IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO.6 OF 2006
IN
COMPANY PETITION NO.91 OF 2005

Jyoti C. Raheja and others … Appellants

Vs.

Aasia Properties Development Ltd. and others … Respondents

WITH

COMPANY APPEAL NO.11 OF 2006
IN
COMPANY PETITION NO.91 OF 2005

Hinduja Realty Ventures Ltd. … Appellant

Vs.

Juhu Beach Resorts Ltd. and others … Respondents

Mr. Fredun Devitre, Senior Advocate a/w. Mr. Chirag Kamdar, Ms. Bindi Dave, Mr. Raghav Gupta, Mr. Kashish Mainkar, Mr. Siddharth Kate, Ms. Rashi Savla, Ms. Hemlata Jain and Mr. Navin Bhatia i/b. Wadia Ghandy & Co. for Appellants in Company Appeal No.6 of 2006 and for Respondent Nos.2, 3, 6, 7, 17, 18, 19 and 20 in Company Appeal No.11 of 2006.

Mr. Navroz Seervai, Senior Advocate a/w. Mr. Gaurav Joshi, Senior Advocate, Mr. Dhruva Gandhi, Mr. Naishadh Bhatia and Mr. Heet Kumar Vacchani i/b. Crawford Bayley & Co. for Appellant In Company Appeal No.11 of 2006 and for Respondents in Company Appeal No.6 of 2006.

Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Chirag Kamdar, Ms. Bindi Dave, Mr. Raghav Gupta, Mr. Kashish Mainkar, Mr. Siddharth Kate, Ms. Rashi Savla, Ms. Hemlata Jain and Mr. Navin Bhatia i/b. Wadia Ghandy & Co. for Respondent Nos.10 to 14 and 21 to 23 in Company Appeal No.11 of 2006.

CORAM : MANISH PITALE, J.
RESERVED ON : 29TH APRIL, 2025
PRONOUNCED ON: 16TH JUNE, 2025

JUDGEMENT :

. These two appeals have been filed under Section 10F of the Companies Act, 1956, challenging the order dated 19.09.2006 passed by the Company Law Board, Principal Bench, New Delhi (hereinafter

referred to as 'CLB'), taking exception to different parts of the same order. While the appellants in Appeal No.6 of 2006 are aggrieved by the direction contained in the impugned order of the CLB, declaring that the original petitioner before CLB i.e. Aasia Properties Development Limited (respondent No.1) in the said appeal was entitled to nominate one director on the Board of the Company - Juhu Beach Resorts Limited, the appellant in Appeal No.11 of 2006 i.e. the aforementioned Aasia Properties Development Limited, now known as Hinduja Realty Ventures Ltd., is aggrieved by the findings rendered by the CLB on the aspect of manipulations of records of the Company relevant for the date of acquisition of 1/3rd shares of the Company by the said petitioner, as also denial of prayer for representation on the Board of the Company. The appellants in both the appeals have made rival submissions on analysis of Section 397 read with Section 402 of the Companies Act, 1956 by the CLB and its effect on the question of alleged oppression suffered by the original petitioner before the CLB.

2. For the sake of convenience, the appellants in Company Appeal No.6 of 2006 are referred to as ‘Rahejas’ and the appellant in Company Appeal No.11 of 2006 is referred to as ‘Aasia Properties’. Although Aasia Properties subsequently became Hinduja Realty Ventures Ltd., since the original petition before the CLB was filed by Aasia Properties, this order shall refer to the said party as 'Aasia Properties' for the sake of convenience.

3. It would be appropriate to briefly refer to the facts leading upto filing of these appeals. On 15.01.1974, the aforementioned Juhu Beach Resorts Limited, which is respondent No.2 in Appeal No.6 of 2006 and respondent No.1 in Appeal No.11 of 2006 (hereinafter referred to as the 'Company') was incorporated as a private limited company under the Companies Act. In 1978, two groups of shareholders i.e. Shah Group

and K. Raheja Group took over the Company with the Shah Group holding 1/3rd shares numbering 633 shares and the K. Raheja Group holding the balance 2/3rd shares numbering 1267 shares. On 26.06.1981, Ashok Hinduja, who was a director of Aasia Properties (then known as 'Mecca Properties'), was appointed as an additional director in the Company. While Aasia Properties claims that the said Ashok Hinduja participated in the affairs of the Company on an oral understanding that the Hinduja Group would have proportional representation and equity of rights in management, the said claim is stoutly denied by Rahejas. It is an admitted position that there is no written document about such alleged oral understanding.

4. Rahejas claim that in an Annual General Meeting of the Company on 27.06.1981, the appointment of Ashok Hinduja as an additional director was not confirmed and that in any case, in 1982, the said Ashok Hinduja resigned as an additional director. In this regard, reliance is placed on Form 32 filed with the Registrar of Companies. Aasia Properties claims that it acquired shares of the Company from various members of the K. Raheja Group in the year 1982, thereby acquiring 1/3rd shares in the Company. It was specifically claimed that such 1/3rd shares were acquired on 30.08.1982. On the other hand, Rahejas claim that such transfer of shares to the extent of 1/3rd shares took place in favour of Aasia Properties on 28.01.1983. In the meanwhile, on 15.01.1983, the aforesaid Shah Group transferred its shares in favour of B. Raheja Group and according to Rahejas, the effect of the same was that the K. Raheja Group and B. Raheja Group together had 2/3rd shares, while Aasia Properties had 1/3rd shares in the Company.

