, however, be paid for the time being by the respondents 1 to 6, as arrayed in the captioned appeal. The appellant will, however, not extend any loan or make any investment to any associate or related third party, without leave or permission of this Court.

5. Furthermore, the condition contained in Clause (f) of paragraph 10.8 of the impugned order shall remain stayed, till further orders of this Court."

4.2. The next returnable date was fixed as 06.07.2016. In the interregnum, C.M.P.Nos.7564 and 7576 of 2016 were filed on behalf of the controlling group, wherein, the following directions were sought:

Prayer in CMP No.7576 of 2016 :

"…. to direct that the pro-term (sic) appointment of the Valuer agreed upon would not create any equities and be without prejudice to the rights of the appellant challenging the directions for valuation of shares contained in the order of the Company Law Board dt.10.03.2014 and thus render justice."

Prayer in CMP No.7564 of 2016 :

"….. to direct that the Report of the Valuer appointed pursuant to the pro-term (sic) arrangement dt.18.04.2016, be submitted in a sealed cover to this Hon'ble Court and direct that the sealed cover not to be opened pending disposal of the Company Appeal 3 of 2016 pursuant to the order passed in the above appeal by its Order dated 18.04.2016, passed by the Hon'ble Court and pass such further and other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

5. Thus, after hearing the arguments on 06.07.2016, three (3) aspects of the matter were considered. First, that M/s.Brahmayya & Co., Chartered Accountants, who were carrying out the exercise of share valuation, would take recourse to the profit earning method to value the worth of the shares. This direction was issued, as Mr.Arvind P.Datar, learned senior Advocate, who appeared on behalf of the

controlling group, took an objection to the fact that the break-up value method was being employed by the aforementioned valuer, contrary to the principles set forth by the Supreme Court in the following judgments:

a) Commissioner of Wealth Tax, Assam Vs. Mahadeo Jalan, AIR 1973 S.C. 1023; and

b) Commissioner of Gift Tax, Bombay Vs. Smt.Kusumben D.Mahadevia, AIR 1980 S.C. 769.

5.1. This, of course, was contested by Mr.K.G.Raghavan, learned senior Advocate, who appeared on behalf of Natarajan and respondent Nos.1 to 6, by relying upon the judgment of the Supreme Court rendered in ***Cosmosteels Private Limited & Others V.Jairam Das Gupta & Others, AIR 1978 S.C. 375.***

5.2. The second aspect, which I dealt with was: as to whether or not, the Natarajan block should be entitled to examine the valuation report. Having considered the matter, at that stage, I deemed it fit to direct that this aspect of the matter would be adverted to, after pleadings were completed in the case.

5.3. The third aspect, which came to fore and got resolved by virtue of the stand taken by Mr.P.S.Raman, learned senior Advocate, who also appeared for the appellants was that, pendency of litigation in this Court, if not already disclosed, shall be disclosed to the Bombay

Stock Exchange (in short, "BSE").

6. Thereafter, on 01.08.2016, upon an application being moved by Natarajan, i.e., C.M.P.No.12274 of 2016, a clarification was issued that Brahmayya & Co. will submit a valuation report, by taking recourse to all recognised methods of valuation, which would include the Break-up Value/Net Asset Value Method and the Profit Earning Method.

6.1. Mr.P.S.Raman, who, as indicated above, also appeared for the controlling group, was, in fact, the proponent of the plea that all recognised methods of valuation should be taken into account by the valuer.

7. On 15.09.2016, Brahmayya & Co., Chartered Accountants, submitted their valuation report, albeit, in a sealed cover. A decision was taken by me, on that date, to defer opening of the sealed cover. It was indicated that this aspect of the matter would be examined, once arguments in the appeal would commence.

7.1. Thereafter, the matter was heard from time to time and finally, the judgment in the matter was reserved on 10.02.2017.

7.2. Furthermore, on that date, without prejudice to the rights and contentions of the parties, the valuation report was opened and its contents were shown to the counsels for the parties. The counsels

were given due opportunity to examine the contents of the report.

8. As to what impact this would have on the captioned matters will be discussed in the latter part of my judgment. For the moment, the aforesaid background was adverted to, in order to establish from the record that valuation of shares was carried out and a report was, accordingly, submitted by the designated Chartered Accountant, who, in turn, was appointed, with the consent of the counsels for parties.

PREFATORY FACTS:

9. In order to adjudicate upon the disputes, which have arisen in the instant matters, one would have to notice the following, broad facts, which have led to the institution of the instant proceedings.

9.1. In this behalf, one would have to, necessarily, allude to the genesis of the birth of SVG. The birth of SVG is rooted in the company, by the name, Binny Limited. It appears that in and about 1987, Binny Limited, which was, a widely held, listed company, having representatives of banks and financial institutions on its Board of Directors (BOD), came to cede controlling interest in favour of four (4) persons and their constituents, namely, late Mr.N.P.V.Ramasamy Udayar (Ramaswamy), Mr.M.Nandagopal (Nandagopal), Ethiraj, and Natarajan. Natarajan was co-opted to the BOD of Binny Limited in

June, 1987/January, 1988 (the record shows both dates). Upon the death of Ramasamy, Mr.V.R.Venkatachalam (Venkatachalam), his son, stepped into his shoes.

9.2. Though, exact details have not been provided, the record is indicative of the fact that Natarajan purchased a stake in Binny Limited via respondent Nos.1 to 5.

9.3. In this context, it is to be noted that the stand of the controlling group is that, as a matter of fact, monies for investment were advanced in the form of loan to respondent Nos.1 to 5 via a company, by the name, Swadesimitran Limited.

9.4. Though, in the appeal, there is a reference to the aforementioned two entities, in a letter dated 01.10.2014, addressed by Ethiraj to Natarajan, in response to his letter dated 24.09.2014, reference is made only to the aforementioned company, viz., Swadesimitran Limited. The controlling group has indicated that the following sums were advanced to respondent Nos.1, 2, 4 and 5 respectively :

(i) Sheetala Credit Holdings Pvt. Ltd., - Rs.42.00 lakhs
(ii) Satluj Credit and Holdings Pvt. Ltd., - Rs.42.50 lakhs
(iii) Rajat Chankra Credit and Holdings Ltd., - Rs.42.00 lakhs
(iv) Calcom Credit and Holdings Pvt. Ltd., - Rs.42.00 lakhs

9.5. The stand of the controlling group appears to be that

Natarajan was required to return the shares, upon receipt of an aggregate sum along with an indemnity that recovery of the sums loaned to respondent Nos.1 to 5 would not be triggered. The controlling group takes the stand that while, indemnity bonds were received from Natarajan, he went back on his promise to re-transfer the shares in Binny Limited.

9.6. The record seems to indicate that since, the financial health of Binny Limited was weak, on account of its net worth having been eroded, it had to approach the Board for Industrial and Financial Re-construction ("BIFR") under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"). Consequently, in 1992, a Scheme of rehabilitation was submitted to the BIFR. The Scheme of rehabilitation, so formulated, required, inter alia, infusion of a sum of Rs.60.00 Crores by the promoters. Lack of funds, led to the existing promoters introducing two new co-promoters in Binny Limited. The introduction of new co-promoters took place, in and about 1993. These new co-promoters, it appears, injected a sum of Rs.60.00 Crores, in the form of equity and unsecured interest free loan, albeit, in equal half. In other words, Rs.30.00 Crores was infused by way of equity, while, the remaining Rs.30.00 Crores was funded by way of loan, which was both unsecured and interest free. Natarajan, however,

claims that it was his intercession in the matter, which led to introduction of the new co-promoters and the infusion of funds in Binny Limited.

9.7. The record is suggestive of the fact that new co-promoters decided to part ways and thus, Binny Limited was demerged, in about 2004, into two companies, i.e., Binny Limited and Binny Karnataka Limited. There was distribution of assets and control of associated incorporated companies as well. The details with respect to which, perhaps, are not relevant for the adjudication of the instant case.

9.8. Suffice it to say, that Binny Limited came out of the purview of SICA in 2007. Furthermore, in 2007, SVG was incorporated.

9.9. Natarajan, however, continued to remain as the Director of Binny Limited, despite, the demerger.

10. Within three (3) years, that is, in 2010, once again, a split took place, which resulted in the exit of Nandagopal and Venkatachalam. Towards this end, a Scheme of arrangement qua the demerged entity, i.e., Binny Limited and two Resulting Companies, i.e., SVG and Binny Mills Limited was presented for sanction, before this Court.

10.1. This Court vide order dated 22.04.2010, sanctioned the Scheme.

10.2. Pertinently, immediately, after the demerger, Natarajan was brought on to the Board of SVG, albeit, as a "non-executive Director". Apart from anything else, the principal object of the demerger was that the controlling group, which was led by Ethiraj, retained 55% of shares in SVG. Similarly, Nandagopal and Venkatachalam and their constituents retained 55% shares in the other two companies. Natarajan and his constituents, on the other hand, held approximately, 19% equity stake in each of the three companies, i.e., Binny Limited, Binny Mills Limited and SVG.

10.3. In so far as the cross holdings of Ethiraj, Nandagopal and Venkatachalam and their constituents in the aforementioned companies were concerned, they were done away with, so as to ensure that each of these families controlled the companies coming under their sway, without interference from other families, with Natarajan, being the only common factor.

10.4. It is the stand of the controlling group that on two occasions, i.e., in 2007 and 2013, an attempt had been made to purchase the equity stake of Natarajan in SVG. It is suggested that in a meeting held in May, 2007, Natarajan, had agreed to sell his shares in all three companies, for a total sum of Rs.50.00 Crores.

10.5. As indicated above, this attempt was, once again, made in December, 2013, at which point in time, the controlling group, via Ethiraj, seems to have indicated that he would purchase Natarajan's interest in SVG for a sum of Rs.16.66 Crores, which was 1/3rd of Rs.50.00 Crores, offered in 2007, for purchase of his interest, in all three companies, i.e., Binny Limited, Binny Mills Limited and SVG.

11. Be that as it may, in so far as SVG is concerned, (which became the cause of falling-out between the controlling group and Natarajan), the following dates and events are important.

11.1. On 01.09.2012, a BOD Meeting of SVG was convened, at which, inter alia, a decision was taken to hold an AGM on 29.09.2012. At this meeting of the BOD, a decision was taken to appoint Shanmugam, as the Managing Director, for a period of five (5) years, with effect from 02.04.2012, on the following terms and conditions, subject to approval of the shareholders:

"....

1. Salary : Subject to a ceiling of Rs.5 lakhs per annum

2. Perquisites: As detailed in the explanatory statement.

"RESOLVED FURTHER THAT the Board of Directors be and is hereby authorised to increase vary or amend the remuneration and other terms of the appointment from

time to time provided that such revised remuneration shall also be in conformity with and within the ceiling of Part II under Section 2 of Schedule XIII to the Companies Act, 1956 or any statutory modifications or re-enactment thereof."

Details of Perquisites referred to in the Resolution No:5

1. Free use of furnished accommodation owned or leased by the company with amenities including Water, Gas, Electricity and Furnishings. If no accommodation is provided, the Managing Director is entitled to House Rent Allowance subject to a ceiling of 70% of his salary. The expenditure incurred by the Company on Water, Gas, Electricity and Furnishings will be evaluated as per Income Tax Rules, 1962.

2. XXXXX

3. XXXXX

4. XXXXX

5. XXXXX

6. XXXXX

7. XXXXX

8. XXXXX

9. XXXXX"

11.2. Importantly, Natarajan, along with Mr.R.Narayanan (Narayanan), i.e., respondent No.10, who had been appointed as independent Director, were not present at the said meeting.

11.3. To be noted, at some point in time, Narayanan, who was Ex-Chairman of LIC, appears to have resigned from SVG. Since, no relief, in the instant appeals, is sought against him, he has been given up as a party in Company Appeal No.3 of 2016.

11.4. Resultantly, on 29.09.2012, an AGM was convened and, inter alia, a resolution was passed to appoint Mr.Shanmugam, as the Managing Director for a period of five (5) years, with effect from 02.04.2012, on certain terms. The relevant extract of the resolution along with explanatory is set forth below :

> "..... Considering the paid-up capital of our company, subsequent to demerger and relevant provisions of Section 269 of the Companies Act, 1956, requiring appointment of a Managing Director, the board of directors at their meeting held on 01.09.2012. It was decided to appoint Mr.E.Shanmugam as Managing Director of the Company, subject to the consent at the general meeting of shareholders, for a period of 5 years with effect from 02.04.2012. The term of office/remuneration payable to the Managing Director by way of salary and perquisites (as given in annexure) are within the specified limits land down in Schedule XIII of the Companies Act, 1956. This may be treated as an abstract of the terms and conditions governing the appointment of and remuneration payable to the Managing Director pursuant to Section 302 of the Companies Act, 1956. Accordingly,

the said resolution is submitted for your consideration.

Details of Perquisites referred to in the Resolution No.5

1. Free use of furnished accommodation owned or leased by the company with amenities including Water, Gas, Electricity and Furnishings. If no accommodation is provided, the Managing Director is entitled to House Rent allowance subject to a celling of 70% of his salary. The expenditure incurred by the Company on Water, Gas, Electricity and Furnishings will be evaluated as per Income Tax Rules, 1962. ...."

11.5. At the following BOD, held on 02.11.2012, the minutes of the previous meeting, convened on 01.09.2012, were approved.

12. As indicated herein above, it appears, that, since, the relationship between Natarajan and the controlling group was not on an even keel, in 2013, an attempt, according to the controlling group, was made to purchase the shares of Natarajan.

12.1. On 04.08.2014, the 49th BOD Meeting of SVG was held, whereat, a decision was taken to convene an AGM on 26.09.2014.

12.2. Since, Natarajan along with Ethiraj, albeit, in the normal course, were to retire by rotation, the notice issued to the members convening the AGM on 26.09.2014, inter alia, indicated that both Ethiraj and Natarajan had offered themselves for reappointment. It

may be relevant to note at this stage as a matter of fact, one of the independent directors, who is arrayed as a respondent in both the company appeals, i.e., Mr.Satyajit Prasad, was also to retire on the same date. I have mentioned this aspect, as a submission has been advanced on behalf of Natarajan that the principle of seniority ought to have been followed in deciding, who, out of the two (2), would retire from the BOD.

12.3. The record shows that two days before the AGM, vide letter dated 24.09.2014, Natarajan wrote a letter to Ethiraj, recording therein, briefly, what according to him, were the circumstances, in which, they were brought together. Based on his understanding of their inter-se relationship, which, according to him, was one of partnership, he recounted how interest in Binny Limited was acquired by four (4) co-promoters, which included late Ramasamy, Nandagopal, Ethiraj and himself. Natarajan argued that since, each family was a co-promoter, therefore, the oral understanding subsisting uptill, then, had to be crystallised into a written agreement. This, according to Natarajan, was necessary to remove any impediments that may be caused qua the generation, which was to follow him and Ethiraj. Thus, Natarajan suggested putting in place various measures, which would, according to him, concretise the understanding, which had obtained

uptill then.

12.4. As to when Natarajan's letter reached Ethiraj is not discernible from the record - what did happen, though, was that the AGM convened for 26.09.2014 did take place, and to his horror, his reappointment was blocked by the controlling group. What made matters worse was that, while the Natarajan block had voted in favour of the resolution seeking reappointment of Ethiraj, as the Director of SVG, albeit, via electronic voting, the controlling group, on the other hand, admittedly, voted against the resolution seeking reappointment of Natarajan. Concededly, the controlling group had cast their votes, at the AGM held on 26.09.2014, via paper ballots, instead of through electronic means. Consequently, Natarajan ceased to remain the Director of SVG.

12.5. This action of the controlling group propelled Natarajan to institute Company Petition No.62 of 2014 in the CLB, albeit, via respondent Nos.1 to 6. The petition was filed on 18.10.2014. Though, interim orders were sought, the CLB declined to grant any interim orders and instead, called upon the appellants to file their reply to the Company Petition.

12.6. Respondent Nos.1 to 6, being aggrieved by this approach of the CLB, preferred a Company Appeal to this Court. This Appeal was

numbered as : Company Appeal No.14 of 2014. Natarajan, also joined the fray by filing a separate appeal. Natarajan's appeal was numbered as : Company Appeal No.13 of 2014. These appeals were filed on 28.11.2014. In the meanwhile, pleadings in the Company Petition, pending before CLB, got completed.

12.7. Company Appeal Nos.13 and 14 of 2014 were dismissed by this Court on 27.04.2015. The Review Petitions were preferred by respondent Nos.1 to 6, as well as, Natarajan. The Review Petitions met the same fate. The Review Petitions, were dismissed, on 18.12.2015. In the interregnum, respondent Nos.1 to 6 and Natarajan had preferred Special Leave Petitions (SLPs), against the order dated 27.04.2015, passed in Company Appeal Nos.13 and 14 of 2014. The SLPs were filed on 10.08.2015. Apparently, on 24.08.2015, when, the SLPs came up for hearing, the same were not pressed and instead, a direction was sought for disposal of the Review Petitions, albeit, within a time frame of three weeks.

12.8. It appears, respondent Nos.1 to 6, had also filed, in the meanwhile, an application to amend their Company Petition pending before the CLB. This application was filed on 17.12.2015.

12.9. The record shows that on 11.1.2016, respondent Nos.1 to 6 moved an application before the CLB to withdraw the amendment

application and, instead, sought leave to move for early hearing in the matter.

13. It is, in this background, the impugned judgment and order dated 10.03.2016 came to be passed in C.P.No.62 of 2014, which has given rise to the instant Company Appeals and Cross Objection, to which I have made a reference at the very outset.

SUBMISSIONS ADVANCED BY COUNSELS:

14. The arguments, on behalf of the controlling group, were advanced by Mr.P.S.Raman, Senior Advocate, assisted by Mr.T.K.Bhaskar, while on behalf of SVG, submissions were advanced by Mr.Arvind P.Datar, Senior Advocate, assisted by Mr.Venkatavaradhan. In so far as contesting respondents are concerned, i.e., respondent Nos.1 to 6, submissions were advanced by Mr.K.R.Raghavan, Senior Advocate, assisted by Mr.M.Anirudh Krishnan, while on behalf of Natarajan, submissions were advanced by Mr.Murari, Senior Advocate, assisted by Ms.Preeti Mohan.

14.1. The "independent Directors", i.e., Mr.Y.Satyajit Prasad and Dr.K.Shivaram Selvakkumar, were represented by Mr.T.K.Seshadri, Senior Advocate, assisted by Mr.Adithya Reddy.

15. Broadly, on behalf of both the appellants, the following was contended.

(i) That the CLB had directed purchase of shares of respondent Nos.1 to 6, by the controlling group, even when it had found that there was no oppression of the minority shareholders or mismanagement in running the affairs of SVG.

(ii) The grievance of Natarajan was, in substance, in the nature of a "directorial complaint", which was dressed up as an action for "oppression and mismanagement". Therefore, the fact that Natarajan failed to get elected, in what was a democratic process involving balloting by shareholders, could not form the basis of an action under Section 397 and 398 of the Companies Act, 1956 (in short "the 1956 Act").

(iii) The will of the majority shareholders, not to reappoint Natarajan, as a Director, could not be negated by a judicial process, merely because the outcome was not to his liking.

(iv) The entire premise of the action, though erroneous, was that, there was in existence an S.N.group (i.e., S.Natarajan group), which was a co-promoter group along with the Venkatachalam group, the Nandagopal group and the controlling group. A perusal of the Scheme of demerger of 2010 would show that there was no S.N.group

in existence. Furthermore, there is no reference to the S.N.group, even in the Articles of Association of SVG or, in any inter-se agreement executed between the contesting parties. The argument was that, there was, as a matter of fact, no such agreement in place.

(v) The CLB having found that there was no partnership in existence, ought to have simply dismissed the petition. The CLB ought not to have granted the relief, it has gone on to grant by way of the impugned judgment, in view of the following facts: that there was no quasi-partnership in existence; that the SVG was a widely held public listed company, having 9014 shareholders; that there was nothing in the Articles of Association or by way of an agreement between the contesting parties regarding representation on the Board of SVG by a nominee of respondent Nos.1 to 6; that no fraud or malafides had been found in the controlling group casting their vote, albeit, against the resolution seeking reappointment of Natarajan, as the Director of SVG; that no findings of oppression of the minority shareholders had been returned and lastly, that no finding was returned as regards the allegation of diversion of funds.

(vi) The CLB, contrary to the record, had found: that there was a "practical dead lock" in the running of the affairs of SVG; that there existed a relationship of mutual confidence and good faith, which

required the controlling group to vote in favour of the resolution seeking reappointment of Natarajan as the Director of SVG; and that respondent Nos.1 to 5 had a legitimate expectation that they would be represented on the BOD of SVG.

(vii) The CLB had failed to notice the fact that Natarajan was appointed as a "non-executive Director" on BOD of SVG for his "advisory skills" and not on account of his abilities to manage the affairs of the said company.

(viii) The CLB ought to have noted that neither did Natarajan hold any executive position nor was he part of any Committee of the Board, either, when, he became Director of Binny Limited or, later, when, he got on to the Board of SVG.

(ix) The CLB ought to have ruled one way or the other qua the issue as to whether the votes cast by the controlling group, albeit via paper ballots, was valid. CLB's observation that it was a grey-area, was erroneous, in view of the fact that every shareholder had an inalienable right to cast his vote, which could not have been taken away, except by an express provision in the Statute, notwithstanding the fact that the controlling group had cast their vote via paper ballot, despite the AGM notice holding out that voting would take place by electronic means.

(x) Respondent Nos.1 to 6 were not entitled to appoint their nominee as a Director on the Board of SVG by applying proportional representation principle, having regard to their minority shareholding. The CLB erred in holding that respondent Nos.1 to 5 were entitled to representation on the Board of SVG, when, there was no pleading of legitimate expectation.

(xi) The CLB erred in holding that there was an expectation of expression of mutual good faith and confidence between the contesting parties, merely because Natarajan was shown as a promoter at a point in time when he was associated with Udayar group and, that too, after CLB found that there was no quasi partnership in existence.

(xii) The CLB ought to have appreciated that e-voting was introduced for the convenience of shareholders to enhance the possibility of their participation and voting in general meetings. E-voting is intended only to supplement and not supplant the process of voting put in place by SVG. The circular dated 17.06.2014, issued by the Government of India, Ministry of Corporate Affairs (in short "MCA"), clarifies how voting by electronic means has to take place. The said circular, which sets out, clearly, that provisions of Section 108 of Companies Act, 2013 (in short 2013 Act) read with Rule 20 of the Company (Management and Administration) Rules, 2014, (in short

CMA Rules) are to be followed, seek to ensure wider shareholder participation in the decision making process, concerning the affairs of the companies. Therefore, voting, which is an inalienable right of a shareholder cannot be emasculated, simply because e-voting process was put in place, which was not accessed by the controlling group to cast votes at the AGM. Disregarding the votes cast by nearly 57% of the shareholders, albeit, against the resolution seeking reappointment of Natarajan as a Director on the Board of SVG, would unfairly prejudice the majority shareholders.

(xiii) There was no misuse of the Boat Club Property as alleged at all. The use of the Boat Club Property, as the residence of Shanmugam, Managing Director of SVG, was approved at the BOD Meeting held on 01.09.2012. The minutes of the BOD Meeting held on 01.09.2012 were approved at the subsequent meeting of the Board held on 02.11.2012, at which, Natarajan was present. The allegation of lack of transparency in dealing with the Boat Club Property is therefore, baseless.

(xiii)(a) It was further contended that there was nothing on record to show that the use of the Boat Club Property by the Managing Director, pursuant to the approval of the shareholders, had caused any prejudice to SVG or, that, they were better avenues available for

deploying the said property for other business purposes. The charge with regard to the alleged misuse of the Boat Club property, qua which, Natarajan had remained silent for nearly two (2) years, was raised, for the first time, when, the Company Petition was filed with the CLB.

(xiv) Furthermore, the allegation of mismanagement, based on an enabling resolution passed under Section 372A of the 1956 Act for advancement of loan and/or investment in associate entities/ companies was untenable. The allegation was tenuous, for the reason that not only is SVG a widely held, public listed company, but also that it has on its Board, at any given point in time, two or more independent Directors, who act as a watch dogs with regard to its affairs.

(xiv)(a) There is, in fact, no prohibition in carrying out related-party transactions, albeit, after complying with the requisite provisions of the law.

(xiv)(b) In this behalf, reliance was placed on Sections 295, 297, 299, 300 and 372 of the 1956 Act and the corresponding provisions of the 2013 Act, i.e., Sections 185, 186, 188 and 184. The checks and balances, according to the appellants, were not only provided for in the Acts referred to above, but also in the Regulations framed by

Securities and Exchange Board of India (in short SEBI), in that behalf. Specific reference was made, in this connection, to Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [in short SEBI (LODR)].

(xv) The CLB had erred in holding that there were disputes among the promoters and, hence, Binny Limited had to be demerged. There were no complaints lodged by respondent Nos.1 to 6 (except for pre-litigation correspondence), which could be said to be suggestive of the fact that there was oppression, or that, it was practically difficult to manage the affairs of SVG. The controlling group had managed the affairs of SVG, in which, Natarajan had no role to play. Natarajan has only, as indicated above, rendering advisory services. Natarajan had not, at any point in time, invested any funds of his own in Binny Limited or thereafter, in SVG.

(xv)(a) In this connection, it is also contended that shares in Binny Limited were also purchased by Natarajan, out of the funds furnished by a company, by the name, Swadesimitran.

(xvi) The security and guarantees qua the debts owed by Binny Limited were provided by Nandagopal, Ethiraj and Venkatachalam. Therefore, the claim of Natarajan that he had partnered the aforementioned persons in running the affairs of Binny Limited or other

entities is false. Natarajan, neither exposed himself to any financial risk, nor, was he involved in the day-to-day management of SVG.

15.1. In support of the submissions advanced, reliance was placed on the following judgments:

(i).In re : Godrej Industries Ltd., (2014) 184 Comp. Cas 441 (Bom);

(ii).In cable Net (Andhra) Limited and Others V. A.P.Aksh Broadband Limited and Others, (2010) 6 SCC 719 ;

(iii).Chatterjee Petrochem (I) P. Ltd. V. Haldia Petrochemicals Limited and Others, (2011) 167 Comp Cas 73 (SC);

(iv).Shanti Prasad Jain V. Kalinga Tubes Limited, (1965) 35 Comp. Cas 351 (SC);

(v).V.S.Krishnan V. Westfort Hi-Tech Hospitals Limited and Others, (2008) 3 SCC 363 ;

(vi).Anugraha Jewellers Ltd. and Another V. K.R.S.Mani & Others, (2002) 111 Comp Cas 501 (Mad.);

(vii).K.R.S.Mani & Others V. Anugraha Jewellers Limited, 2004 (3) CTC 348 ;

(viii).Suresh Kumar Sanghi V. Supreme Motors Ltd and Others, 1983 Comp. Cas 54 235 ;

(ix).Public Prosecutor V. T.P.Khaitan and Others, AIR 1957 Mad, 4;

(x).Shailesh Harilal Shah and Others V. Matushree Textiles Limited and Others, AIR 1944 Bom 20;

(xi).Vardhman Dye-Stuff Industries Private Limited V. M.R.Shah, 2009 (149) Comp Cas 345 (Bom.);

(xii).In Re. Astec (BSR) Plc., (1999) B.C.C. 59 ;

(xiii).In Re. Blue Arrow Plc., (1987) 3 B.C.C. 618;

(xiv).Dale and Carrington V. P.K.Prathapan, AIR 2005 SC 1624 ;

(xv).Track Parts of India V. K.N.Bhargava, 2000 Cri. L.J. 310;

(xvi).Brown Forman Mauritius Limited V. Jagatjit Brown-Forman India Limited and Another, (2004) 1 Comp. L J 368 (Del.);

(xvii).B.Premanand and Others V. Mohan Koikal and Others, AIR 2011 SC 1925 ;

(xviii).Shiv Kumar Sharma V. Santosh Kumari, AIR 2008 SC 171;

16. Mr.T.K.Seshadri, Senior Advocate, who appeared for the independent Directors, largely, supported the submissions made on behalf of the appellants.

16.1. In sum, Mr.Seshadri, submitted that no case for oppression and mismanagement was made out and, therefore, there was no cause for the CLB to grant the reliefs, which it did in Company Petition No.62 of 2014.

16.2. In particular, Mr.Seshadri, submitted that, the decision taken by the Board of SVG, to permit Shanmugam, to use the Boat Club Property as his residence, was in order. Furthermore, Mr.Seshadri submitted that the resolution passed, in consonance with the provisions of Section 372A, was also in order. It was also submitted

that, if at all, loans are extended or investments are made in associate entities/companies of SVG, they would be made, after terms and conditions qua such transactions, if, entered into, are duly vetted by the Board of SVG. Since, that stage had not arisen, the allegation was based on a mere apprehension, which could not form the basis for filing a Company Petition, under Sections 397 and 398 of the 1956 Act. In support of his submissions, reliance was placed on the following judgments:

(i).Sangramsinh P.Gaekwad and Others V. Shantadevi P.Gaekwad (Dead) thr. LRs and Others, AIR 2005 SC 809;

(ii).Haraballay Sarma and Others V. Mohodar Sharma, AIR 1975 Gau 76 ;

17. Mr.Raghavan, senior Advocate, assisted by Mr.Anirudh Krishnan, on behalf of those who had filed Cross-Objections and respondent Nos.1 to 6 in Company Appeal Nos.3 and 4 of 2016, broadly, made the following submissions.

17.1. Learned senior counsel submitted that Natarajan was part of a group of four (4) persons, who had acquired controlling interest in Binny Limited, in and about 1987. The other persons, according to the learned Senior Advocate, who were concerned with the acquisition of

controlling interest in Binny Limited, were Late Ramasamy, Nandagopal, Ethiraj and Natarajan. The fact that these four (4) persons had come together, was based on their past relationship. Each of the four (4) persons were holding 19% of the equity stake in Binny Limited. These persons were always shown as promoters in all statutory filings, which included filings made with the Stock Exchange.

17.2. In so far as Natarajan was concerned, shares were held in Binny Limited via respondent Nos.1 to 6, and, accordingly, he was chosen as their nominee on the Board of Binny Limited. According to the learned counsel, the settlement/partition amongst those holding controlling interest in Binny Limited, after its demerger in 2004, took place with the sanction of the 2010 demerger Scheme floated in that behalf. The demerger, which was sanctioned in 2010 by this court, according to Mr.Raghavan, resulted in the birth of three entities, that is, Binny Limited (Demerged Company), SVG Limited (Resulting Company No.1) and Binny Mills Limited (Resulting Company No.2). Learned counsel pointed out that the other three co-promoters, that is, Late Ramasamy's family, represented by, Venkatachalam, Nandagopal and Ethiraj came to hold 55% shares in the aforementioned three companies, albeit, separately, while Natarajan, via respondent Nos.1 to 6 held 19% shares, in each of the three companies. It was, thus,

emphasised that the controlling group, on account of the 2010 demerger, acquired, approximately, 19% shares in SVG. Therefore, as per the Scheme, the properties of Binny Limited were split and segregated and, thereafter, vested in the aforementioned three companies, i.e., Binny Limited, SVG and Binny Mills Limited. It was further stressed that such splitting of assets had also taken place in 2004 as well, when, Binny Limited was demerged into Binny Limited and Binny Karnataka Limited. It was averred that consequent thereto, the then new co-promoters, took control of Binny Karnataka Limited. At this point, according to Mr.Raghavan, the valuation of shares was carried out based on net asset value methodology.

17.3. The assets, according to the learned counsel, were divided at that stage as well. Learned counsel emphasised the fact that even after demerger, Natarajan continued to be nominated on the BOD of SVG, as the representative of respondent Nos.1 to 6.

17.4. Thus, in sum, learned counsel contended that it is these facts, which the CLB took into account that persuaded it to come to a conclusion that there existed a relationship of probity, good faith and mutual confidence between the controlling group and Natarajan.

17.5. In so far as the failure of Natarajan to get reappointed at the AGM, held on 29.12.2016, was concerned, learned counsel

attributed the same to the illegality committed by the controlling group in voting, contrary to the norms fixed.

17.6. According to the learned senior counsel though, a decision had been taken to cast votes by electronic means, the controlling group cast their vote via paper ballots. It was further submitted that, a perusal of the scrutiniser's report would show that if, the votes cast via electronic means are taken into account, it would emerge that the resolution seeking reappointment of Natarajan, as the Director of SVG, had been successfully carried.

17.7. Learned counsel submitted that it is, only if, one were to take into account that part of the scrutiniser's report, which refers to paper ballot, would the resolution seeking reappointment of Natarajan, as the Director of SVG, be shown as having been failed.

17.8. Furthermore, learned counsel submitted that the evidence of mismanagement of the affairs of SVG was evident from two clear instances: First, the instance pertaining to passing of shareholders' resolution dated 02.05.2014, whereby, a proposal for granting loan and making investments in companies/associates related to SVG, was approved by the shareholders, albeit, on such terms, as the Board may deem fit. Second, with regard to the decision taken that the Boat Club Property of SVG, which was valued, conservatively at Rs.300 Crores,

was allowed to be used as the residence of Shanmugam vide the BOD's resolution dated 01.09.2012.

17.9. Both instances, according to the learned counsel, showed the propensity of the controlling group to run the affairs of SVG, contrary to its interest.

18. Learned counsel also emphasised the fact that the claim of the appellants that SVG was a widely held company was false to their own knowledge. For this purpose, reliance was placed upon the contents of the communication dated 22.03.2016 addressed by SVG to BSE. Notably, this communication was sent by SVG to BSE much after the passing of the impugned judgment by the CLB.

18.1. A perusal of the said communication would show that SVG itself had taken a stand before the world at large, that it was a "closely held company".

18.2. Learned counsel also submitted that the direction issued by CLB for purchase of shares was in order, as in the given circumstances, the controlling group and respondent Nos.1 to 6 could not work together. Furthermore, respondent Nos.1 to 6 held 19% of the equity stake, no special resolution can be passed, unless 75% of the shareholders voted in favour of the resolution. For appellants to cobble up 75% votes in favour of a special resolution would be a

tough-ask, given the fact that there was a remote possibility of the controlling group, and Natarajan, who hold together, 74% of the shares in SVG, coming together on any issue. Moreover, what complicates matters is the fact that the balance 26% of the equity stake, which is in public domain, is dispersed amongst nearly 9,000 shareholders, making it difficult for the controlling group to get them to vote en bloc in favour of a special resolution. Therefore, there was nothing wrong, according to the counsel, in the CLB coming to the conclusion that there was a "practical dead lock" in the working of the SVG.

18.3. Furthermore, it was submitted that, since, the shares of SVG were "infrequently traded", even though listed, it was only appropriate for the CLB to direct purchase of respondent Nos.1 to 6's equity stake in SVG, albeit, at a fair value, as in any case, the controlling group in the past had shown interest in purchasing their shares in SVG. As to how infrequently traded shares could be valued, reliance was placed by Mr.Raghavan, on Regulation 8(2)(e) of the Take over Regulations. To emphasize this point, the learned counsel submitted that during the previous 12 months, only 1.25% of the total value of the shares had been traded.