5. It is the case of Aasia Properties that thereafter there were further transfer of shares by Rahejas, keeping Aasia Properties in the dark and that, such transfer of shares was in the teeth of Article 38 of the Articles

of Association of the Company. In fact, on the basis that Aasia Properties had acquired 1/3rd shares on 30.08.1982 in the Company, it claimed that even transfer of 1/3rd shares by the Shah Group to the B. Raheja Group was illegal as it was in the teeth of Article 38 of the Articles of Association. The said Article pertains to the right of existing shareholders to be offered such shares for purchase before being offered to third parties. Between 1983 and 1989, the Company set up a five-star hotel on its land located at Juhu in Mumbai and the Company has a management agreement with Mariott Hotels for the operation of the said hotel. In August, 1989, a meeting was held between Rahejas and Ashok Hinduja representing Aasia Properties, wherein he allegedly raised certain disputes and at this point in time, he was informed that he had ceased to be a director of the Company and that, shares of the Shah Group had been transferred and registered in favour of the B. Raheja Group. Aasia Properties claims that although it intended to obtain legal redress for such acts of Rahejas, since it was misled by Rahejas into believing that there was no chance of success, it remained silent and continued to subscribe to future rights shares as a 1/3rd shareholder.

6. It is the case of Aasia Properties that thereafter, from 1989 onwards, it continuously engaged in correspondence with Rahejas and the Company asking for various documents, including copies of Board Meeting Minutes as also Annual General Meetings Minutes. Thereafter, Aasia Properties demanded inspection, which was granted in December 1998, and this process continued. Thereafter, communications were addressed by Aasia Properties to the Company from 2001, alleging that the management was acting in an oppressive manner against it and on 26.12.2001, Aasia Properties for the first time sent a letter to the Company to adopt proportional representation for appointment of directors. Further correspondence ensued wherein Aasia Properties sought inspection of registers and statutory records, which was granted

by the Company and in this backdrop, Aasia Properties reiterated its allegation of oppressive behaviour and mismanagement of the Company.

7. On 19.05.2005, Aasia Properties addressed a letter to the Company, alleging oppressive style of management as shares were fraudulently allotted and there were manipulations in appointment of directors, claiming that the company records were manipulated.

8. On 19.09.2005, Aasia Properties sent a letter to the Company, seeking further inspection of entire records of share transfers and claimed proportional representation on the Board to give effect to alleged mutual understanding. In this backdrop, on 23.09.2005, Aasia Properties filed Company Petition No.91 of 2005 under Sections 397 and 398 of the Companies Act before the CLB. In this petition, serious allegations of manipulation of the company records, including registers, were levelled against the Company and particularly, the Rahejas. On this basis, Aasia Properties sought a declaration that certain transfers of shares, in the year 1983, were null and void and that, transfers of shares made subsequently were also null and void. It was also prayed that a nominee of Aasia Properties ought to be appointed on the Board of the Company and that, the management agreement executed by the Company ought to be declared as null and void. The respondents in the said petition filed their replies and on 19.09.2006, the CLB passed the impugned order.

9. In the said order, the CLB found that although there were indeed discrepancies in the records of the company, including the register of members and the register recording share transfers, it was found that Aasia Properties, as the petitioner, was required to prove its own case with cogent evidence and that, reliance placed on such discrepancies would not take the case of Aasia Properties any further. In this backdrop, it was found that since the share certificates bearing the seal of the

Registrar of Companies (ROC) were dated 28.01.1983, the claim of Aasia Properties that 1/3rd shares were transferred in its favour on 30.08.1982 could not be accepted. On the aspect of Article 38 of the Articles of Association, concerning the claim of pre-emption right for purchasing shares, in the context of alleged illegal share transfers by Rahejas, it was held that since 2/3rd shareholders could sell shares to a third party and Rahejas, as a Group, did hold 2/3rd shares, the transfers could not be declared invalid, although it was recorded that there was nothing on record to show consent in writing by the members of the entire Raheja Group for transfer of such shares. But, the CLB did find that even though the said Ashok Hinduja had ceased to be a director and he was aware about the same at least from 1989 onwards, there could be no legitimate expectation for representation on the Board of the Company. Nonetheless, the CLB found that the claim made on behalf of Aasia Properties by Ashok Hinduja could always be considered on equitable grounds since Aasia Properties was indeed found to be the single largest shareholder with 1/3rd shares in the Company. It was also found that substantial amounts were invested by Aasia Properties in the Company and therefore, denial of equitable right to it to have a nominee on the Board of the Company was indeed an act of oppression. In that light, it was directed that to meet the ends of justice and equity, Aasia Properties was entitled to nominate one director on the Board of the Company, who would be a non-functional director.

10. It is to be noted that the CLB also considered the scope of the power exercised under Section 397 of the Companies Act to hold that once oppression was established, winding up of the company on just and equitable grounds would be automatic, further holding that in such a situation, the CLB had to only form an opinion that such winding up would not be in the interest of the company / shareholders and accordingly, it could mould relief with a view to put an end to the

matters complained of. Rahejas are seriously aggrieved by the aforesaid interpretation and analysis of Section 397 of the Companies Act, which according to them, falls foul of the settled position of law. Aasia Properties, on the other hand, contends that the said interpretation is in line with the position of law and therefore, no error can be attributed to the same, although it has serious objection to the other findings rendered by the CLB in the impugned order. Aggrieved by the aforesaid order of the CLB dated 19.09.2006, both Rahejas and Aasia Properties have filed the aforesaid appeals. Both the parties had filed applications seeking interim reliefs / directions.

11. On 20.11.2008, this Court considered the interim applications filed by the rival parties. The reliefs sought in the application filed by Aasia Properties were not granted, while the application filed by Rahejas was allowed to the extent that the direction contained in the impugned order of the CLB, declaring that Aasia Properties had the right to nominate one non-functional director on the Board of the Company, was stayed. Consequently, during the pendency of these appeals, the only effective relief granted by the CLB in favour of Aasia Properties remained stayed. The appeals were already admitted and they have now come up for final hearing.

12. Mr. Devitre, learned senior counsel appearing for the appellants in Company Appeal No.6 of 2006 and respondent Nos.2, 3, 6, 7, 17, 18, 19 and 20 in Company Appeal No.11 of 2006, submitted that in the facts and circumstances of the present case, the CLB ought not to have granted the relief of declaring that Aasia Properties had right to nominate a non-functional director on the Board of the Company. It was submitted that such a relief is neither relatable to the Articles of Association of the Company nor could such relief be granted under Section 397 of the Companies Act. It was submitted that while Aasia Properties in its

appeal has attacked the findings rendered by the CLB on the aspect of alleged manipulation of records including registers of the Company, it has not made out any ground for dislodging the finding rendered by the CLB that it failed to produce positive evidence about having acquired 1/3rd shares of the Company on 30.08.1982. The share certificates bearing the stamp of Registrar of Companies also bear the date 28.01.1983 and hence, any contrary claim made by Aasia Properties was correctly found to be unsustainable by the CLB. It was submitted that even if the entries in the register of members and the register of share transfers showed some overwriting, it could not be said to be manipulation and therefore, the CLB had correctly concluded that, at worst, the record keeping of the company was not upto the mark. Nonetheless, Aasia Properties was not absolved from proving its case by positive evidence about having acquired 1/3rd shareholding in the Company on 30.08.1982. On this basis, it was submitted that once the aforesaid finding of the CLB is taken into consideration, the allegation about illegal transfer of 1/3rd shares by the Shah Group to the B. Raheja Group, cannot be considered at all. As a result, the K. Raheja Group and the B. Raheja Group together held 2/3rd shares in the Company and this becomes crucial for the present case.

13. It was submitted that once the finding rendered by the CLB that Aasia Properties became a shareholder only from 28.01.1983 onwards, is found to be correct, the allegations made in the present case, with regard to the right of pre-emption of Aasia Properties under Article 38 of the Articles of Association, can be of no relevance. Aasia Properties has made the said allegations on the premise that it became a shareholder on 30.08.1982 and since Shah Group transferred its shares in favour of B. Raheja Group on 15.01.1983, Aasia Properties, as 1/3rd shareholder, was entitled to exercise its right of pre-emption under Article 38 of the Articles of Association. In this context, reference was made to Sections

84 and 108 of the Companies Act, to contend that the said provisions were correctly applied in the impugned order to hold against Aasia Properties. In this regard, reliance was placed on the judgement of the Supreme Court in the case of *Mannalal Khetan and others vs. Kedar Nath Khetan and others*, **(1977) 2 SCC 424**, to emphasize that unless a proper instrument of transfer, duly stamped and executed, was produced, the company could not have entered the transfer of shares in favour of Aasia Properties in the register of share transfers.

14. It was further submitted that even according to Aasia Properties, it became aware about the share transfer by Shah Group and the fact that Ashok Hinduja had ceased to be a director, at least in the year 1989 and yet, no steps were taken for redressal of its grievance. The contention that it could not take any steps earlier as it was misled into believing that any such step would not meet with success, is wholly unsustainable. In any case, the presumption arising under Section 84 of the Companies Act, was not rebutted by Aasia Properties and therefore, the findings rendered by the CLB in that regard, cannot be interfered with.