18.4. Learned counsel concluded by submitting that the impugned judgement ought to be sustained as it not only legally valid and equitable, but was also based on correct appreciation of facts, save and except to the extent adverted to, in the cross objections.

18.5. In support of the submissions advanced, reliance was placed on the following judgments:

(i).Cosmosteels Private Limited V. Jairam Das Gupta and Others, (1978) 1 SCC 215;

(ii).In Re Yenidje Tobacco Company Limited [1916] 2 Ch 426

(iii). Loch v. John Blackwoods Ltd, [1924] AC 783

(iv). Thomson v. Drysdale, 1925 S.C. 311 AIR 197

(v). Ebrahimi v. Westbourne Galleries, 1973 AC 360

(vi). Hind Overseas Pvt. Ltd., v. Raghunath Prasad Juhunjhunwala and Anr., AIR 1976 SC 91

(vii). Needle Industries and Anr., v. Needle Industries Newey, AIR 1981 SC 743

(viii). Re Saul D Harrison & Sons plc. [1995] 1 BCLC 14

(ix). Kilpest Pvt., Ltd., & Ors v. Shekhar Mehra, [1996] 10 SCC 696

(x). O' Neill v. Phillips, (1999) UKHL 24

(xi). Sangram Singh Gaekwad and ors. v. Shanta Devi P

Gaekwad (Dead) and Ors., [2005] 123 Comp. Case 566 (SC)

(xii). M.S.D.C. Radharaman v. M.S.D. Chandrasekara., MANU/SC/1342/2008

(xiii). Probir Kumar Misra v. Ramani Ramaswamy and Ors., (2010) 154 Comp Case 658

(xiv). Re Leeds United Holdings Plc., [1996] 2 BCLC 545

(xv). KN Bhargava and Others v. Track parts of India Ltd., and Ors., [2001] 104 Comp. Cas 611 (CLB)

(xvi). Track Parts of India Ltd., and Ors., v. KN Bhargava and Ors., 2000 Cri LJ 310

(xvii). Gurmit Singh v. Polymer Papers, (2005) 123 Comp Cas 486

(xviii). Subash Hostimal Lodha v. Manikchand Promoters, (2007) 140 Comp Cas 512

(xix). Naginder Singh v. RS Infrastructure, (2007) 139 Comp Cas 246

(xx). K Muthusamy P DUrai v. S. Balasubramaniam & Ors., (2011) 167 Comp Cas (167) (Mad)

(xxi). Maharastra Power Development Corporation v. Dabhol Power & Ors., (2003) 117 Comp Cas 506 (Bom)

(xxii). PIK Securities (P) Ltd v. Union Western Bank Ltd., (2001) 4 Com LJ 81

(xxiii). Micromeritcs Engineers Pvt. Ltd., v. S. Munusamy, MANU/TN/0844/2002

(xxiv). V.S. Krishnan v. Westfort Hi-Tech Hospitals Ltd. & Ors., (2008) 3 SCC 363

(xxv). PPN Power Generating Companies v. PPN Mauritius Company, 2005 3AR BLR 354

(xxvi).Nazir Ahmed V. King Emperor, 44 L.W.538 (Privy Council)

(xxvii).Nalinakhya Bysack V. Shyam Sundar Haldar and Ors., AIR 1953 SC 148

(xxviii).Dr.Baliram Waman Hiray v. Justice B. Lentin and Ors. (1988) 4 SCC 419

(xxix).Hukam Chand Shyamlal v. Union of India and Ors. (1976) 2 SCC 128

(xxx).M/s.Madan & Co. Wazir Jaivir Chand (1989) 1 SCC 264

(xxxi).Taylor v. Taylor (1875) 1 CH.D 426

(xxxii).Babu Verghese & Ors v. Bar Council of Kerala and Ors. (1999) 3 SCC 462

(xxxiii).MP Wakf Board v. Subhasa (2006) 10 SCC 696

19. Mr.Murari, Senior Advocate, who appeared for Natarajan, largely, supported the submissions advanced by Mr.Raghavan. It was Mr.Murari's endeavour to demonstrate that Natarajan was in fact, a promoter - Director of Binny Limited and, therefore, continued to get appointed to the Board of the Resulting Company, i.e., SVG, post the 2010 Demerger scheme. Learned counsel also sought to demonstrate that the directions issued by the CLB were legal and tenable, except to the extent adverted to in the cross objections filed in this matter.

(i).Syed Mohamed Ali V. R.Sundaramoorthy and Others, 1971 L.W. 595 ;

(ii).Shanti Prasad Jain V. Union of India, (1973) 75 Bom LR 778 ;

20. Mr.Arvind P.Datar, who advanced submissions on behalf of SVG, in Company Appeal No.4 of 2016, apart from adopting the submissions of Mr.P.S.Raman, made the following arguments:

(i) The direction issued by the CLB to purchase the shares of respondents No.1 to 6 was not called for, in view of the findings rendered in the impugned judgment that this was not a case of quasi-partnership.

(ii) In the absence of any real and substantial deadlock, the CLB

could not have directed either the controlling group or, SVG to purchase the subject shares. Furthermore, Mr.Datar, as indicated in my narration above, laid great emphasis on the fact that valuation could not be carried out by adopting the net asset value method in the case of a going concern.

20.1. I must point out Mr.Venkatavaradan, also, independently advanced submissions, which were more or less in line with the arguments advanced by Mr.Raman.

REASONS :

21. I have heard the learned counsels for the parties and perused the records.

22. The core issue which arises in the appeals is, as to whether the CLB, given the findings that it has returned, ought to have granted, inter alia, the relief of purchase of shares of respondent Nos.1 to 6.

22.1. While respondent Nos.1 to 6 in their Cross Objections, have defended most of the findings and the conclusion reached by the CLB, they have by way of abundant caution, assailed some findings of the CLB, to which, a reference is made hereafter :

22.2. The Cross Objections, broadly, assails the following aspects

of the impugned judgment:

(i) The CLB has wrongly concluded that SVG was not a quasi-partnership, despite recognising the fact that a relationship of good faith, mutual trust, confidence and understanding subsisted between the controlling group and Natarajan.

(ii) Pending the purchase of shares of Natarajan, the CLB ought to have reinstated Natarajan as a Director of SVG, in order to safeguard the interests of respondent Nos.1 to 6.

(iii) The CLB, having found the resolution, appointing Shanmugam, as the Managing Director, defective, by virtue of it having conferred by way of perquisite, the right to make use of the Boat Club Property as his residence, it ought to have invalidated the actions taken pursuant thereto, in consonance with the provisions of Section 299 and 300 of the 1956 Act.

(iv) The CLB erred in treating the defect as curable by directing the appellants to have the defect removed by having a resolution passed by the shareholders to ratify the transaction. Since, the resolution was fundamentally flawed, the CLB could not have permitted the appellants to cure the same. Consequently, the CLB ought to have directed Shanmugam, to vacate the Boat Club Property and to pay a fair rent to SVG for its illegal occupation.

(v) Lastly, the CLB ought to have declared that the decision taken at the Board Meeting dated 01.09.2012 was defective, for the following reasons:

(a) Lack of quorum, in relation to appointment of Shanmugam, as the Managing Director of SVG and grant of permission to him to use the Boat Club Property as his residence.

(b) Non-declaration of interest by the controlling group, in the resolution, granting Shanmugam, the right to use the Boat Club Property as his residence.

(c) Deliberate misstatement to the public shareholders that the BOD had approved appointment of Shanmugam as the Managing Director.

(d) Deliberate suppression in the notice convening the AGM of 29.09.2012, wherein, particulars of the Boat Club Property were not provided. The public shareholders were, thus, according to the objectors, kept completely in the dark.

22.3. Accordingly, via the said Cross Objections, the following substantive reliefs are sought for by respondent Nos.1 to 6:

> *"....(i) Hold that the 7th respondent company is in fact a quasi-partnership and to this extent the finding of the Company Law Board be reversed.*
>
> *(ii) Direct that the Appellant No.1 vacate the Boat*

Club Road Property and pay the fair rent for the period of illegal occupation.

(iii) Direct that the Appellants vacate the office of directorship of the 7th Respondent Company with effect from 01.09.2012, as stipulated in Section 283(1)(i) of the Companies Act, 1956.

(iv) Direct that Respondent No.11 be reinstated as a Director of the 7th Respondent Company till such time as the shares of these Respondents are purchased in the manner set out in the order....."

23. In the background of the aforesaid broad facts and submissions made by the counsels and upon perusal of the records, several issues arise for consideration. I intend to deal with each these issues separately.

24. Before I deal with the factual issues, it may be relevant to discuss, particularly, the principles of law, which have been consistently applied by Courts in actions filed under Sections 397 and 398 of the 1956 Act. More importantly, the manner, in which, the Courts in India have exercised powers under Section 402 of the 1956 Act.

24.1. I may also indicate that both sides have placed on record a whole host of case law both involving Indian Courts as well as Courts

of foreign jurisdiction. I have decided to discuss the more significant judgments, where, the principles of law have been enunciated and those which have been followed by Courts repeatedly, only to avoid an overload of case law.

24.2. Significantly, the law on the subject involving use of a just and equitable principle has received the attention of Courts, both in Indian and other jurisdictions over a span of 100 years or more.

25. In India, more often than not, the judgments of the English Courts are cited, while dealing with winding up actions or actions under Section 397 and 398 of the 1956 Act. The reason, for this, is, perhaps, that statutes such as the 1956 Act and 2013 Act are inspired by the provisions of the English Companies Act, which too has been amended from time to time. Suffice it to say that one of the very first judgments, to which, often, reference is made by the Courts, in order to understand the scope and effect of the expression "just and equitable", which is found, both in clause (f) of Section 433 of the 1956 Act as well as in clause (b), sub-section (2) of Section 397 of 1956 Act is the judgment in ***In Re Yenidje Tobacco Company Ltd. - [1916] 2 Ch 426***.

25.1. This was a case, where two (2) persons decided to amalgamate their business to form a private limited company; they were the only shareholders and Directors in the Private Limited Company. Under the Articles of Association, each person had equal voting powers and, one, Director could form a quorum. Importantly, the articles provided that in case a dispute arose between the Directors with regard to any resolution, the matter could be referred to arbitration.

25.2. In this background, dispute arose between the Directors. The Court invoked the just and equitable principle and granted the relief of winding up. More often than not, at times, it is wrongly construed, (as demonstrated by later judgments of the English Courts as well), that the winding was ordered on account of there being a deadlock. As a matter of fact, the argument of the defendant was that, since, the Articles of Association provided for arbitration, there was, in fact, no deadlock in the running of the company.

25.3. A careful reading of the judgment would demonstrate that the Court ordered winding up of the company on account of the fact that the business of the company, which was being run in the guise of a Private Limited Company, was in fact, a partnership and, since, the two Directors/shareholders were constantly quarreling, with no hope of

reconciliation, there was a lack of confidence ; an attribute so very necessary to run the business.

25.4. The following observations, made by Court bear this out:

> "..... The matter does not stop there. **It is proved that these two directors are not on speaking terms, that the so-called meetings of the board of directors have been almost a farce or comedy, the directors will not speak to each other on the board, and some third person has to convey communications between them which ought to go directly from one to the other.** ..... **Certainly, having regard to the fact that the only two directors will not speak to each other, and no business which deserves the name of business in the affairs of the company can be carried on, I think the company should not be allowed to continue. I have treated it as a partnership, and under the Partnership Act of course the application for a dissolution would take the form of an action; but this is not a partnership strictly, it is not a case in which it can be dissolved by action. But ought not precisely the same principles to apply to a case like this where in substance it is a partnership in the form or the guise of a private company ?** It is a private company, and there is no way to put an end to the state of things which now exists except by means of a compulsory order. ..... **If ever there was a case of deadlock I think it exists here; but, whether it exists**

or not, I think the circumstances are such that we ought to apply, if necessary, the analogy of the partnership law and to say that this company is now in a state which could not have been contemplated by the parties when the company was formed and which ought to be terminated as soon as possible. We are told that we ought not to do it because the company is prosperous, making large profits, rather larger profits than before the disputes became so acute. I think one's knowledge of what one sees in the streets is sufficient to account for that, having regard to the number of cigarettes that are sold, and we can take judicial notice of that in judging whether the business is much larger than it was before. Whether such profits would be made in circumstances like this or not, it does not seem to me to remove the difficulty which exists. It is contrary to the good faith and essence of the agreement between the parties that the state of things which we find here should be allowed to continue. ....."

(emphasis is mine)

26. The next case, which, dealt with this principle, albeit, in the context of a Public Limited Company is : ***Loch V. John Blackwoods Ltd. [1924] AC 783***.

26.1. In this case, the concerned company was registered in Barbados. It appears, one Mr.John Blackwood established an engineering business in Barbados and carried on the same until his death in January, 1904. Under the provisions of his will, his estate was to be divided amongst the beneficiaries named therein. Furthermore, authority was given to the trustees to structure his business into a company with the powers conferred on to the trustees to act as Directors. One of the trustees was given the power to control the company. A public limited company was, accordingly, formed. One of the persons, who was appointed as the Managing Director, used his preponderant voting power, in such a fashion that he denied the necessary information to other shareholders.

26.2. The Privy Council applied the judgment in the case of ***In Re Yenidje Tobacco Company Ltd. - [1916] 2 Ch 426*** and treated the Public Company as one, which was practically a family concern. The principles of quasi-partnership were applied to the company, and accordingly, the just and equitable clause was used to order its winding up.

27. This principle was also applied in the case of : ***Thomson v. Drysdale 1925 S.C. 311.***

27.1. This was a case , where a private company was formed to run a motor transport services by two (2) persons with a nominal capital of 2,000 pounds divided into shares of one thousand pounds each, of which, the only two (2) shares were issued, one to each of these two (2) persons. One of the shareholders, who was a touring agent, in his previous avatar was appointed as the Secretary and Managing Director of the company, while the other shareholder, who was also a Director, and owned a garage, and three (3) motor buses, agreed shortly, after the formation of the company that the motor buses owned by him should be transferred to the company for 1500 pounds; a transaction, which was consummated with allocation of 1500 shares. Differences arose between the two (2) shareholders. The shareholder, who was the Secretary and Managing Director, decided to terminate his relationship with the other shareholder. The other shareholder treated this statement as a formal resignation and, accordingly, took control of the company. The holder of the single share moved the Court for winding up, which was defended by the holder of 1501 shares. The Court granted the prayer, mainly on the ground that the defendant-shareholder, who held the majority shares, was running the company, in such a way so as to destroy his fellow shareholder's confidence in his impartial administration of the affairs of

the company. Consequently, the Court considered it to be a fit case to apply the just and equitable clause to wind up the company.

27.2. The following observations of the Court, being relevant, are extracted hereafter:

> "Now, in any case in which the shareholders who hold a preponderating interest in a company make it manifest that they intend to set at naught the security provided by company procedure, and to treat the company and its affairs as if they were their own property, it is impossible that the minority should retain any confidence in the impartiality or probity of the company's administration, and - according to the circumstances of each particular case - it becomes a question whether the minority are not entitled, as a matter of "justice and equity" within the meaning of subsection (vi.) of section 129 of the Companies (Consolidation) Act, 1908, to have the company wound up. It is always true that the majority are entitled to use their voting power in what they believe to be the interests of the company; and the petitioner's fellow-shareholder had no doubt been allowed to acquire an overwhelmingly preponderant power so far as votes were concerned. But whether he could have used that power, not only to annul the arrangements made in the directors' minutes – I assume he could – but also to acquire for himself the petitioner's touring business (for which the company had never paid a single penny) is a very different matter. In

any case, he never attempted to use his voting power in the only legitimate way. The principles governing the application of the "just and equitable" remedy provided by Section 129 have recently been illustrated by the case of ***Baird V. Less, 1924 S.C. 83,*** in this Court, and by the case of **Loch V. Blackwood, [1924] A.C. 783,** in the Privy Council. The facts of the present case appear to me to make it a *fortiori* of those cases ; and I therefore answer the question whether it is just and equitable that this two-man company should be wound up in the affirmative. ..... On the other hand, in circumstances like the present, it behoves the shareholder who has the 1501 votes to avoid any conduct which would reasonably lead to the inference that he fails to appreciate the fact that it is his duty to use his voting power in the interests of the company as a whole, and that he must not ignore the interests of the other shareholder or treat the company and its asset as if they were his own private property. Further, he must avoid acting in such a way as might reasonably be held to make it impossible for the other shareholder to co-operate with him in the management of the company. Upon the admitted facts I think that it appears that the respondent has abused his position as a shareholder possessing a preponderating voting power, and that the petitioner is entitled to the remedy which he asks for. ..... That this is his point of view is fully shown in his agent's letter of 19th December to the magistrates, and I think that he

has acted on it to a degree which makes it impossible to expect that the petitioner should any longer have the necessary confidence in him as his co-adventurer. Accordingly, I agree in thinking that it is just and equitable that the company should be wound up."

(emphasis is mine)

28. The other most frequently cited case is, the judgment of the House of Lords rendered in : **Ebrahimi V. Westbourne Galleries Limited and others, 1973 A.C. 360.**

28.1. This was a case, where, one Mr.Nazar, who carried on the business of dealing in Persian and other carpets, formed a private limited company with a person by the name : Mr.Ebrahimi. Consequently, Mr.Nazar and Mr.Ebrahimi were the first Directors of the company, with equal shareholding; each holding 500 shares. However, soon after the company had been formed, Mr.Nazar's son, one Mr.George Nazar, was appointed as a Director in the company. The existing shareholders shed their shareholding and transferred 100 shares each to Mr.Geroge Nazar. Resultantly, the senior Mr.Nazar along with his son held 60% of the shares, while Mr.Ebrahimi held 40% of the shares in the company.

28.2. Evidently, by an ordinary resolution passed at the General Meeting, Mr.Ebrahimi was removed from the office of the Director.

Though the resolution was effective and valid in law, a petition was filed by Mr.Ebrahimi, seeking the following reliefs : that his shares be purchased by the senior Mr.Nazar and his son, or, in the alternative, the company be wound up under the "just and equitable clause". The Plowman, J. allowed the alternative relief, which was, to wind up the company.

28.3. The Court of Appeal, however, reversed the judgment, by holding, inter alia, that, if the majority shareholders, in a general meeting, exercised the power conferred on them under the Articles or the provisions of the Act, to remove a Director, which resulted in his exclusion from the management of the company, that itself would not form a ground for holding that it was "just and equitable" to wind up the company, unless it was shown that the power had not been exercised in a bona fide manner in the interest of the company, or that the grounds for exercising the power were such that no reasonable man could think that the removal was in the interest of the company.

28.4. Being aggrieved, Mr.Ebrahimi approached the House of Lords. The House of Lords allowed his appeal. While doing so, the House of Lords, made several seminal observations. The observations made, being apposite to the facts arising in the instant case, are extracted hereafter, as one cannot encapsulate the law better than

that, which is enunciated in the opinion of the Lord Wilberforce :

> "..... My Lords, in my opinion these authorities represent a sound and rational development of the law which should be endorsed. The foundation of it all lies in the words **"just and equitable"** and, if there is any respect in which some of the cases may be open to criticism, **it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own; that there is room in company law for recognition of the fact that behind it or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound.** In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. **The "just and equitable" provision does not, as the respondent suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the Court to subject the exercise of legal rights to equitable considerations; consideration, that is, of a**

personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.

It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements : (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company ; (ii) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one members is removed from management, he cannot take out his stake

and go elsewhere.

It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves. To refer, as so many of the cases do, to "quasi-partnerships" or "in substance partnerships" may be convenient but may also be confusing. It may be convenient because it is the law of partnership which has developed the conceptions of probity, good faith and mutual confidence, and the remedies where these are absent, which become relevant once such factors as I have mentioned are found to exist : the words "just and equitable" sum these up in the law of partnership itself. And in many, but not necessarily all, cases there has been a pre-existing partnership the obligations of which it is reasonable to suppose continue to underlie the new company structure. But the expressions may be confusing if they obscure, or deny, the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations. **A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in.**

My Lords, this is an expulsion case, and I must briefly justify the application in such cases

of the just and equitable clause. The question is, as always, whether it is equitable to allow one (or two) to make use of his legal rights to the prejudice of his associate(s). The law of companies recognises the right, in many ways, to remove a director from the board. Section 184 of the Companies Act 1948 confers this right upon the company in general meeting whatever the articles may say. Some articles may prescribe other methods : for example, a governing director may have the power to remove (compare **In re Wondoflex Textiles Pty. Ltd. [1951] V.L.R. 458). And quite apart from removal powers, there are normally provisions for retirement of directors by rotation so that their re-election can be opposed and defeated by a majority, or even by a casting vote.** In all these ways a particular director-member may find himself no longer a director through removal, or non-re-election: this situation he must normally accept, unless he undertakes the burden of proving fraud or mala fides. **The just and equitable provision nevertheless comes to his assistance if he can point to, and prove, some special underlying obligation of his fellow member(s) in good faith, or confidence, that so long as the business continues he shall be entitled to management participation, an obligation so basic that, if broken, the conclusion must be that the**

> **association must be dissolved.** And the principals on which he may do so are those worked out by the courts in partnership cases where there has been exclusion from management (see **Const V. Harris [1824] Tur. & Rus. 496, 525)** even where under the partnership agreement there is a power of expulsion (see **Blisset V. Daniel [1853] 10 Hare 493; Lindley on Partnership, 13th ed. (1971), pp. 331, 595).** ....."
>
> (emphasis is mine)

29. The next case, to which, one would like to make a reference, is the judgment of the Supreme Court in **Hind Overseas Private Limited V. Raghunath Prasad Jhunjhunwalla and Another, [1976] 46 Comp Cases 91 (SC).**

29.1. This is a case, where, a dispute had arisen between two groups of shareholders, who had formed a company, which had its genesis in a partnership firm. Because of the disputes, one group filed a petition for winding up, which was dismissed by a Company Judge, at the very threshold, albeit, without admitting it. The Division Bench, in an appeal preferred by the aggrieved party, reversed the order of the Company Judge. This is how the matter travelled to the Supreme Court.

29.2. The Supreme Court, inter alia, considered the judgements of the English Court in **Yenidje Tobacco Co. Ltd. (1916) 2 Ch 426,**

and **Ebrahimi V. Westbourne Galleries Ltd., 1973 A.C. 360,** whereupon, the Court, broadly, observed that the Indian Courts should fashion the law in a manner, which suits the conditions and circumstances prevailing in the Indian society and one of these being : that the general interest of the shareholders should not be readily sacrificed at the alter of squabbles of the Directors connected with powerful groups. Having said to, the Court made the following observations, which are relevant to the case :

> "..... 32. When more than one family or several friends and relations together form a company and there is no right as such agreed upon for active participation of members who are sought to be excluded from management, the principles of dissolution of partnership cannot be liberally invoked. Besides, it is only when share-holding is more or less equal and there is a case of complete deadlock in the company on account of lack of probity in the management of the company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, there may arise a case for winding up on the just and equitable ground. In a given case the principles of dissolution of partnership may apply squarely if the apparent structure of the company is not the real structure and on piercing the veil it is found that in reality it is a partnership. On the allegations and submissions in the present case, we are not prepared to extend these principles to the present company.

33. **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 strait-jacket of an inflexible formula.**

34. In an application of this type allegations in the petition are of primary importance. A prima facie case has to be made out before the court can take any action in the matter. Even admission of a petition which will lead to advertisement of the winding up proceedings is likely to cause immense injury to the company if ultimately the application has to be dismissed. The interest of the applicant alone is not of predominant consideration. The interests of the shareholders of the company as a whole apart from those of other interests have to be kept in mind at the time of consideration as to whether the application should be admitted on the allegations mentioned in the petition. ....."

(emphasis is mine)

29.3. What is to be noted in this case is that, the Court came to the conclusion that : assuming that the company had initially emerged from a partnership, that partnership was subsequently “abandoned” with the formation of the company. In coming to this conclusion, the

Court noted that one person, who was an outsider (as in an employee of the one of the persons involved in the dispute), was inducted into the company. This, according to the Court, railed against the idea of a partnership, which gives preeminence to equal status amongst partners. Furthermore, the Court also noted that the person, who had filed the winding up petition served as an employee on a monthly salary, and therefore, was not enjoying a "equal partner's freedom and prestige". The petitioner was under supervision and control of another member of the family, who had infused large sums of money into the company. For all these reasons, the Court came to the conclusion that the Division Bench was not right in holding that the company was a quasi-partnership or partnership in substance.

29.4. The reason that I have cited this judgment is because this judgment was not only cited with the approval in another judgment of the Supreme Court, i.e., in **Kilpest Private Limited and Others V. Shekhar Mehra, (1996) 10 SCC 696,** but was also relied upon by the appellants to advance their submissions that no case of quasi-partnership was made out in the instant matter.

30. The judgment rendered by the Supreme Court in **Hind Overseas Private Limited (cited supra),** which was delivered by a Three-Judge Bench, was followed by another significant judgment of

the Supreme Court in **Needle Industries and another V. Needle Industries Newey (India) Holdings Limited, AIR 1981 SC 743.** Interestingly, this judgment of the Supreme Court was also rendered by a Three-Judge Bench. In **Needle Industries,** the Supreme Court emphatically approved the law enunciated both in **Yenidje Tobacco Co. Ltd. (1916) 2 Ch 426,** and **Ebrahimi V. Westbourne Galleries Ltd., 1973 A.C. 360.**

30.1. The Court, after examining a plethora of case law on the subject, came to hold that the person complaining of an oppression must show that he was constrained to submit to a conduct which lacked in probity, a conduct which is unfair to him and had caused prejudice to him in the exercise of his legal and proprietary rights as a shareholder. The Court noted the observations of the Gujarat High Court in **Sheth Mohanlal Ganpatram V. Shri Sayaji Jubilee Cotton & Jute Mills Co., [1964] 34 Comp Cas 777,** and that of English Court in **Elder V. Elder and Watson [1952] SC 49,** and made the following observations :

> "..... The question sometimes arises as to whether an action in contravention of law is per se oppressive. It is said, as was done by one of us, N.H. Bhagwati J. in a decision of the Gujarat High Court in **Sheth Mohanlal Ganpatram V. Shri Sayaji Jubilee Cotton & Jute Mills Co., [1964] 34 Comp Cas 777,**

that "a resolution passed by the directors may be perfectly legal and yet oppressive, and conversely a resolution which is in contravention of the law may be in the interests of the shareholders and the company". On this question, Lord President Cooper observed in **Elder v. Elder and Watson [1952] SC 49** :

> "The decisions indicate that conduct which is technically legal and correct may nevertheless be such as to justify the application of the 'just and equitable' jurisdiction, and, conversely, that conduct involving illegality and contravention of the Act may not suffice to warrant the remedy of winding up, especially where alternative remedies are available. Where the 'just and equitable' jurisdiction has been applied in cases of this type, the circumstances have always, I think, been such as to warrant the inference that there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy".

Neither the judgment of Bhagwati J. nor the observations in Elder, 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. ...."

(emphasis is mine)

30.2. It may be relevant to note that the Three-Judge Bench in **Needle Industries case (cited supra),** even while it sustained the decision to dismiss the company petition, which had been taken by the Single Judge, directed the Indian shareholders to buy out the shares held by the holding company in the Indian company, at a fair value, in order to do substantial justice between the parties.

31. The next judgment, to which I wish to refer to, is the judgment of the Supreme Court in **Kilpest Private Limited and Others V. Shekhar Mehra, (1996) 10 SCC 696.**

31.1. This was the matter, in which two persons by the name of : Dubey and Mehra, came together to form a company. They were the first Directors of the company. While Dubey was appointed as the Managing Director, Mehra was appointed as the Joint Managing Director. It appears that the two fell out. Consequently, Mehra stopped attending Board meetings. The Articles of Association of the company, which provided for the management of its business by Dubey and Mehra for life with equal remuneration, were altered and the post of Joint Managing Director was abolished. In the interregnum, one, Mr.Mishra was inducted as an Additional Director. At a Board meeting

convened by the company, it was resolved that Mehra ceased to be a Director. Mehra, being aggrieved by the fact that the : Articles of Association, had been altered, additional shares had been issued, and he had been removed from the post of Joint Managing Director - instituted petition under Sections 397 and 398 of the 1956 Act.

31.2. The Company Judge, however, thought it fit to try the petition as a winding up action. The matter was carried in appeal. The Division Bench allowed the appeal and set aside the order of the Company Judge. Consequently, the petition was dismissed. Upon an appeal, being preferred to the Supreme Court, the judgment of the Division Bench was set aside and the matter was remanded for fresh consideration.

31.3. On remand, the learned Company Judge dismissed the petition, whereupon, once again, Mehra filed an appeal with the Division Bench. The Division Bench came to the conclusion that no ground for winding up was made out under the 'just and equitable' clause. Furthermore, the Court, having regard to the powers vested upon it under Section 402 of the 1956 Act, directed Mehra be appointed as the Director of the company. In addition thereto, Dubey was directed to return to the company, a certain sum, which he had misappropriated. A direction was issued to the Registrar of Companies

to inspect the records of the company.

31.4. It is, in this background that the matter, once again, reached the Supreme Court. The Supreme Court following the dicta laid down in **Hind Overseas case (cited supra),** came to the conclusion that the approach adopted by the Division Bench was correct. In coming to such a conclusion, the following observations were made by the Court in paragraphs 11 and 12 :

> "..... 11. The promoters of a company, whether or not they were hitherto partners, elect to avail of the advantages of forming a limited company. They voluntarily and knowingly bid themselves by the provisions of the Companies Act. The submission that a limited company should be treated as a quasi-partnership should, therefore, not be easily accepted. Having regard to the wide powers under Section 402, very rarely would it be necessary to wind up any company in a petition filed under Sections 397 and 298.
>
> 12. The present was a petition under Sections 397 and 398. The Division Bench exercised power under Section 402 to appoint Mehra as a director to protect his interests and guard against mismanagement. It required Dubey to return to the company the sum of Rs.52,875 which he had wrongly appropriated to himself. It directed the Registrar of Companies of enquire into other allegations of misconduct in which it found, prima facie, substance; and we may say

> immediately that we have perused the report filed by the Registrar of Companies which shows that no substance was, ultimately, found therein. We agree with the Division Bench that this was no case for winding up the company and must dismiss the appeal filed by Mehra. ....."

(emphasis is mine)

31.5. The point to be noted is that, while relief of winding up was denied on the ground that it was not a quasi-partnership, the powers available under Section 402 of the 1956 were exercised, which were sustained by the Supreme Court.

32. The other case, to which I would refer to is the decision of House of Lords in **O'Neill and another V. Phillipis and Others, [1999] UKHL 24.**

32.1. This was a case, in which, the House of Lords was called upon to interpret the provisions of Section 459(1), as amended by the Companies Act, 1989, Schedule 19, Paragraph 11. The said provision empowers a member of a company to apply to the Court, for relief, where, inter alia, the affairs of the company have been conducted in a manner, which is unfairly prejudicial to the interests of its members generally, or some of its members. Based on the action, if, the Court is satisfied with regard to its merits, it is empowered to grant such orders as it thinks fit under Section 461(1) of the very same Act, for giving

relief in respect of the matters complained of. One of the powers, that is available to the Court is, to direct purchase of the petitioner's shares by other members of the company or the company itself. (See Section 461(2)(d) of the said Act).

32.2. The facts in the instant case were, broadly, as follows : one, Mr.Phillip bought the entire shares of the company by the name Pectel Limited. The company went on to employ one, Mr.O'Neill as its Foreman. Gradually Neill was promoted to the post of a Contracts Manager. Since, Mr.Phillips saw potential in Mr.Neill, he appointed him as a Director and gave him 25% of the shares in the company. It was also indicated to Neill that he would be allowed to draw 50% of the profits. At some stage, during the course of business, it was further indicated by Mr.Phillips, that Mr.Neill would be allotted additional shares. It appears that Mr.Phillips, at some point in time, decided to retire from the day-to-day affairs of the company, leaving Mr.Neill, in effect, as its sole Director. In effect, Mr.Neill was the Managing Director of the company.

32.3. While, the business environment was good, Mr.Neill appeared to do well. However, when, the industry went into recession, the company struggled. Mr.Phillips became alarmed about the company's financial position and Mr.Neill's management skills.

Mr.Phillips decided to take control of the company, being the majority shareholder. He also told Mr.Neill that he would no longer be acting as its Managing Director, and that, he would not be given 50% of the profits. In other words, Mr.Neill was restricted to the salary he got and dividends receivable by him on his 25% shareholding in the company.

32.4. This propelled Mr.Neill to file a petition under Section 459. The petition was dismissed; a decision, which was reversed by the Court of Appeal. The House of Lords, in turn, reversed the same.

32.5. It must be noticed that at some stage, prior to the filing of the petition, Mr.Phillips had offered to purchase the shares of Mr.O'Neill; an offer, which he rejected. One of the reasons that the offer was rejected by Mr.O'Neill was that it made no provision for costs.

32.6. Importantly, the court approved the dicta of Lord Wilberforce with regard to situations, in which, equitable considerations may override exercise of powers under Articles of Association. The observations made, in that behalf, are extracted hereafter :

> "..... **The Court of Appeal found that by 1991 the company had the characteristics identified by Lord Wilberforce in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, as commonly giving rise to**

equitable restraints upon the exercise of powers under the articles. They were (1) an association formed or continued on the basis of a personal relationship involving mutual confidence, (2) an understanding that all, or some, of the shareholders shall participate in the conduct of the business and (3) restrictions on the transfer of shares, so that a member cannot take out his stake and go elsewhere. I agree. It follows that it would have been unfair of Mr. Phillips to use his voting powers under the articles to remove Mr. O'Neill from participation in the conduct of the business without giving him the opportunity to sell his interest in the company at a fair price. ....."

(emphasis is mine)

32.7. Furthermore, on what is understood by the term "legitimate expectation", in the realm of company law, when, a person is removed from the right of his participation in the company, while he has no opportunity to liquidate his capital upon reasonable terms, the Court explained this principle, which otherwise is used more frequently, in the domain of public law, in the following manner :

".... 6. *Legitimate expectations*.

In *In re Saul D. Harrison & Sons Plc.* [1995] 1 B.C.L.C. 14, 19, **I used the term "legitimate expectation," borrowed from public law, as a label**

for the "correlative right" to which a relationship between company members may give rise in a case when, on equitable principles, it would be regarded as unfair for a majority to exercise a power conferred upon them by the articles to the prejudice of another member. I gave as an example the standard case in which shareholders have entered into association upon the understanding that each of them who has ventured his capital will also participate in the management of the company. In such a case it will usually be considered unjust, inequitable or unfair for a majority to use their voting power to exclude a member from participation in the management without giving him the opportunity to remove his capital upon reasonable terms. The aggrieved member could be said to have had a "legitimate expectation" that he would be able to participate in the management or withdraw from the company.