15. As regards interpretation and application of Article 38 of the Articles of Association, it was submitted that the right of pre-emption would be triggered only if 2/3rd shareholders failed to approve transfer of such shares to a third party. It was submitted that there was a fundamental flaw in the contention raised on behalf of Aasia Properties that such 2/3rd shareholders would not include the group or shareholders transferring their shares. A plain reading of Article 38 of the Articles of Association, would show that the requirement is that holders of not less than 2/3rd of the issued share capital of the company, need to approve such transfer to a third party. There being no ambiguity in the same, the deliberate confusion sought to be created by Aasia Properties ought to be ignored and Article 38 ought to be interpreted on a plain and simple

reading of the same. In this regard, reliance was placed on the judgement of the Supreme Court in the case of *V. B. Rangaraj vs. V. B. Gopalakrishnan and others*, **(1992) 1 SCC 160**, wherein it was observed that since shares are freely transferrable, any restriction on such transfer, under the Articles of Association, must be applied in a strict manner and it ought to be construed in favour of the shareholder, who desires to transfer the shares.

16. It was further submitted that even if it was to be assumed that the transfers of shares post-28.01.1983 were to be hit by Article 38 of the Articles of Association, such shares would only revert back to the transferors, who are none else but those from Raheja Group holding 2/3rd shares and therefore, the same cannot inure to the benefit of Aasia Properties. It was further submitted that if the nature of transfers are to be taken into consideration, it would be found that they were largely technical in nature, including situations such as change of name of a member company, joint holder's name being deleted, upon demise of a shareholder the same devolving upon entities wholly owned by the family, thereby indicating the fact that Aasia Properties could not have claimed the shares directly inuring for its benefit. It was submitted that reliance placed on the judgement of the Supreme Court in the case of *Vijayalakshmi (Smt) vs. B. Himantharaja Chetty and another*, **(1996) 9 SC 376** is misplaced, for the reason that the said case dealt with immovable properties, where a single known pre-emptor was identified, while in the present case, the facts are clearly distinguishable.

17. It was further submitted that the CLB committed a grave error in declaring that Aasia Properties had the right to nominate a non-functional director on the Board of the Company on equitable considerations, despite having rejected its claim of having become 1/3rd shareholder on an oral understanding that it would have a right to

nominate a director on the Board. It was submitted that the law pertaining to jurisdiction to be exercised by the CLB under Section 397 read with Section 402 of the Companies Act, was completely misinterpreted to hold that a direction for nomination of a non-functional director was for the purposes of doing 'substantial justice'. It was submitted that equitable considerations could not have a place in such a situation, where neither the Articles of Association of the Company, nor any provision under the Companies Act, justify such a direction issued by the CLB.

18. Reference was made to relevant judgements in this context and it was submitted that the same were not taken into consideration by the CLB, while holding in favour of Aasia Properties to the aforesaid limited extent. It was emphasized that Aasia Properties, as 1/3rd shareholder, had all through benefited from the success of the hotel run by the Company. The shareholding of Aasia Properties never dwindled and the CLB itself found that the Company always made available documents and record, as demanded by Aasia Properties. In such circumstances, it was submitted that the direction issued in favour of Aasia Properties deserved to be set aside.

19. It was further submitted that in the facts of the present case, the petition filed by Aasia Properties before the CLB was barred by limitation. Even if the pleadings on its behalf were to be accepted, admittedly from 1989 onwards, it was aware about the assertion of the Company that B. Raheja Group had become 1/3rd shareholder in the Company on 15.01.1983, as also the fact that according to the Company, Ashok Hinduja representing Aasia Properties, had ceased to be the director at least from 1982 onwards. Yet, the petition before the CLB was filed after about 23 years in September 2005. The cause of action was triggered much earlier and hence, it ought to be held that the

petition itself deserved to be dismissed, as being barred by limitation. It was submitted that the CLB erred in holding against Rahejas in this context. On this basis, it was submitted that Company Appeal No.06 of 2006 deserved to be allowed and Company Appeal No.11 of 2006 deserved to be dismissed.

20. Mr. Janak Dwarkadas, learned senior counsel appearing for respondent Nos.10 to 14 and 21 to 23 in Company Appeal No.11 of 2006 supported the submissions made by the learned senior counsel appearing for the appellant in Company Appeal No.06 of 2006 and other respondents in Company Appeal No.11 of 2006. Although, the learned senior counsel appearing for the appellant in Company Appeal No.06 of 2006 did make submissions on the question of jurisdiction exercised by CLB under Section 397 read with Section 402 of the Companies Act, detailed and elaborate submissions in this regard were specifically made by the learned senior counsel appearing for respondent Nos.10 to 14 and 21 and 23 in Company Appeal No.11 of 2006. It was submitted that a pure question of law arose, in the light of erroneous finding rendered by the CLB in this regard.

21. In this context, attention of this Court was specifically invited to paragraph Nos.29 and 30 of the impugned order of the CLB. It was submitted that the CLB committed a grave error in holding that once oppression was established under Section 397 of the Companies Act, the winding-up of the company on just and equitable ground would be automatic and all that the CLB was required to do was to form an opinion that such winding-up of the company would be in the interest of the company/shareholders. It was submitted that this finding was in the teeth of the settled position of law and unless the twin requirements under Section 397 of the company are satisfied, there is no question of the CLB exercising jurisdiction to pass any order. On this basis, it was

said that a jurisdictional error was committed by the CLB.