It was probably a mistake to use this term, as it usually is when one introduces a new label to describe a concept which is already sufficiently defined in other terms. In saying that it was "correlative" to the equitable restraint, I meant that it could exist only when equitable principles of the kind I have been describing would make it unfair for a party to exercise rights under the articles. **It is a consequence, not a cause, of the**

> **equitable restraint.** The concept of a legitimate expectation should not be allowed to lead a life of its own, capable of giving rise to equitable restraints in circumstances to which the traditional equitable principles have no application. That is what seems to have happened in this case. ...."
>
> (emphasis is mine)

33. The Supreme Court in the more recent judgment rendered in **Sangram Singh Gaekwad and Others V. Shanta Devi P. Gaekwad (dead) and Others, [2005] 123 Comp. Cases 566 (SC),** after examining the length and breadth of the law on the subject, reiterated the view taken by the Court in **Needle Industries.** The Court, in so far as the decision in **Kilpest case** was concerned, made the following observations :

> "..... 242. **Kilpest Pvt. Ltd. And Ors V. Shekhar Mehra, (1996) 10 SCC 696,** whereupon Mr.Desai placed strong reliance, thus, cannot be said to be an authority for the proposition that for no purpose whatsoever the principals of quasi-partnership can be applied to an incorporated company. The real character of the company, as noticed hereinbefore, for the purpose of judging the dealings between the parties and the transactions which are impugned may assume significance and in such an event, the principles of quasi-partnership in a given case may be invoked.

243. The ratio of the said decision, with respect, cannot be held to be correct as a bare proposition of law, as was urged by Mr.Desai, being contrary to a larger Bench judgements of this Court and in particular Needle industries (supra). It is, however, one thing to say that for the purpose of dealing with an application under Section 397 of the Companies Act, the court would not easily accept the plea of quasi-partnership but as has been held in Needle Industries (supra), the true character of the company and other relevant factors shall be considered for the purpose of grant of relief having regard to the concept of quasi-partnership. ...."

(emphasis is mine)

34. The Supreme Court, as a matter of fact, reiterated its view expressed in **Sangram Singh Gaekwad's case,** in **M.S.D.C. Radharamanan V. M.S.D.Chandrasekara Raja and another, (2008) 6 SCC 750.** This was a case, in which, the father and son, who were Managing Director and Joint Managing Director in the company, got entangled in a lis. This led to filing of a petition under Sections 397 and 398 of the 1956 Act. Even though, CLB, held that no case of mala fide or oppression is made out, it opined that there existed deadlock in the affairs of the company, and therefore, the appellant should purchase the shares of the respondent No.1 at a value to be determined by a chartered valuer. An appeal made to the

Division Bench of this Court did not succeed. Consequently, the appellant approached the Supreme Court for reversal of the judgment of the Division Bench, which sustained the view of the CLB.

34.1. The Supreme Court refused to interfere with the direction for purchase of shares, despite a plea that, since, no finding of oppression have been returned, such a direction could not be issued. In doing so, the Court noticed the methodology employed by the Three-Judge Bench of that very Court in **Needle Industries (cited supra),** which was that even where a petitioner fails to make out a case of oppression, the Court is not powerless to do substantial justice between contesting parties, and thus, if, the situation so demands order purchase of shares of the minority group.

34.2. Furthermore, the Court, as indicated above, reiterated its view that the decision in **Kilpest Private Limited (cited supra),** ran counter to **Needle Industries.** (See paragraphs 15 and 16 of the Judgment).

ISSUE NO.1:

35. The first and foremost issue, which arises for consideration is: Was Natarajan a mere adviser, as contended by the appellants.

35.1. For this purpose, one would have to bear in mind the

events, which transpired between 1987 and 2014, as it enable a true appreciation of the relationship, which subsisted amongst the main protagonist. In and about 1987, when controlling interest of Binny Ltd. was acquired, mainly, from one, Mr.S.N.Hada, four individuals had come together, namely, Natarajan, Late Ramasamy, Nandagopal and Ethiraj. The record shows that these four (4) persons bought together controlling stake in Binny Limited. Each person held, approximately, 19% of the shares in Binny Limited, which, at that point in time, was, in the true sense, a widely held Public Limited Company. As a matter of fact, representatives of banks and financial institution had their nominees on its Board.

35.2. Admittedly, in June 1987/January, 1988, Natarajan was, for the first time, appointed as the Director of Binny Limited. In 1993, the net worth of Binny Limited got eroded. Consequently, in and about 1994, a rehabilitation scheme was sanctioned with the help of new co-promoters.

35.3. However, in 2003, the new co-promoters parted ways, which resulted in some of the assets of Binny Limited, being vested in, Binny Karnataka Limited. Pertinently, all this while, that is, between 2003 and 2004, Natarajan continued to be shown in the Annual Reports of Binny Limited as its Director. As a matter of fact, this

position continued to subsist right till 2014, that is, even after the 2010 Demerger. The Annual Reports of Binny Limited, clearly, bear this fact out.

35.4. The fact that to the world at large, Natarajan along with other main protagonist was represented as the promoter-Director of Binny Limited is evident from the extract of its own document put in public domain:

> *"DETAILS OF DIRECTORS RETIRING BY ROTATION AND SEEKING REAPPOINTMENT*
> *(In pursuance of clause 49 of the Listing Agreement)*
> *Name of the Director :*
> *i)* ***Mr.V.R.Venkataachalam is one of the Promoter Directors of the company with effect from 11.01.1988****, aged 44 years. A graduate in Arts and possess vast experience for more than two decades as Industrial in the growth of textiles, Breweries, Chemicals, Granites, Medical Education and Hospital. He is also instrumental in setting up and managing, Shri Ramachandra Medical Centre having 1050 beds with full spectrum of clinical activities and hi-tech medical care. He is also concerned with other social and voluntary organization and Chemical Manufacturing Associations.*
> *Details of other Directorships*
> *Name of the Company* *Position held*
> *XXXXXX* *XXXX*

Mrs.V.R.Venkatachalam is not a Member of any Committee of the Company.

ii) ***Mr.S.Natarajan is one of the Promoter Directors of the Company with effect from 11.01.1988, aged 57 years and is*** *a graduate in Commerce and a Practicing Chartered Accountant since 1975 and also Director in many leading Companies with the industrial experience in the field of financial restructuring, accounts, etc.*

Name of the Company	*Position held*
XXXXX	*XXXXX*

Mr.S.Natarajan is a Member of Audit committee and Share Transfer Committee of Binny Limited.*"*

(emphasis is mine)

36. This apart, the shareholding pattern of Binny Limited, as on 30.09.1993, as put out in its public documents, shows under the heading "Promoters", not only the shares held by Ramasamy group and the Ethiraj group, but also, the shares held by the Natarajan block.

36.1. As is indicated in my narration above, in and about 1992, when, Binny Limited was before the BIFR, it was required to have the funds infused to the extent of Rs.60.00 Crores via its promoters, in order to have a rehabilitation Scheme sanctioned by the said authority. The said sum of Rs.60.00 Crores was found and was sourced to the new promoters. The said funds were provided in the form of equity and

loan in equal measure. Consequently, Binny Limited, with truncated assets, came under the sway/control of Messrs.Ethiraj, Venkatachalam (S/o.Late Ramasamy), Nandagopal and Natarajan. The re-structured board continued with Natarajan as one of its Directors.

36.2. The record, further shows that Binny Limited continued with the BIFR uptill 2007 when, it came out of its purview. This was also the point in time, when, SVG was incorporated, albeit, virtually as a shell company. This was followed by a demerger Scheme, being floated, which was sanctioned by this Court on 22.04.2010. Consequent to the Demerger, Binny Limited, split into three (3) companies, i.e., Binny Limited (Demerged Company); SVG (Resulting Company No.1) and Binny Mills Limited (Resulting Company No.2). Pertinently, Binny Limited came under the control of the Nandagopal group, SVG came under the sway of Ethiraj group and Binny Mills Limited came to be controlled by the Venkatachalam group. Natarajan, however, enjoyed a unique portion; he, via his constituents, not only held shares in all three companies, but also, had representation on their Board. Natarajan was co-opted on the Board of all three companies, including SVG.

36.3. In so far as the three groups described above are concerned, the Demerger Scheme provided that none of them would

hold shares in the company controlled by the other group. In other words, cross holdings were done away with. Consequently, Nandagopal group held 55% shares in Binny Limited; Venkatachalam group held 55% shares in Binny Mills Limited, while the controlling group held 55% share in SVG. Natarajan, as indicated above, held, via his constituents, approximately, 19% of shares in each of the three companies and almost, simultaneously, was appointed as a Director in SVG. The facts are not denied by the appellants.

36.4. As a matter of fact, in the information memorandum published by SVG, the following particulars of the Board were reflected

INFORMATION MEMORANDUM S V GLOBAL MILL LIMITED

Board : The Board of Directors of the Company constitutes of

1.	Mr.M.Ethurajan	Promoter – Non-Executive Director
2.	Mr.M.E.Shanmugam	Promoter – Non-Executive Director
3.	Mr.R.Narayanan	Independent, Non-Executive Director
4.	Justice Mr.S.Jagadesan	Independent, Non-Executive Director
5.	***Mr.S.Natarajan***	***Promoter - Non-Executive Director***
6.	Mr.Y.Satyajit Prasad	Independent, Non-Executive Director

36.5. A perusal of the extract would show that against Serial No.5, Natarajan, was shown as "promoter Non-Executive Director". This apart, in the Annual Reports of SVG generated between 2010 and, upto the AGM of 26.09.2014, Natarajan, continued to be shown as its Director. This fact emerges, clearly, upon perusal of SVG's Annual Reports of March, 2011, March, 2012 and March, 2013 and March,

2014.

37. The question, therefore, is, as to whether the stand taken by the controlling group, that Natarajan was a mere adviser, is correct. The material placed before me, substantiates the fact that the preponderant probability, is that, Natarajan was not a mere adviser. Natarajan, right from 1987, seems to have played a role in the acquisition of controlling interest in Binny Limited and, thereafter, participated in the process, whereby, the assets of the said company were segregated in 2003, with the formation of Binny Karnataka Limited. That Natarajan continued with the SVG as one of its Promoters, is evident from its own document, i.e., the Information Memorandum.

38. The argument advanced on behalf of the controlling group that he was only a Non-Executive Director, to my mind, does not earn them much mileage, as the very same document, that is, the Information Memorandum of SVG, on which, this argument is based, shows, Ethiraj and Shanmugam as "Promoters-cum-Non-Executive Directors", as well. This holds true even for the independent Directors, i.e., Narayanan and Satyajit Prasad.

38.1. Therefore, if, Natarajan was only an adviser and, by this, I gather that he was a Chartered Accountant, who was engaged only to

give professional advice, in the ordinary and the usual course of events, he would have normally asked and be paid professional fee and nothing more. In this case, Natarajan continued to hold an equity stake right throughout, at first, in Binny Limited, and, thereafter, in the Resulting Companies as well, i.e., SVG and Binny Mills Limited. Surely, if, Natarajan was a mere adviser, he would not have been shown as a Promoter-cum-Non Executive Director of SVG, right after the sanction of the 2010 Demerger Scheme.

38.2. It is also sought to be argued that, since, Natarajan was a Non-Executive Director, he was not involved in the day-to-day working of SVG. The expression "Executive Director" or, "Non-Executive Director" has not been defined, either in the 1956 Act or in the 2013 Act. However, under the Companies (Specification of definitions, details) Rules, 2014, the Executive Director has been defined; to mean, a Whole time Director, as defined in the Act. The Act herein would be the 2013 Act.

38.3. Section 2(94) of the 2013 Act provides that a Whole time Director includes a Director in whole time employment of the company. Therefore, an Executive Director would be one who is a Director and is, in whole time employment of the company. Thus, the logical sequitur of this would be that a Non-Executive Director is a Director, who is not

in whole time employment of a company. In other words, he is not involved in the day-to-day management of the company.

38.4. It is not Natarajan's case that he was in the whole time employment of the company. Natarajan's case, which is borne out from the record, was that as a part of the Board of SVG, he was involved in the policy formulation of the company, which also enabled him to protect his investment in SVG, which was routed via respondents No.1 to 6. Furthermore, the record also depicts contrary to what was argued by the appellants that Natarajan was a member of two crucial Committees, i.e., The Audit Committee and Share Transfer Committee.

38.5. Therefore, the argument advanced on behalf of the appellants that, since, Natarajan was a Non-Executive Director and hence, by necessary implication, an Adviser, to my mind, is contrary to the record placed before the Court.

38.6. In my view, Natarajan was a co-venturer, who, along with Late Ramasamy, Nandagopal and Ethiraj, decided to acquire and run Binny Limited, when the opportunity, for this endeavour, first occurred in 1987. The record shows that this venture continued even after the sanction of Demerger Scheme by this Court, in 2010. Natarajan's continued reappointment to the Board of SVG till 26.09.2014, when,

the resolution seeking his reappointment was nixed by the controlling group, at an AGM held on that day, would show his deep and pervasive involvement with the affairs of SVG.

38.7. Ordinarily, a business "partnership" would involve a venture concerning two or more persons who decide to participate in its working, to share its benefits and risks. The fact that in the instant case, the co-venture involved acquiring a corporate entity (i.e., Binny Limited) and running the same, would give to it a colour of a quasi partnership. The benefits and risks in a venture of this nature would necessarily wax and wane with the performance of the company, which, presently, stands morphed into SVG. Furthermore, the benefits and risks could also be graded. Quite naturally, in a venture of this type, the larger the benefit, the greater the risks. Every co-venturer need not necessarily have the same appetite for the risks involved in a given venture. Arrangement with regard to these aspects depends on mutual understanding arrived at amongst co-venturers. The fact that one person/or block has taken less risk as against the other does not necessarily work against the concept of partnership or quasi-partnership. Therefore, the argument of the appellants that Natarajan take any exposure in the form of financial liability does not, in the facts of this case, advance the cause of the appellants.

38.8. I must indicate herein that during the course of arguments, it was sought to be suggested that Natarajan was shown as a Promoter, both for the reason that it would facilitate a buy-out of his equity stake, first in Binny Limited and, thereafter, in SVG. In this behalf, my attention was sought to be drawn to the events of 2007 and 2013, when, attempts were purportedly made to purchase Natarajan's equity stake. This argument finds a reflection in paragraph Nos.12, 13, 19 to 22 of Ethiraj's letter dated 01.10.2014, addressed to Natarajan.

38.9. The suggestion was, that if, the share transfer took place amongst persons, who were not part of the promoter group, the Take Over Code of SEBI would kick in, compelling the acquirer of Natarajan's interest to make a public offer. In my view, this submission is completely untenable for the reason that right from the time, i.e., 1987-1988, when, Natarajan came on to the Board of Binny Limited, the equity stake held by him, via respondents No.1 to 6, was shown under the head "Promoters". Even according to the appellants, the attempts at purchasing Natarajan's interest was made only in May 2007 and 2013. Therefore, the linkage, sought to be made between the two, is, clearly, an afterthought.

39. This apart, I would like to believe that it was never the

intention of the controlling group, or, even that of the Nandagopal group or Venkatachalam group, either in 2007 or, thereafter, in 2010, to violate the law and to portray a state of affairs, which was contrary to actual facts, only to sidestep the law. If, this presumption is to be made, with which, I do not think that the appellants would want to quarrel, then, it cannot be argued, at this stage, by the appellants that Natarajan was never the part of the promoter group. The controlling group, I would assume, did not wish to violate any provisions of law, and, therefore, if, shares of Natarajan were intended to be acquired in 2007 or 2013, they were well and truly shares, which qualified to be classified as promoter shares. This state of affairs appears to be in line with SVG's own letter dated 22.03.2016, addressed to BSE; a letter, to which, I would be making a reference in some detail shortly hereafter. Suffice it to say SVG via this letter has portrayed to BSE that 74.79% of equity stake is held by Promoters. It needs no rocket science to come to the conclusion that this percentage would, necessarily, include 19% equity stake held by the Natarajan block. I doubt that the appellants would attribute this assertion of SVG in its letter to BSE as a Freudian slip.

Issue No.2:

40. Is SVG a widely held company, to which, the principle of quasi-partnership cannot apply?

40.1. In respect of this issue, let me deal with the factual aspects, having touched upon the law in the earlier part of my discussion.

40.2. First and foremost, there is no denial that SVG has public shareholding of 26%, comprising of approximately 9014 shareholders. It has been contended by respondent Nos.1 to 6, that the shares held by public at large, are not concentrated in one block. Therefore, between the controlling group and Natarajan, they hold 74% of the shares of SVG. There is also no doubt that the shares of SVG are listed on the BSE. However, it is SVG's own stand before the BSE that it is a "closely held company". This is evident from a bare perusal of communication dated 22.03.2016, which was addressed by SVG to the BSE. Paragraph 2 of the said communication, being relevant, is extracted hereafter.

> *"..... 2. M/s.S V Global Mill Limited is a company incorporated under the Companies Act, 1956, as a result of the demerger sanctioned by the Madras High Court of the erstwhile M/s.Binny Mills Limited.* ***The Company is a closely held Company, with the Promoters holding 74.79% and resident Individuals holding approximately 15.18%.****"*

(Emphasis is mine)

40.3. As is evident, despite public shareholding, SVG itself has taken a stand that it is a closely held company. In so far as the trading of its shares on Stock Exchange is concerned, the Natarajan block has asserted that SVG's shares are "infrequently traded" on the Stock Exchange. As a matter of fact, the assertion before me, is that, in the previous 12 months, only 1.25% of the shares of SVG were traded on the Stock Exchange.

40.4. These facts have not been controverted by the appellants.

40.5. Given these facts, one is required to consider as to whether or not, the principle of quasi-partnership would apply to a public listed company, as it is the submission of the appellants that the said principle could never apply to a public limited company. While, I will be dealing with other aspects of the relationship subsisting between contesting parties as well, to demonstrate as to why I am of the view that the principle of quasi-partnership would apply in this case, suffice it to say, to my mind, there is no limitation in law that the principle of quasi-partnership cannot apply to a listed company, if, the facts and circumstances so demand. There are several companies, which fulfill the legal regimen of a public listed company, but are otherwise controlled in large measure by a group of shareholders, who run the company, like a family-owned company. There are several

examples of such companies in India, of which judicial notice can easily be taken. SVG is, only, one such case.

40.6. Therefore, in my view, CLB's conclusion that the principle of quasi-partnership would not be applicable to SVG is flawed. The CLB, quite obviously, could not have had the benefit of perusing the communication dated 26.03.2016, which was placed before this Court, to which, I have made a reference above. The appellants, i.e., controlling group has not disputed, either the existence or the contents of the said communication.

Issue No.3:

41. This brings me to the other issue, as to whether the existence of a deadlock is a necessary ingredient for triggering the principle of quasi-partnership.

41.1. The CLB, in the impugned judgment, has described the circumstances obtaining in the matter as leading to a "practical dead lock". The controlling group naturally submits that there is no deadlock as Natarajan represents only about 19% of the total shareholding in SVG.

41.2. On the other hand, on behalf of respondent Nos.1 to 6, it is submitted that this conclusion was reached by the CLB, on account of breach of trust and mutual confidence, which obtained between the

contesting block of shareholders.

41.3. In my view, it must be understood that the principle of quasi-partnership comes into play in an action preferred under Section 397 and 398 of the 1956 Act, via the provisions contained in clause (b) of sub-section (2) of the very same Section. Sub-section (1) of Section 397 vests a right in any member of a company, who carries a grievance with regard to the manner in which, the affairs of the company are conducted to institute an action. The grievance, in this behalf, could be that the affairs of the company, are run, either in the manner prejudicial to the public interest or in a manner oppressive to any member or members. The CLB, on its part, is given the right to pass such orders, as it think fit, which could bring to an end, the matters complained of, provided, the ingredients of clauses (a) and (b) of sub-section (2) of Section 397 of the 1956 Act stand fulfilled.

41.4. Clause (a) of sub-Section (2) of Section 397 requires the CLB to come to a conclusion, having regard to the allegation made, that the affairs of the company are, in fact, being conducted in a manner prejudicial to public interest or in a manner oppressive to any of its member or members. Clause (b) of sub-Section (2) of Section 397 further requires the CLB to make a determination, to the effect, that the facts and circumstances justify passing a winding up order qua

the company, on the ground that it is just and equitable to do so, and that, the only reason it would not do so, would be, that, it could unfairly prejudice such member or members, who would have brought the action to court.

41.5. The just and equitable clause could kick-in in myriad situations, including where, in point of fact, a company, say for instance, emerges out of the pre-existing partnership, or, where, there is an agreement or understanding of the kind, amongst some or all the shareholders, that they shall participate in the conduct of business, or where there is in place a restriction on the transfer of shares, and despite, loss of confidence, or removal from management, a shareholder is unable to liquidate his stake in the company. (See : **Ebrahimi V. Westbourne Galleries Ltd.).**

41.6. These are situations, which give rise equitable considerations, and would, thus, require legal rights to align with equity. Thus, the principle of "quasi-partnership", or "in substance partnership" comes into play via the "just and equitable" clause found in Section 397(2)(b) of the 1956 Act, as the concepts of probity, good faith and mutual confidence are founded in the law of partnership. Therefore, where, such ingredients are found, the remedies, which are akin to those, which are available in disputes pertaining to partnerships

become available even qua such relationships, which have, otherwise, a corporate structure [See:***Ebrahimi V. Westbourne Galleries Ltd.].***

41.7. Therefore, in my view, deadlock in shareholding or in management could only be a possible circumstance, in which, just and equitable clause could get triggered. But, it is not, as if, where, there is no deadlock in the shareholding or management, the concerned forum cannot come to the conclusion that it would be just and equitable to wind up the company, for other good, sound and justiciable reasons, and that, the said course of winding up is not adopted only for the reason that it would unfairly prejudice the member or members, who have instituted an action under Section 397 of the Act.

41.8. Furthermore, as rightly submitted on behalf of the Natarajan block that, there is a clear possibility where special resolutions have to be passed that their passage and/or adoption may become difficult, given the fact that the controlling group has only 55% of the equity stake under their control. This coupled with the fact that even according to the appellants, not only is the 26% public shareholding widely dispersed but that Natarajan block does form a formidable minority interest. Therefore, whether or not, one agrees

with the use of the expression 'practical deadlock' one would tend to agree with the CLB that given the relationship between the contesting blocks of shareholders, there could arise situations, where impediments may emerge, which may ultimately impact the smooth functioning of SVG.

Issue No.4:

42. Whether the casting of paper ballots by the controlling group at the AGM held on 26.09.2014, was proper and valid in the eyes of law ?

42.1. In this context, one would have to bear in mind that prior to the convening of AGM of 26.09.2014, the BOD of SVG met on 04.08.2014. At that meeting, amongst others, a decision was taken to convene, as indicated above, an AGM on 26.09.2014. Furthermore, the BOD, also approved the draft notice for convening the said AGM and authorised Ethiraj, as the Chairman to issue the said notice to the members of SVG. Amongst other resolutions, which included approval of Directors' reports, for the year ending 31.03.2014, a decision was also taken to appoint a scrutiniser for the purpose of e-voting to be conducted at the said AGM. Accordingly, the Board appointed one Mr.R.Kannan, Company Secretary, as the scrutiniser for the purpose of conducting e-voting.

42.2. The notice, which was sent to the members, in respect of the AGM to be held on 26.09.2014, amongst other business, placed for consideration of the members, two (2) crucial resolutions : first to appoint a Director, in the place of Ethiraj, who retired by rotation and being eligible, had offered himself for re-appointment; and, second, to appoint a Director, in the place of Natarajan, who, likewise, retired by rotation and being eligible, had offered himself for re-appointment.

42.3. The note No.12 appended to the notice convening the said AGM, clearly, indicated that the members were offered e-voting facility, in respect of the business scheduled to be conducted at the AGM. The relevant extract of note 12, is set forth hereafter:

> *".... 12.* **Pursuant to the provision of Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, the Company is offering e-voting facility to its members in respect of the business to be transacted at the AGM scheduled to be held on Friday, September 26, 2014 at 10.00 a.m. with a request to follow the instructions for voting electronically** *as under :-*
>
> > *The voting period begins on 20th September, 2014 at 9 a.m. and ends on 22nd September, 2014 at 6.00 p.m. During this period the shareholders of the Company, holding shares either in physical form or in dematrialized form as on the cut-off date*

(record date of 22nd August 2014) may cast their vote electrically. The e-voting module shall be disabled by CDSL for voting thereafter.
In case of member receiving email."

(emphasis is mine)

42.4. Quite clearly, what was portrayed to one and all, in particular, the members of SVG was that, they could vote on the business to be transacted at the AGM via electronic means. As it transpired, while the representative of respondent Nos.1 to 6 voted via electronic means, the controlling group cast paper ballots. Accordingly, the Scrutiniser rendered a report, which revealed that the resolutions, concerning reappointment of Ethiraj and Natarajan as Directors of SVG qua which votes had been cast via electronic means had been carried. However, the report further indicated that the result of the paper balloting was to the contrary, in respect of the resolution concerning reappointment of Natarajan, as the Director. There is no dispute that the contrary result was achieved because the controlling group, had cast their votes against the resolution, concerning the reappointment of Natarajan.

42.5. The appellants, on their part, have raised several submissions, which would, ultimately, boil down to two (2) broad aspects: First, that while voting by electronic means was made available by SVG, it did not preclude members, who had not cast their

vote by electronic means, to cast paper ballots. Second, the extant provisions of law could not be read in a manner, which would result in taking away, what is termed as an inalienable right of the member/shareholder to cast his or her vote at the General Meeting.

43. I may only indicate that CLB has not categorically ruled on the issue. Therefore, it may be important to note, in this connection, certain provisions of law.

43.1. Section 107 of the 2013 Act, inter alia, provides that, at any General Meeting, resolution put to vote shall be decided by show of hands, unless a poll is demanded under Section 109 or voting is carried out electronically. Section 108 mandates the Central Government to prescribe the class or classes of companies and the manner in which a member may exercise his right to vote by electronic means. Section 109 confers on the Chairman of the meeting, the authority, to order a poll either on his own motion or on the say so of the members, who fall under clause (a) or (b) of Section 109 (1). This exercise can be undertaken, both before or on declaration of the result of voting, on a resolution by show of hands.

43.2. As a matter of fact, in exercise of powers, so conferred and in consonance with the provisions of Section 108, the Central Government has notified the CMA Rules. Sub-rule (1) of Rule 20 of

CMA Rules compels every listed company, having not less than 1000 shareholders, to provide to its members facility to exercise their right to vote at the general meetings via electronic means. It appears that by notification dated 19.3.2015, there was an amendment brought about in Rule 20, which, however, did not dilute what is stated above, which is, provisioning of electronic voting facility.

43.3. Therefore, given the circumstances, that Section 107 had been brought into force, with effect from 12.09.2013, whereas, Sections 108 and 109, had been brought into force from 01.04.2014, the BOD of SVG, it appears, took a decision to provide electronic facility to its members to vote at AGM to be held on 26.09.2014. It appears that even SEBI, via circular dated 17.04.2014, had revised Clause 35B and 49 of the Equity Listing Agreement (in short 'the Listing Agreement'). This step was a precursor to Regulation 44 of SEBI (LODR) Regulations, which were notified on 02.09.2015.

43.4. The amended Clause 35B, mandated provisioning of e-voting facilities by all listed companies, to its shareholders, in respect of all shareholders' resolutions, which were to be passed at general meetings or via postal ballot. Given this background, it appears, SVG was propelled to provide e-voting facility to its shareholders, in respect of the business to be conducted at the AGM to be held on 26.09.2014.

43.5. However, on 17.6.2014, the Government of India, Ministry of Corporate Affairs issued a General Circular No.20/201, whereby, having regard to certain practical difficulties, which were, broadly, adverted to in the circular, it was decided not to treat the provisioning of e-voting facilities, mandatory, till 31.12.2014. The said Circular also carried certain clarifications associated with e-voting. For purpose of the instant matter, the relevant clarifications contained in clauses (1), (2), (6) and (7) are set out hereafter :

> *"(i) Show of hands not to be allowed in case of e-voting:- In view of clear provisions of section 107, voting by show of hands would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.*
>
> *(ii) Participation in the general meeting after voting by e-means :-* ***It is clarified that a person who has voted through e-voting mechanism in accordance with rule 20 shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting*** *again, and his earlier vote (cast through e-means) shall be treated as final.*
>
> *(iii) XXXXX*
>
> *(iv) XXXXX*
>
> *(v) XXXXX*
>
> *(vi) Manner of voting in case of shareholders present in the meeting :- Stakeholders have sought*

clarity about manner of voting for shareholders (of a company covered under rule 20) who are present in the general meeting. It is hereby clarified that since voting ***through e-means would be on the basis of proportion of share in the paid-up capital or 'one-share one-vote', the Chairperson of the meeting shall regulate the meeting accordingly.***

*(vii) Applying rule 20 voluntarily :- Stakeholders have referred to words '****A company which opts to'*** *****appearing in rule 20(3) and have raised a query whether rule 20 is applicable to companies not covered in rule 20(1). It is clarified that rule 20(3) is being amended to align it with rule 20(1). Regarding voluntary application of rule 20, it is clarified that in case a company not mandated under rule 20(1) opts or decided to give its shareholders the e-voting facility, in such a case, the whole of procedure specified in rule 20 shall be applicable to such a company.*** *This is necessary so that any piece-meal application does not prejudice the interest of shareholders. "*

(emphasis is mine)

43.6. A perusal of the said clarifications, extracted above, would show that a person, who had voted via e-voting mechanism, could not vote again, after having cast his vote by such means even while, there is no bar to his physical participation in the general meeting. Furthermore, a company, though, not obliged to, voluntarily opts for e-

voting, under Rule 20 of the CMA Rules, it would have to follow to the 'T' the entire procedure prescribed therein. This was considered necessary, as a piecemeal application could prejudice the shareholders' interest.

43.7. The appellants contend that the bar, if any, for casting paper ballots would only kick in qua members/shareholders, who had cast their vote electronically.

43.8. As indicated above, they also contend, based on the principles and the provisions of clause 49A(b)[1] of the Listing Agreement, that it is the Company's obligation to ensure that shareholders have the opportunity to participate effectively and, vote in general shareholder meetings. In other words, as indicated above, it is submitted on behalf of the appellants that, voting being an inalienable part of the shareholder's rights, it could not be emasculated by preventing paper ballot voting at the AGM, held on 26.09.2014, when, admittedly, they formed the controlling group and had not cast their vote electronically.

44. According to me, there can be no two opinions about the fact that the shareholder's right to vote, which is a statutory right cannot be taken away and needs to be protected, under all circumstances.

---

1 b. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings. ....."

That having been said, one needs to differentiate between the subsistence of a right and the manner in which the said right is to be exercised. SVG, after its BOD Meeting of 04.08.2014, had categorically indicated to all its members/shareholders, which included its public shareholders via a notice that in respect of the business to be transacted at the AGM held on 26.09.2014, it offered voting by electronic means. This offer had been made, as indicated above, based on the provisions of Section 108 of the 2013 Act read with Rule 20 of the CMA Rules, because of which, SEBI had amended clause 35B of its Listing Agreement.

44.1. The General Circular No.20/201 dated 17.06.2014, issued by MCA, merely indicated that the provisions of Section 108 of the 2013 Act read with Rule 20 of the CMA Rules, requiring electronic voting, shall not be treated as mandatory till 31.12.2014. The Circular did not, to my mind, provide that where companies had notified to their members/shareholders that the business fixed at the general meeting, would be transacted via electronic means, such intimation would not bind the concerned company.

44.2. SVG, in this case, had made a representation to the shareholders at large, which included the public shareholders, that the resolutions to be considered at the AGM convened on 26.09.2016,

would be vested upon via electronic means. Therefore, once that intimation had been given by SVG upon exercising the option of electronic voting, in my view, no shareholder could, thereafter, have acted in a manner contrary to what had been indicated in the notice convening the AGM.

44.3. What makes it more disconcerting is the fact that the deviation in the manner of voting was brought about by none other than the Chairman and the Managing Director of SVG. This apart, the public shareholders, who, even according to the appellants hold 26% of the equity stake in SVG would have no clue, that the rules of the game had been changed midway. Therefore, the submission advanced on behalf of the appellants that, if, one were to ignore the paper ballots, it would emasculate them of their right to vote, is untenable, since, in my view, though, the right remained intact, a caveat was entered only with regard to the manner, in which, it was to be exercised. The controlling group chose to break the regime set forth for casting votes; a regime, which was put in place after a decision in that behalf was taken at the BOD meeting held on 04.08.2014, of which, they were a part, and hence, could blame no one else, but themselves.

44.4. As to the argument, which is that, the result would be no

different, if, the controlling group were to cast their vote electronically, is, to my mind, not an argument, which has its foundation in law, but is one, which reeks of rank opportunism.

44.5. In so far as I am concerned, once, a particular mode, manner and procedure had been prescribed for casting the vote, the shareholders/members could have cast their vote only in the manner prescribed. I make it clear, though, that when I observe that the decision of the appellants reeks of rank opportunism, it is not to be understood that I propound that a moralistic approach should be adopted by members/shareholders, while, casting their vote, which is sans economic realities and strategic pursuits, control and corporate goals. Suffice it to say that in so far as this aspect of the matter is concerned, the controlling group was, clearly, in the wrong in casting their vote in the manner, which was contrary to the procedure prescribed by SVG qua one and all.

ISSUE NO.:5

45. This brings me to the other aspect, which is whether the decision taken to permit Mr.Shanmugam to use Boat Club Property as his residence was right.

45.1. In this behalf, one notices that at the BOD meeting held on 01.09.2012, a decision was taken to place for approval of the

shareholders, the following special business:

"SPECIAL BUSINESS

To consider and, if thought fit, to pass, with or without modifications, the following resolution as an Ordinary Resolution :

APPOINTMENT OF MANAGING DIRECTOR

"RESOLVED THAT pursuant to the provisions of ***Sections 198, 269, 309, 310 and 317 read with Schedule XIII and other applicable provisions, if any, of the Companies Act, 1956, (including any amendment to or enactment thereof) and consent of the members of the Company be and is hereby accorded to the appointment of Mr.E.Shanmugam, as Managing Director for a period of five years with effect from 02.04.2012*** *upon the terms and conditions as set out below :*

1. Salary : Subject to a ceiling of Rs.5 lakhs per annum

2. Perquisites: As detailed in the explanatory statement.

"RESOLVED FURTHER THAT the Board of Directors be and is hereby authorised to increase vary or amend the remuneration and other terms of the appointment from time to time provided that ***such revised remuneration shall also be in conformity with and within the ceiling of Part II under Section 2 of Schedule XIII to the Companies Act, 1956 or any statutory modifications or re-enactment thereof.*** *....."*

(emphasis is mine)

45.2. Furthermore, the details of perquisites were provided in item No.5 of the explanatory statements, the relevant extract of which, reads as follows :

> "Item No.5
> Considering the paid-up capital of our company, subsequent to demerger and relevant provisions of Section 269 of the Companies Act, 1956, requiring appointment of a Managing Director, the board of directors at their meeting held on 01.09.2012. It was decided to appoint Mr.E.Shanmugam as Managing Director of the Company, subject to the consent at the general meeting of shareholders, for a period of 5 years with effect from 02.04.2012. **The term of office/remuneration payable to the Managing Director by way of salary and perquisites (as given in annexure) are within the specified limits land down in Schedule XIII of the Companies Act, 1956. This may be treated as an abstract of the terms and conditions governing the appointment of and remuneration payable to the Managing Director pursuant to Section 302 of the Companies Act, 1956.** Accordingly, the said resolution is submitted for your consideration.
>
> **Details of Perquisites referred to in the Resolution No.5**
>
> 1. **Free use of furnished accommodation *owned***

> **or leased by the company with amenities including Water, Gas, Electricity and Furnishings. If no accommodation is provided, the Managing Director is entitled to House Rent allowance subject to a celling of 70% of his salary.** The expenditure incurred by the Company on Water, Gas, Electricity and Furnishings will be evaluated as per Income Tax Rules, 1962. ....."
>
> (emphasis is mine)

45.3. It is pertinent to note that the said BOD Meeting was attended by both Ethiraj and Shanmugam and, Satyajit Prasad, one of the two independent Directors, appointed on the Board of SVG. Natarajan was not present at this meeting.