22. It was submitted that the Supreme Court, in its judgements in *Shanti Prasad Jain vs. Kalinga Tubes Ltd.*, **AIR 1965 SC 1535**; *Needle Industries (India) Ltd. and others vs. Needle Industries Newey (India) Holding Ltd. and others*, **(1981) 3 SCC 333**; *Sangramsinh P. Gaekwad and others vs. Shantadevi P. Gaekwad (dead) through LRs and others*, **(2005) 11 SCC 314**; *Kamal Kumar Dutta and another vs. Ruby General Hospital Ltd. and others*, **(2006) 7 SCC 613**; and *Hanuman Prasad Bagri and others vs. Bagress Cereals Pvt. Ltd. and others*, **(2001) 4 SCC 420**, had dealt with the nature of jurisdiction exercised by the CLB under Sections 397/398 and 402 of the Companies Act. It was submitted that on a proper reading and interpretation of the said judgements, it was evident that the twin requirements of oppression as well as just and equitable grounds for winding-up of the company, were required to be satisfied, even before the powers specified under Section 402 of the Companies Act could be exercised by the CLB. It was submitted that there was no question of the second limb of the twin requirements being automatically satisfied upon oppression being established, as erroneously held by the CLB in the impugned order. It was submitted that in any case, the finding of oppression itself was wholly unsustainable. In any case, it was submitted that unless the twin requirements stood satisfied, the CLB had no jurisdiction to pass any order in the matter.

23. It was submitted that some observations made by the Supreme Court in the case of **Needle Industries (India) Ltd. and others vs. Needle Industries Newey (India) Holding Ltd. and others** (*supra*) and **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*), were being read out of context. It was indicated that the position of law has been clarified in the case of **Hanuman**

Prasad Bagri and others vs. Bagress Cereals Private Limited and others (*supra*) and in that context, judgement of the Calcutta High Court in the case of *Bagree Cereals (P) Ltd. and others vs. Hanuman Prasad Bagri and others*, **2000 SCC OnLine Cal 371** also needs to be perused. It was submitted that in any case, a subsequent judgement in the case of *Tata Consultancy Services Limited vs. Cyrus Investments Private Limited and others*, **2021 SCC OnLine SCC 272** had put the position of law beyond any doubt.

24. It was submitted that the contention raised on behalf of Aasia Properties that even if the twin requirements under Section 397 of the Companies Act are not satisfied, the Court still retains power to do substantial justice and to pass orders, cannot be accepted, as the CLB, being a creature of the statute, cannot exercise powers beyond the statute that created it. On this basis, it was submitted that the CLB committed grave error in declaring that Aasia Properties had the right to nominate a non-functional director on the Board of the Company, despite the fact that the requirements of Section 397 of the Companies Act were not satisfied. On this basis, it was submitted that Company Appeal No.06 of 2006 deserves to be allowed and Company Appeal No.11 of 2006 deserves to be dismissed.

25. Mr. Navroz Seervai, learned senior counsel appearing for Aasia Properties i.e. respondent No.1 in Company Appeal No.06 of 2006 and appellant in Company Appeal No.11 of 2006, submitted that the CLB in the present case, committed grave error and rendered perverse finding on the most crucial aspect of the matter pertaining to the date when the shares were transferred and Aasia Properties became 1/3rd shareholder in the Company. In this context, the learned senior counsel appearing for Aasia Properties copiously referred to the register of members, register of transfer of shares and minutes book of the company, to impress upon

this Court that there were widespread additions, alterations, deletions and omissions in the said record, demonstrating blatant manipulation by the Company at the behest of Rahejas. It was submitted that the said discrepancies clearly demonstrated the fraud committed upon Aasia Properties. The shares were transferred in favour of Aasia Properties to the extent of 1/3rd shareholding on 30.08.1982 and yet, it was claimed before the CLB that the transfer of shares actually took place on 28.01.1983. It was submitted that the overwriting, deletions and additions in the register of share transfers, clearly show that the record was manipulated in such a manner, only with the intention of claiming that Aasia Properties became a shareholder only on 28.01.1983. In this context, the mix-up in the serial/entry numbers and the alleged obvious fraud was sought to be emphasized upon. It was submitted that such blatant manipulations and fraud committed on Aasia Properties was erroneously brushed aside by the CLB in the impugned order by observing that the maintenance of records in the company was not upto the mark.

26. It was further submitted that emphasis placed on the date mentioned on the share certificates being 28.01.1983, was misplaced in the facts and circumstances of the present case, as such share certificates under Section 84 of the Companies Act, at best, amount to *prima facie* evidence, which was obviously rebuttable. Relying upon the additions, deletions and omissions made in the aforesaid record, it was submitted that the presumption under Section 84 of the Companies Act was clearly rebutted and the CLB ought to have held that Aasia Properties became 1/3rd shareholder on 30.08.1982. It was also claimed that the minutes book was tampered with, further indicating the fraud committed on Aasia Properties. On this basis, it was submitted that once it was established that Aasia Properties became 1/3rd shareholder of the Company on 03.08.1982, the very transfer of 1/3rd shares of Shah Group

and B. Raheja Group on 15.01.1983, stood hit by Article 38 of the Articles of Association. The right of pre-emption of Aasia Properties was violated and therefore, the CLB could not have held against it. It was submitted that under Article 38 of the Articles of Association, the transferor of shares could not have any say and therefore, the say of only the remaining shareholders could be taken into consideration, while applying the said Article. On this basis, it was submitted that even the transfer of shares made subsequent to 28.01.1983, was hit by Article 38 of the Articles of Association, as the right of pre-emption of Aasia Properties was violated.