45.4. Clearly, the BOD, on 01.09.2012, had taken a decision to appoint Shanmugam as the Managing Director of SVG for a period of five (5) years, with effect from 02.04.2012, on payment of proposed salary and perquisites. A ceiling qua salary was fixed, which was Rs.5.00 lakhs per annum. In so far as the perquisites were concerned, the BOD had proposed to the shareholders that Shanmugam, should be given use of furnished accommodation, "owned" or, "leased" by SVG with attendant facilities, such as, water, gas, electricity and furnishings. The BOD, further indicated that, if no accommodation was provided, then, Mr.Shanmugam, would be entitled to a house rent

allowance, subject to a ceiling of 70% of the salary. At the very same meeting, the BOD also took a decision to convene an AGM on 29.09.2012.

45.5. The draft notice for convening the said AGM was approved by the BOD, which, as indicated above, included the special business, to which I have alluded to above. The Company Secretary was authorised to issue the said notice qua the AGM. Admittedly, notice issued to the members/shareholders in respect of the AGM, to be held on 29.09.2012 alluded to the proposed appointment of Shanmugam, as the Managing Director, on the terms and conditions indicated hereinabove. There is no dispute that the resolution appointing Shanmugam, as the Managing Director, on the terms indicated above, was carried at the AGM, held on 29.09.2012. This is, clearly, discernible from the BOD Meeting held on 02.11.2012. At this meeting, Natarajan was present. Apart from Ethiraj and Shanmugam, Satyajit Prasad, one of the independent Directors, was also present.

45.6. The BOD, at this meeting, confirmed the minutes of its earlier meeting dated 01.09.2012 as well as took on record, the minutes of AGM held on 29.09.2012.

45.7. The aforesaid facts bring out the following:

(i) There was no disclosure whatsoever made at the BOD

meeting held on 01.09.2012, that the property, which was to be given for the use to Shanmugam, as his residence, was the Boat Club Property.

(ii) That the notice issued to the shareholders did not advert to the Boat club Property.

(iii) That Natarajan was not present at the BOD Meeting held on 01.09.2012; he was, though, present at the subsequent meeting dated 02.11.2012, whereat, both the minutes of the previous BOD meeting dated 02.11.2012, and the minutes of the AGM held on 29.09.2012, were taken on record.

45.8. The appellants, however, argue that there was no infraction of law as what was placed before the members/shareholders for approval was the proposal that the company, i.e., SVG would provide, by way of perk, a fully furnished house to its Managing Director, which could be a property owned or leased by it. Furthermore, if, no such accommodation was provided, then, the Managing Director would be entitled to a house rent allowance, subject to a ceiling of 70% of his salary.

45.9. Respondent Nos.1 to 6, on the other hand, says, that Boat Club Property, even on a conservative basis is valued at Rs.300 Crores. Given the fact that SVG had a total income of Rs.2.53 lakhs for

the year ending 31.03.2013 and Rs.11.28 lakhs, for the year ending 31.03.2014, it could well have utilised the Boat Club Property to earn revenue, if, nothing else.

46. In my view, there can be no doubt that the BOD, at the meeting held on 01.09.2012, failed to make a complete disclosure as to the property, which SVG, intended to give for use to its Managing Director. To that extent, the independent Director on the Board, i.e., Satyajit Prasad, to say the least, failed to ask the relevant questions or carry out a due diligence; an expectation, which is, in consonance with the provisions of clause 49(d)(1)(b) of the Listing Agreement. Clause 49(d)(1)(b) requires the BODs', i.e., the top management, to conduct themselves with utmost probity. That the other two persons present at the meeting would not have adhered to the expected standards of probity is given, as they were deeply interested in the subject. What was expected is that, the independent director on the Board would ask searing and relevant questions.

46.1. Quite clearly, this standard was not met by the Board of SVG and, therefore, to that extent, it failed to live up to the standards of corporate governance, which are expected of the listed companies. Respondent Nos.1 to 6, however, are aggrieved by the directions contained in the impugned judgment, whereby, the CLB has directed

the SVG to seek a ratification from its shareholders qua the BOD resolution passed vis-a-vis the Boat Club Property, so as to ensure that the business transacted was brought within the bounds of law and adhered to the norms of transparency.

46.2. As a matter of fact, respondent Nos.1 to 6 have filed cross objections in that behalf, to which, I have made a reference above. One of the directions, respondent Nos.1 to 6 have sought via their cross objections is that Shanmugam, should be called upon to vacate the Boat Club Property and pay fair rent for the period that the property was illegally occupied.

47. The questions, which arise for consideration are: (i) Has SVG committed infraction of any provision of law ? (ii) Is the direction contained in the impugned order qua calling upon SVG to seek ratification valid ?

47.1. In so far as the first aspect is concerned, as already indicated above, while the disclosure with regard to the property, which was to be given for use to Shanmugam, as his residence did not meet the standards of corporate governance, as fixed by SEBI - there was disclosure, nevertheless, that a property owned or leased by SVG was to be given for such use to Shanmugam. Therefore, what was complied with was literally the letter of the resolution and not its spirit.

This conclusion can, however, be only partially correct, as the resolution, which has been passed at the AGM of 29.12.2012, is based on the understanding that the remuneration, which was approved for payment to the Managing Director, by way of salary and perquisites, was within the limits specified in Schedule XIII of the 1956 Act.

47.2. The CLB, as is evident from the impugned judgment, took no steps to value the property. As a matter of fact, before me, no arguments have been advanced in that behalf. The CLB, on its part, has directed SVG to seek ratification of the shareholders vis-a-vis the Boat Club Property. Inherent in the direction is the acceptance of fact that what was presented at the time, when, the resolution, was passed at the AGM held on 29.09.2012, was based on inchoate facts. The CLB, in fact, in this behalf, in paragraph 10.7 of its judgment, makes the following observations.

> *"10.7. ..... However, the fact of allowing the use of the property at New No.5, Old No.3, III Avenue, Boat Club Road, Chennai-600 208 was not disclosed in the aforesaid meeting held on 25.09.2012. The Respondents Advocate has however stated that as approved by the shareholders the Managing Director is entitled to be provided a furnished accommodation, owned or leased by the Respondent Company and once the property came to be vested in the Respondent Company, it is for the board to decide in relation to the utilisation of its properties*

subject to the approval of the shareholders in accordance with law. ***This implies that there is lack of transparency with the shareholders in the matter of allowing the aforesaid high value property to the Managing Director for his residential purpose by passing a resolution in the meeting of the Board of Directors where proper quorum was also not present."***

(emphasis is mine)

47.3. It would seen that CLB disapproved of the resolution passed at the AGM dated 29.09.2012, on the ground of lack of transparency and lack of proper quorum. The reason, perhaps, was that at the BOD of 01.09.2012, Shanmugam was present, who being interested in the decision, ought not to have participated in the meeting. Therefore, if, the CLB came to the conclusion that the resolution passed at the AGM was unlawful, then, surely, the occupation of the Boat Club Property by Mr.Shanmugam in the interregnum was not valid either.

47.4. It must be conceded, though, that if, everything else was in order, and, if, a fresh resolution was passed by the shareholders, ratifying the decision taken to allow Shanmugam to use the Boat Club Property as his residence, would relate back to the date when the decision, in that behalf, was taken in the first instance. This, however,

may be plausible, if, the only defect in resolution so passed pertained to the factum of disclosure of the particulars of the property, which was to be given for use of Shanmugam. As indicated above, it appears, that no exercise was carried out to value the subject perquisite by the Board of SVG. Therefore, the direction issued to SVG to obtain ratification of the shareholders, is not in order. SVG, to my mind, would have to do a de novo exercise, by placing the matter afresh before the shareholders along with the requisite background material.

47.5. In that behalf, the BOD would have to carry out the necessary exercise of valuing the subject perquisite, in order to ensure that the total salary and remuneration paid to Shanmugam, during the relevant period, did not cross the limit specified in Schedule XIII of the 1956 Act, or the extant provisions of law, if any, formulated in that regard.

ISSUE NO.6:

48. This brings me to the other aspect of the matter, which relates to the special resolution, passed by the shareholders, albeit, via a postal ballot, under Section 372A of the 1956 Act, to enable the BOD of SVG to extend loan, furnish guarantees or provide securities to its associate entities/companies, subject to the outer limit of Rs.500 Crores.

48.1. This resolution, albeit, via postal ballot was passed, in the background of the decision taken at the BOD meeting of SVG held on 28.03.2014. Respondent Nos.1 to 6 have submitted that the controlling group had taken a decision to grant loans to related entities and, it is because Natarajan had expressed his reservations that the resolution was placed before the shareholders, which finally led to it being passed via postal ballot on 02.05.2014, with the necessary caveat in place. The caveat entered was that all such facilities, either by way of loan, or investment of funds, or extension of corporate guarantees, or securities to associate entities/companies shall be finally decided, on terms and conditions, as may be stipulated by the BOD of SVG.

48.2. The controlling group, as also SVG, contend that this instance brought forth in the Company Petition, as an act of mismanagement, was completely unsustainable, as it was based on a mere apprehension. Furthermore, it was submitted that it is not, as if, under law, companies are barred from entering into transactions with related-third parties, the only stipulation being that such a transaction should meet the prescribed norms, stipulated in that behalf.

48.3. In this behalf, the provisions of Sections 188 and 185 read with relevant rules, were cited. It was further submitted that there had

not been a single instance, between 2010 and 24.09.2014, where an issue had been raised by Natarajan, with regard to diversion or misuse of funds. It was further submitted that the contention of respondent Nos.1 to 6 that only Natarajan could safeguard their interest was not sustainable, as the shareholders had not approved the resolution seeking his reappointment on the Board of SVG.

48.4. I may only indicate that, in this connection, respondent Nos.1 to 6 have also averred that SVG, upon a compulsory acquisition of the land, located at Bengaluru, ad-measuring 3 acres and 30 guntas, had received a sum of Rs.70.13 Crores from the Government of Karnataka, which had also approved a further payment of Rs.88.11 Crores along with interest at the rate of 8% towards balance consideration. The emphasis was, that the use of these funds needed to be safeguarded considering the past proclivity of the controlling group to divert funds to associate entities/companies.

48.5. The submission of respondent Nos.1 to 6 was, given the background, in which, the aforementioned resolution was passed, it is quite possible that the appellants would attempt to divert the monies received from acquisition of SVG's Bengaluru property, to its related entities/concerns, and that, such acts could only be prevented, if, Natarajan, remained as its representative on the Board, as was the

case for the past four (4) years.

48.6. In my opinion, the submission of the appellants that apprehension, by itself, can never form the basis of an act of mismanagement, seems too wide a proposition. A distinction has to be drawn between what is in the realm of possibility as against that in respect of which some incipient steps have already been taken. In a situation like the instant case, where a resolution has already been passed, albeit, with a caveat, which is that, the final decision will be taken by the Board qua the terms and conditions, on which loan can be given, or investment can be made or guarantee or security could be furnished does introduce a fear factor, which carries the issue beyond the realm of a remote possibility.

48.7. As adverted to above, the decision to have a postal ballot was taken at the BOD Meeting dated 28.03.2014 and the resolution via postal ballot was passed on 02.05.2014. Since then, Natarajan no longer sits on the Board of SVG. The appellants are, however, right in their contention, there is neither any agreement nor any provision in the Articles of Association or, a mandate of law that Natarajan would remain virtually a permanent representative on the Board of SVG. In isolation, one cannot quibble with this contention advanced on behalf of the appellants.

48.8. What is, though, required to be seen, is the apprehension, given the entire gamut of the matter, without basis. Could the manner in which the vote was cast qua Natarajan's reappointment be linked to the charge levelled by respondent Nos.1 to 6, that the majority shareholders, i.e., the controlling group, had been acting in a manner, which was harsh, burdensome and wrongful. This could, perhaps, have an impact on the charge relating to oppression, where, equitable considerations could outweigh legality. Therefore, while, it would be difficult to conclude that the appellants had acted contrary to law in merely passing the resolution under Section 372A of the 1956 Act, this could lend weight to the charge levelled by the minority shareholders that this resolution has the portents of an unfair and prejudicial act.

ISSUE NO.:7

49. Which brings me to the last aspect of the matter, as to whether the charge of oppression is made out.

49.1. This, in one sense, is the essence of the Company Petition, which was moved by respondent Nos.1 to 6 before the CLB. The entire burden of the said petition filed by respondent Nos.1 to 6 was, broadly, as follows:

(i) Natarajan, who was a Chartered Accountant, with a thriving practice, got introduced to the Udayar group, which, at the relevant

time, comprised of Late Ramasamy, Nandagopal and Ethiraj. It would be relevant to note that Nandagopal is the brother of Ethiraj. The three gentlemen, apart from Natarajan, were known as the Udayar group, at the relevant point of time.

(ii) Natarajan rendered, it appears, advice on financial and taxation matters to the Udayar group. This brought about his proximity with the other two (2) members of Udayar group, apart from Late Ramasamy, that is, Ethiraj and his brother, Nandagopal.

(iii) Apparently, an opportunity for investment of funds and acquiring a company arose, in and about, 1987, in the form of Binny Limited. It appears, according to Natarajan, Binny Limited, at that time, as indicated above, was widely held listed company, which had on its Board, nominees of Banks and financial institutions. Natarajan takes the stand that he saw an opportunity to acquire Binny Limited and, accordingly, took the proposal to Late Ramasamy, Nandagopal and Ethiraj. The result was that the controlling interest in the company, i.e., Binny Limited, was acquired, and in fact, the stand of Natarajan is that he had provided a sum of Rs.14.00 lakhs to Late Ramasamy and his son Venkatachalam via his concern, Saranga Investment and Consultancy Private Limited, for acquisition of equity stake in the said company.

(iv) It is also the stand of Natarajan that it was because he had funded monies to the Udayar group at various times, in 1993, shares were allotted to respondent Nos.1 to 6 at his instance.

(v) Furthermore, Natarajan claims that it was, at his instance, that respondent Nos.1 to 6 directly acquired shares in Binny Limited from State Bank of India, when, the Bank took a decision to divest its holdings in Binny Limited. These shares were registered in the name of one of the six respondents.

(vi) It is not in dispute that respondent Nos.1 to 5, which are corporate entities, i.e., companies, are controlled by Natarajan and his constituents.

(vii) As alluded to above, respondent No.6, is the wife of Natarajan. Natarajan, claims, that it is, in this background, that he got appointed as the Director of Binny Limited on 11.01.1988, and that, he continues to hold that position to date.

49.2. I must indicate herein that the Annual Report of June, 1987 also shows Natarajan as one of the Directors on the Board of Binny Limited; this fact would, if at all, improve the case of Natarajan. on this score.

49.3. The appellants, on the other hand, contest this position. Their submission is, to which I have made a reference above, that

Natarajan was only an adviser, and in fact, funds had been provided to him via two (2) entities, associated with Ethiraj. These entities being: Swadesimitran Limited and Swadesimitran Printers Private Limited. It is averred that the monies had been provided to respondent Nos.1, 2, 4 and 5. According to the appellants, each of these four (4) respondents, except respondent No.2, were given a sum of Rs.42.00 lakhs, albeit, by way of loan, while respondent No.2 was advanced a sum of Rs.42.50 lakhs. This loan was advanced in 1992, which, according to the appellants, has not been repaid by Natarajan to date.

49.4. I must only indicate herein that the appellants have not dilated upon the fact as to how the aforementioned entities, which provided funds to Natarajan were related to Ethiraj. Furthermore, it is not made clear as to why no recovery of the funds said to have been furnished by way of loan was initiated.

49.5. Furthermore, the appellants submit that the opportunity to take over Binny Limited was identified by Ethiraj and Late Ramasamy, and that, this aspect was discussed with one Mr.Venkitaraman, former RBI Governor. It is further averred that it was at his instance, that Natarajan was taken in as an adviser, only to acquire ownership and control of Binny Limited.

49.6. Furthermore, respondent Nos.1 to 6 aver in their Company

Petition that along the way the net worth of Binny Limited got eroded, which led to filing of a reference with BIFR, in and about 1992. While, the reference was pending before the BIFR, a Scheme of rehabilitation was preferred, which required infusion of funds. The new co-promoters, who could invest funds, were identified by Natarajan. Consequently, an MOU dated 21.12.1993 was executed between the existing promoters, which included Natarajan and the newly inducted co-promoters. As a result of which, according to respondents No.1 to 6, funds to the tune of Rs.60.00 Crores in the form of equity and loan were invested in Binny Limited.

49.7. It is also the stand of respondent Nos.1 to 6 that the new co-promoters decided to opt out of Binny Limited and, accordingly, an MOU was executed on 08.05.1996 to freeze the terms of exit of the inductee co-promoters. This MOU could not be implemented and therefore, was followed with the execution of another MOU dated 27.3.2002. Finally, the exit of the inductee co-promoters took place only in 2004, which resulted in the demerger of Binny Limited into Binny Limited and Binny Karnataka Limited. As a result of this, demerged properties of erstwhile Binny Limited, which were situate in Karnataka, were handed over the inductee co-promoters.