27. In this regard, it was submitted that although the CLB found that the requirement of Article 38 of the Articles of Association did not appear to be expressly satisfied in the transfer of shares subsequent to 28.01.1983, no purpose would be served by cancelling such transfer of shares. It was submitted that the CLB committed grave error in holding that it would be a fruitless exercise to do so, simply for the reason that the right of pre-emption was a right vested in Aasia Properties, which could not have been violated by Rahejas and therefore, the petition filed before the CLB ought to have been allowed. Reliance was placed on the judgement of the Surpeme Court in the case of **Vijayalakshmi (Smt) vs. B. Himantharaja Chetty and another** (*supra*), on the aspect of right of pre-emption.

28. It was further submitted that there was sufficient material before the CLB to accept the oral understanding relied upon by Aasia Properties for the right to nominate its director on the Board of the Company. Much emphasis was placed on the assertion that Ashok Hinduja of Aasia Properties was appointed as an additional director on the understanding that Aasia Properties would be purchasing shares in the Company and that it would be investing huge amounts into the Company. Reference

was made to the investments of Aasia Properties in the Company and it was emphasized that such investments were made with the obvious intention of exercising the right to nominate a director on the Board of the Company. It was submitted that the CLB erred in appreciating the said aspect of the matter and holding against Aasia Properties in that regard.

29. In this backdrop, it was submitted that in any case, the limited relief granted by the CLB to the effect that Aasia Properties had the right to nominate a non-functional director on the Board of the Company, cannot be interfered with. The same was granted on equitable considerations, in the light of the fact that Aasia Properties, as a single entity, holds 1/3rd share in the Company with huge investments having been made. It was submitted that Rahejas were wrongly proceeding on the basis that the original petitioner i.e. Aasia Properties was assuming that the twin requirements under Section 397 of the Companies Act, are not required to be satisfied. It was submitted that the settled position of law in the context of the aforementioned judgements of the Supreme Court, particularly **Needle Industries (India) Ltd. and others vs. Needle Industries Newey (India) Holding Ltd. and others** (*supra*) and **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*), demonstrated that the CLB has powers that can be exercised in a given case, even if the requirements of Section 397 of the Companies Act read with Section 402 thereof, are not satisfied. It was submitted that the settled position of law indicates that the Court retains power of the widest amplitude to do substantial justice between the parties and in this context, reliance was placed on the judgement of the Supreme Court in the case of *Bennet Coleman vs. Union of India*, **(1971) SCC OnLine Bom 41**, which was approved by the Supreme Court in the case of **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*).

30. It was submitted that the CLB was conscious of the said position of law and in that context, exercised such power to declare that Aasia Properties had the right to nominate a non-functional director on the Board of the Company. It was submitted that such non-functional director would only be an observer and being 1/3rd shareholder, Aasia Properties is clearly entitled to the said relief, so that it is in a position to access the records of the company and to consider whether steps taken by the Company are in the interest thereof. It was submitted that the vehemence with which Rahejas, who are 2/3rd shareholders, are opposing such limited relief granted to Aasia Properties (1/3rd shareholder), shows that the finding regarding oppression, rendered by the CLB, is justified.

31. On the question of limitation, it was submitted that there was no substance in the contention raised on behalf of Rahejas. The CLB correctly found that only when the records became available in the entirety in the year 2004 to the original petitioner i.e. Aasia Properties, that it came to know about the manipulations and fraud, giving rise to the cause of action to file the petition before the CLB. The oppressive acts of Rahejas were continuous and hence, there was no question of the petition filed by Aasia Properties before the CLB, being dismissed on the ground of limitation.

32. On this basis, it was submitted that Company Appeal No.06 of 2006 deserved to be dismissed and Company Appeal No.11 of 2006 deserved to be allowed, as a consequence of which the original company petition filed before the CLB ought to be allowed in its entirety.

33. The submissions made on behalf of the rival parties are required to be considered in the backdrop of the statutory requirement under Section 10F of the Companies Act, which mandates that such an appeal is to be entertained and decided on question(s) of law arising from the

impugned order of the CLB. Having considered the rival submissions, in detail, the following questions arise for consideration in these appeals:-

A. Whether the CLB, in the impugned order, rendered perverse findings with regard to the changes / deletions / modifications made in the register of share transfers by holding that the same did not amount to manipulation of the records and that the same did not amount to fraud, while holding against Aasia Properties?

B. Whether the CLB was justified in holding against Aasia Properties i.e. the original petitioner to come to a conclusion that it became 1/3rd shareholder in the Company only on 28.01.1983, solely on the basis of the dates mentioned in the share certificates, ignoring the alleged manipulations made in the register of share transfers in the records of the Company?

C. Whether the impugned order passed by the CLB suffers from perversity while rendering a finding that Aasia Properties became a shareholder of the Company only on 28.01.1983 without specifically finding that the entries made in the register dated 30.08.1982 were null and void?

D. Whether the CLB committed an error in applying Article 38 of the Articles of Association pertaining to the right of pre-emption while holding that the transfer of shares by the Shah Group in favour of the B. Raheja Group was not hit by the said Article?

E. Whether the CLB erred in holding that even though the Raheja Group had not given their consent in writing for the transfer of shares made subsequent to 28.01.1983, Article 38 of the Articles of Association could not be

applied to hold in favour of Aasia Properties?

F. Whether the CLB was justified in holding that it would be a fruitless exercise to consider violation of Article 38 of the Articles of Association as regards transfer of shares post 28.01.1983 as the Raheja Group, in any case, held 2/3rd shares, thereby misinterpreting Article 38 and in the alternative, failing to give effect to the same in accordance with law?

G. Whether the CLB was justified in holding that once oppression is established while exercising jurisdiction under Section 397 of the Companies Act, the winding up of the Company on just and equitable grounds is automatic and the CLB is only required to form an opinion that such winding up would not be in the interest of the company / shareholders, in the teeth of the settled position of law laid down by the Supreme Court?

H. Whether the CLB correctly applied the ratio of judgements of the Supreme Court in the cases of **Shanti Prasad Jain Vs. Kalinga Tubes Limited** (*supra*), **Needle Industries (India) Limited Vs. Needle Industries Newey (I) Holding Limited and others** (*supra*), **Sangramsinh P. Gaekwad Vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*), **Kamal Kumar Dutta Vs. Ruby General Hospital Limited** (*supra*) and **Hanuman Prasad Bagri and others Vs. Bagress Cereals Private Limited and others** (*supra*)?

I. Whether the original petitioner i.e. Aasia Properties is justified in contending that even if the requirements of Section 397 of the Companies Act are not satisfied and although powers under Section 402 thereof cannot be

exercised, the CLB can still exercise power beyond the scope of the said provisions for doing justice between the parties?

J. Whether the CLB was justified in directing that Aasia Properties had right to nominate a non-functional director on the Board of the Company, despite holding that it had failed to make out the case of any oral understanding of right to nominate a director on the Board?

K. Whether the petition filed by the original petitioner Aasia Properties before the CLB was hit by limitation?

34. Questions 'A', 'B' and 'C' can be taken up together for consideration as they pertain to the allegations levelled by Aasia Properties i.e. the original petitioner before the CLB as regards widespread changes, deletions / modifications made in the register of share transfers and the implication thereof on the claim of Aasia Properties that it became 1/3rd shareholder by transfer of shares on 30.08.1982 itself. Considering the contentions raised on behalf of Aasia Properties and the findings rendered in the impugned order by the CLB, the aforesaid questions 'A', 'B' and 'C' arise on the aspect of alleged perversity of such findings.

35. In this context, a perusal of the findings rendered in the impugned order of the CLB shows that although the allegations regarding certain modifications being made in the register of share transfers appear to have been accepted by the CLB, it has been held that Aasia Properties cannot simply rely upon such discrepancies to make out its case of having become 1/3rd shareholder on 30.08.1982. Instead, the CLB has relied upon share certificates dated 28.01.1983 to hold that Aasia Properties became such a shareholder only on the said date.

36. In this context, reference to relevant provisions of the Companies Act would be appropriate. Section 84 thereof provides that a share certificate shall be *prima facie* evidence of the title of the member to such shares, while Section 108 pertains to transfer of shares not to be registered except on production of instrument of transfer. This provision also requires the instrument of transfer to be duly stamped and executed and Section 164 of the Companies Act specifies that the register of members shall be a *prima facie* evidence of any matters directed or authorized to be inserted.

37. The learned senior counsel appearing for Aasia Properties copiously referred to the register of share transfers and highlighted the discrepancies therein. Serious allegations of manipulation and fraud were made against the Company, particularly Rahejas and it was alleged that when it was clear that entries were erased and new entries were made and in some instances, there was overwriting, it was clear that such steps had been taken only to deprive Aasia Properties of its claim of being a 1/3rd shareholder in the Company from 30.08.1982 onwards. Much emphasis was placed on the manner in which such alleged fraud had been committed.

38. On the other hand, the learned senior counsel appearing for Rahejas submitted that certain additions and modifications in the register were obvious and that, those were undertaken to correct certain mistakes. It was submitted that, at worst, registers were not maintained in the manner expected. It is relevant to note that even the CLB in the impugned order observed that the said state of affairs indicated that the maintenance of records in the company was not upto the mark. This Court is inclined to agree with the said finding rendered by the CLB.