49.8. It is the stand of respondent Nos.1 to 6 that the demerged

Binny Limited reverted to the original promoters, i.e., Venkatachalam, Ethiraj and Nandagopal and Natarajan. It is averred that, once again, each one of the four (4) persons, which included Natarajan held directly or indirectly an equal stake in Binny Limited.

50. Respondents No.1 to 6 take the stand that the second demerger, which took place in 2010, which was sanctioned by this Court on 22.04.2010, resulted in the demerger of Binny Limited and distribution of assets amongst the two Resulting Companies, i.e., SVG and Binny Mills Limited, and the demerged entity. The demerger, broadly, operated on the following lines : Binny Limited came under the control of the Nandagopal group, SVG came under the sway of the controlling group, while Binny Mills Limited came to be controlled by the Venkatachalam group. Natarajan was also allotted under the scheme, fresh shares, albeit, equivalent to approximately 19% in each of the three (3) companies. The other persons, i.e., Venkatachalam, son of Late Ramasamy, M.Nandagopal and Ethiraj owned and/or controlled nearly 55% of equity stake in each of the three companies, referred to above, without the handicap of cross holding by any other group. The only exception to this was, Natarajan, who, as indicated above, was given a stake in each of the three companies.

50.1. Natarajan says and a fact, which is evident from the record

that upon the sanction of demerger in 2010, he was appointed as Director on the Board of SVG, which, otherwise, stood incorporated, albeit, as a shell company in 2007. Natarajan, based on the regulatory filings and the Annual Reports, seeks to demonstrate that he was shown as a promoter and continued to be a Director, on, firstly the Board of Binny Limited; a position, which obtains to date, and thereafter, upon a second demerger, on the Board of SVG. Natarajan, as indicated above, has demonstrated, based on the Information Memorandum, filed by SVG that he has been shown as a Promoter. Therefore, Natarajan submits that, when, a decision was taken at the BOD Meeting held on 04.08.2014 to seek reappointment, it was a given that the controlling group would vote in his favour at the AGM to be convened on 26.09.2014.

50.2. Natarajan, thus, takes the stand that it is, in this background, that respondent Nos.1 to 6 cast a favourable vote on a similar resolution concerning, Ethiraj's reappointment, albeit, via electronic means. Natarajan says that, given the background that he had all along been a stake holder, i.e., a partner in the ventures undertaken by the other three persons, i.e., Late Ramasamy, followed by Venkatachalam, M.Nandagopal and Ethiraj, his non-renomination, which, in substance amounted to removal from the Board was an act

of oppression. Natarajan says that the association with the aforementioned persons was, in substance a partnership and that, he had, therefore, neither sought nor received any remuneration for the services that he had offered, first to Binny Limited and, then to SVG.

50.3. Having regard to the material on record, I am of the view that the appellants' stand that Natarajan, was mere an adviser, is not correct. I have already discussed this aspect of the matter. In the ordinary course, one cannot, but agree that the appellants have a right to vote in any manner that they think fit, which, necessarily, need not have attributes of morality. The appellants are entitled to vote, as shareholders, based on what is in their best economic and strategic interest. That being said, the nature of jurisdiction that the Court exercises in the instant matter transcends legality, in the sense, that it factors in equitable considerations.

50.4. Having regard to the circumstances of this case, I have no doubt, in my mind, that Natarajan was done in. While, no fault can be found in law in the appellants not being motivated to vote in favour of the resolution seeking, Natarajan's reappointment, equitable considerations would have me conclude otherwise. Therefore, the fact that respondent Nos.1 to 6 are not represented on the Board of SVG, on account of the appellants voting against Natarajan's reappointment,

would be, in the given circumstances, prejudicial to their interest, and hence, constitute an act of oppression.

DIRECTIONS ISSUED BY THE CLB TO PURCHASE SHARES:

51. The directions issued by CLB with respect to purchase of shares of respondent Nos.1 to 6, has two aspects to it, which need to be dealt with. In my view, the first aspect relates to the objection taken by the appellants as regards such a relief being granted, inter alia, on the ground that no such prayer was made in the Company Petition. The second aspect relates to whether such a direction could be issued to SVG. Inter related to these aspects is the general objection raised by the appellants that, in any event, such a direction was not called for, in view of the findings rendered in the impugned judgment that the relationship between them, i.e., controlling group and Natarajan was not in the nature of a quasi-partnership. This objection, I have already dealt with and, therefore, I do not wish to go over this aspect again. Suffice it to say, courts have, time and again, reiterated that even where an action under Sections 397 and 398 fails, a Court can, in order to do substantial justice between contesting parties, direct purchase of shares of the aggrieved party (**Needle Industries and another V. Needle Industries Newey (India) Holdings Limited, AIR 1981 SC 743** and **M.S.D.C.Radharamanan**

V. M.S.D.Chandrasekara Raja and another, (2008) 6 SCC 750).

51.1. As regards the other two (2) aspects, what is required to be borne in mind is that, in the Petition the reliefs sought for are many and varied. Amongst many reliefs sought, there is a prayer made for residuary relief as well, which is generally asked for by litigants, particularly in a petition preferred under Sections 397 and 398 of the 1956 Act, which is that, the CLB may grant any other relief that it may deem necessary. It is not unknown to law that where litigants ask for reliefs, which have a wide ambit, the Tribunal/Courts modulate the reliefs, depending on the jurisdiction, in which, they operate and the power vested upon them in law. To cite an example, while in a Writ Petition and, in an action of a present kind, where Courts/statutory authorities employ equitable jurisdiction, there is latitude available, within the realm of law, to modulate, fashion and forge a relief, which according to it, would ultimately meet the ends of justice. Such a power, perhaps, a Court may not exercise (and I am not foreclosing the possibility altogether), say for example, while rendering a decision in a suit action.

51.2. Therefore, in my view, there was no impediment, in principle, in the CLB having the power to grant such a relief. As a

matter of fact, in so far as a Section 397 and 398 action is concerned, under Section 402, the CLB had the widest powers available to it to grant such reliefs, it deemed fit having regard to the facts and circumstances of the case. This is clearly evident from the language of Section 402, which opens with the words "without prejudice to the generality of the powers". The CLB, under Section 397 and/or 398, is empowered to pass a wide array of possible orders/directions in the interests of members; an aspect which clearly emerges upon a perusal of clauses (a) to (g) of Section 402 of the 1956 Act. As a matter of fact, clause (b) of Section 402 empowers the CLB to direct purchase of shares or interest on behalf of members of the company or other members thereof or by the company itself. Therefore, in law, the appellants submission that such a direction could not have been issued, is a completely untenable. Furthermore, clause (g) of Section 402 of the 1956 Act specifically empowers the CLB, to make a provision qua any other matter, which, in its opinion, is just and equitable.

51.3. Quite clearly, the direction issued by the CLB to purchase shares of the Natarajan block was not outside its purview and/or contrary to law, as has been suggested by the appellants. As a matter of fact, the narration of events, as set forth hereinabove, would show

that it is the appellants' case, both in correspondence exchanged between the contesting parties and in the pleadings filed before the CLB that Natarajan had, according to them, agreed to sell in 2007, his equity stake, held by him in Binny Limited, Binny Mills Limited and SVG, for a total sum of Rs.50.00 Crores. According to the appellants, Natarajan reneged on the promise. The appellants go on to state that this offer was reiterated in 2013, when, based on the understanding reached in 2007, they offered to pay, approximately, Rs.16.66 Crores to purchase Natarajan block's stake in SVG.

51.4. Therefore, even on facts, one cannot find fault with the direction issued by CLB, which compels the controlling group to purchase Natarajan's shares. In this behalf, one may have to go, no further than, peruse the contents of Ethiraj's letter dated 01.10.2014, addressed to Natarajan. The extract of the same, has already been set forth, in my discussion above.

51.5. Having said so, one needs to closely examine as to whether CLB ought to have directed SVG to purchase the shares of Natarajan, in the facts and circumstances of the case, if the controlling group failed to do so.

51.6. In my view, the direction should have been restricted to the controlling group, and that, it ought not to have extended it to

SVG. The reason why I say so, is that, the battle for control, and/or representation on the Board of SVG obtained between the controlling group and the Natarajan block. As discussed above, Natarajan was, contrary to what is sought to be portrayed by the appellants, a part of the promoter group and not a mere adviser. Therefore, if, the appellants were desirous of obtaining greater control of SVG, so that, they could have a further "play in the joints", both at the Board level and in the shareholders forum, i.e., meetings, the CLB should have called only upon them to buy the interest of some one like Natarajan to the exclusion of all others including SVG. The public shareholding in the SVG is a reality, which the controlling group have had to live with, since the time they first acquired interest in Binny Limited, in 1987. Therefore, unless the appellants were willing to make an open offer, in accordance with the extant Rules and Regulations, to my mind, in the given facts and circumstances, the direction issued by CLB to SVG to purchase the shares of Natarajan block upon failure of the Controlling group to do its bidding, does seem inappropriate, as it would require liquidation of its assets. The Court in these situations has to pause and think as to the extent it needs to exercise its powers, given its vast width and amplitude. A direction to SVG to purchase shares would lead to a depletion in the worth of the shares held by the Public

shareholders, without having them have their say in the matter. This is, especially so, as SVG's worth stems from the immovable assets it holds and not from its business operations.

CONCLUSION:

52. In my view, therefore, the following emerges, upon perusal of documents and submissions of counsels and my appreciation of the legal position.

(i) First, Natarajan was part of the promoter group and not a mere adviser, which is exemplified by the fact that throughout, that is, since 1987, he has been retained as a Director till the conclusion of the AGM of 26.09.2014, irrespective of the form or structure Binny Limited morphed into from time to time.

(ii) Second, the principle of "quasi-partnership" or "in substance a partnership" would apply to the relationship, which subsisted in the first instance, amongst Late Ramasamy, Ethiraj, M.Nandagopal and Natarajan, and after, the death of Ramasamy amongst his son Venkatachalam and the other three gentlemen.

(iii) Third, Natarajan, admittedly, did not receive any professional fee. He clearly discharged functions as Director entrusted to him, first on behalf of Binny Limited and, thereafter, on behalf of SVG as well. Over the years, it appears from the record, an understanding was

reached between the persons referred to above, that they would have a representative each on the BOD of the concerned company/companies, as the case may be.

(iv) Fourth, though there was clearly no written agreement in place an understanding built on trust had been forged, which required each side to ensure the appointment of the nominee of the other side on the Board of the concerned company. This facet comes through upon examining a long corporate history of nearly 27 years, spanning between 1987 and 2014. The understanding and trust, which had remained steadfast for nearly three decades was breached, when, Natararajan was not renominated to the Board of SVG.

(v) Fifth, the nature of the relationship between Natarajan and the controlling group cannot be given a short shrift by labelling it as "Directorial complaint". While, in isolation, one cannot, but agree, that corporate democracy and shareholders will must prevail these principles need to be tested in the context of facts and circumstances obtaining in each case. Bereft of context, a grievance regarding failure to obtain renomination to the BOD may seem like a Directorial Complaint.

(vi) Sixth, the appellants, in my view, cannot use the "Directorial Complaint" argument or even the argument that it is a

limited company having public shareholders to deny the Natarajan block its right to sit on the high table, that is, the BOD. When these arguments are put to scrutiny, what does come through, starkly, is that the public shareholders, which approximately, number 9014 are dispersed and, the company, i.e., SVG is run, in substance, like a closely held company by the Controlling group, who hold 55% of the equity stake. It is because of this reason that the Board of SVG could take a decision to allow for use of the Boat Club Property, which is even by a conservative measure, a property worth Rs.300 Crores, for personal use of Shanmugam, its Managing Director, despite poor financials, or that, a ballot resolution dated 02.05.2015 could be passed giving powers to the Board of SVG to, inter alia, make investments or grant loans to the extent of Rs.500 Crores, with the potentiality of these facilities being extended to associate entities/companies.

(vi)(a) As has already been alluded to herein above, while, extension of financial facilities to associate entities/companies, at this stage, can only be construed as an apprehension, it cannot be completely wished away and, therefore, the co-existence of Natarajan with the appellants can only be construed as oppressive, that is, harsh and burdensome and since, appellants are in majority, the oppression

could only be on the minority, which includes the Natarajan-block. The failure to reappoint Natarajan on the Board of Directors of SVG is only the beginning of the oppression.

(vii) Seventh, even if, one were to assume, for the sake of argument, that findings of oppression are not called for, in the instant case, would I, then, reverse the direction issued by the CLB on that score, which, in its own wisdom, has tried to do substantial justice between the contesting parties, by compelling the controlling group to purchase the shares of the Natarajan block. This power, as held hereinabove by me, was rightly exercised by the CLB, save and except to the extent it directed SVG to purchase the shares, upon failure of the controlling group to do so. To my mind, this power was available to the CLB, contrary to what has been argued by the counsels. (See : paragraph 51 above).

(vii)(a) Therefore, the CLB's endeavour to unlock the asset of the Natarajan block, which has stayed the course along with other co-venturers for nearly three decades, in the given facts and circumstances, does not call for interference, as it is both fair and equitable.

(viii). Eighth, the deadlock, as indicated above, need not necessarily be an ingredient of 397 and 398 action. It is only one of

the circumstances in which, such an action can be brought to Court. Besides, the concept of deadlock need not to be looked at in absolute terms. In my view, any issue, which creates an impediment or a possibility of a logjam in the smooth functioning of the company in the foreseeable future, is an aspect, which ought to be factored in, while examining the tenability of an action instituted under Section 397 and 398 of the 1956 Act. The majority shareholders will always allude to the argument that, since, they have the requisite numbers, whether in terms of shares or members on the Board that they can run the company without a hitch; an argument, if, accepted, would actually mean, that the Court would then give legal credence to the submission that they could run rough shod over the minority. Running of the company requires inclusiveness, which is intrinsic part of any democratic process and cannot, to my mind, be any different, where corporate jurisprudence or governance is involved.

52.1. Therefore, in substance, I find no difficulty in CLB coming to the conclusion that there would be impediments in running the affairs of SVG, as indicated above, and therefore, perhaps, as against the use of the expression "practical deadlock", some other expression, which would describe the situation more accurately could have been used. Perhaps, "gridlock" would better describe such like situations.

RELIEFS:

53. Based on the foregoing discussion, the appeals are partly allowed, in as much as, the direction issued by CLB vide the impugned judgment dated 10.03.2016 is set aside to the extent, it directs purchase of equity stake of respondent Nos.1 to 6 by SVG. The other direction of the CLB, which requires the controlling group to purchase the shares of respondent Nos.1 to 6 is sustained.

54. As indicated right at the outset, since, CLB had called upon the parties to appoint an independent valuer, pending the disposition of the aforementioned matter, valuation was got done, albeit, without prejudice to the rights and contentions of the parties via Brahmayya & Co., Chartered Accountants. The valuation report was received and opened. It appears that the contesting parties did not have an opportunity to comment on the valuation report.

55. Therefore, for this purpose, I intend to remand the matter to the National Company Law Tribunal, Chennai Branch (in short, NCLT) (in view of the changed statutory position). The parties would appear before the NCLT on 14.07.2017. The NCLT would call upon the parties to submit their objections and, thereafter, come to a conclusion, one way or the other, as to the price, at which the controlling group should be called upon to purchase the shares of respondent Nos.1 to 6.

56. I must note herein that arguments were advanced on behalf of SVG by Mr.Arvind P.Datar, learned Senior Advocate that net asset method would not be the appropriate method to value the shares of SVG; an objection, which, in a sense, has been taken care of, as the subject shares, have now been valued by Brahmayya & Co., by taking recourse to every known and recognised method involving valuation of shares.

57. To ensure that there is a compliance, the Controlling group and/or its constituents are injuncted from selling, transferring or creating third party interest, qua their shareholding in SVG, till further orders of the NCLT, and in case, a charge or interest has already created by the controlling group, vis-a-vis their equity stake in SVG, the protem charge so created by this direction will stand subordinated to any such prior charge or interest. SVG is also injuncted from registering or recording any request for transfer of shares which are owned or controlled by Ethiraj and Shanmugam and/or its constituents except with the prior permission of NCLT.

57.1. Furthermore, pending the completion of the aforesaid exercise, SVG will not transfer and/or create third party interest in its immovable assets.

57.2. The NCLT would be free to modify and/or vary the protem

order and also to seek other forms of solvent security, if, offered by the controlling group, till such time, the equity interest of respondent Nos.1 to 6 is bought over by them, i.e., the controlling group and/or their nominees.

57.3. This exercise will be completed within eight (8) weeks of the date of first appearance before NCLT, as indicated in paragraph 55. This would take care of the directions contained in paragraph 10.8 clauses (a) to (d) of the impugned judgment.

57.4. Since, independent valuer's report has already been submitted, as indicated above, the directions contained in paragraph 10.8(e) of the impugned judgment and order stands already satisfied. Similarly, in so far as the directions contained in paragraph 10.8(f) is concerned, it stands suitably modified, in the light of the reasons given herein above, with respect to the issue concerning the Boat Club Property.

58. The appeals and the cross objection are disposed of accordingly in terms of the aforesaid directions. Consequently, the connected miscellaneous applications are disposed of as well. However, there shall be no order as to costs.

Speaking Order 04.07.2017
Index : Yes / No
Internet : Yes
sl/gg

To

The Company Law Board/
The National Company Law Tribunal,
Chennai Bench, Chennai.

RAJIV SHAKDHER,J.

sl/gg

Pre-Delivery Common Judgment in

Com.Apel.Nos.3 and 4 of 2016

& Cros.Obj.No.39 of 2016

C.M.P.Nos.6828, 6864, 7563,

7564, 7575 and 7576 of 2016

Dated: 04.07.2017