39. At the same time, the party that approaches the Court (in this case the 'CLB') is required to stand on its own legs and to produce positive

evidence about assertions made in the petition. Even if the allegations of alleged manipulation are to be taken into consideration, that by itself, cannot be treated as positive evidence for demonstrating the date on which the shares were transferred in favour of Aasia Properties to become 1/3rd shareholder in the Company. Under the aforementioned provisions of the Companies Act, a share certificate assumes vital importance and it is statutorily recognized as *prima facie* evidence of title in shares. In the present case, the share certificates, that crucially bear the stamp of the ROC, show the date '28.01.1983'. This is a positive piece of evidence to ascertain the date on which Aasia Properties acquired the shares to become 1/3rd shareholder in the Company. The CLB correctly relied upon the said document to hold against Aasia Properties on its claim of having become 1/3rd shareholder prior in point of time i.e. 30.08.1982. The primary and the basic documents in this case i.e. the share certificates demonstrated that it was on 28.01.1983 that Aasia Properties became 1/3rd shareholder of the Company. The CLB also correctly came to the conclusion that the share certificates under Section 84 of the Companies Act have precedence over Section 164 thereof, for the reason that the register of members is in control of the Company and it can be susceptible to manipulation. The original petitioner i.e. Aasia Properties could not explain the date on the share certificates and even before this Court, it could not come up with any answer to the same. In this context, Aasia Properties cannot claim that the CLB should have rendered a finding on the entries in the register dated 30.08.1982 as being null and void, before returning any finding on the date on which it became 1/3rd shareholder of the Company. This Court is of the opinion that the positive documentary material, in the light of the statutory mandate of the Companies Act, was properly taken into consideration by the CLB to render finding against Aasia Properties and therefore, it cannot be said that there is any perversity in the said

findings.

40. The Supreme Court in the case of **Mannalal Khetan and others vs. Kedar Nath Khetan and others** *(supra)* found that unless a proper instrument of transfer duly stamped in terms of Section 108 of the Companies Act is produced, no entry recording transfer of shares can be made in the register. Emphasis was placed on the words '*shall not register*' to hold that the same are of mandatory character. Rahejas are justified in relying upon the said position of law to contend that Aasia Properties, in the present case, failed to justify its claim of having become 1/3rd shareholder of the Company on 30.08.1982. Therefore, questions 'A', 'B' and 'C' are answered against Aasia Properties.

41. Questions 'D', 'E' and 'F' pertain to the interpretation and effect of Article 38 of the Articles of Association relating to right of pre-emption of purchasing the shares, when any shareholder intends to transfer the shares to a third party. In order to consider the rival submissions and to answer these questions, it would be appropriate to refer to Article 38 of the Articles of Association. It reads as follows:-

> "38. A share may be transferred by the member or other persons entitled to transfer the same, to any member selected by the Transferor or a person approved by the holders of not less than two third of the issued Share Capital of the Company, but save as aforesaid, and save as provided by Articles 42 to 45 hereof, no share shall be transferred to a person who is not a member as long as any member is willing to purchase the same at the face value."

42. A perusal of the aforesaid Article shows that the right of pre-emption would arise only if 2/3rd shareholders do not approve of transfer of shares to third party. In other words, in a situation where 2/3rd shareholders do approve such proposed transfer of shares, there is no question of the right of pre-emption being exercised.

43. Since this Court has already come to a conclusion hereinabove

that the finding rendered by the CLB is correct, to the effect that Aasia Properties became 1/3rd shareholder only on 28.01.1983, there is no question of applying the right of pre-emption under Article 38 of the Articles of Association to the transfer of 1/3rd shares by the Shah Group to the B. Raheja Group on 15.01.1983. At that point in time, Aasia Properties was not even a shareholder and therefore, there was no question of it having any right of pre-emption in the matter.

44. The aforesaid Article has been pressed into service by Aasia Properties even to challenge transfers of shares made subsequent to 28.01.1983. In that regard, it has been claimed that on a proper reading of the said Article, the transferor would not have a say while considering as to whether 2/3rd shareholders have approved the transfer of shares to a third party. On a plain reading of the above-quoted Article 38, this Court is unable to agree with the aforesaid contention raised on behalf of Aasia Properties. In this context, the contention raised on behalf of Rahejas appears to be justified that when a restriction is specified in an Article, it must be read strictly and in the case of any ambiguity, it must be construed in favour of the shareholder, who is desirous of making the transfer. In the case of **V. B. Rangaraj vs. V. B. Gopalakrishnan and others** *(supra)*, the Supreme Court has approved of the said position of law. Applying the same to the facts of the present case, this Court is unable to agree with the submissions made on behalf of Aasia Properties. Such an interpretation sought to be foisted on behalf of Aasia Properties appears to be anomalous on a plain reading of the above-quoted Article. The crucial words in the Article are '*approved by the holders of not less than 2/3rd of the issued Share Capital of the company*'. Therefore, it cannot be accepted that while calculating 2/3rd of the issued share capital of the Company, the shareholder, desirous of transferring its share, would not be taken into account. Thus, the aforesaid submission is rejected.

45. There is also substance in the approach adopted by the CLB that even if express consent of 2/3rd shareholders was not manifested by the material on record, the entire exercise would be fruitless, for the reason that Raheja Group admittedly had 2/3rd shareholding in the Company. It is also of no consequence for Aasia Properties to contend that if the transfers made subsequent to 28.01.1983 are to be set aside by applying Article 38 of the Articles of Association, such shares would automatically stand transferred to Aasia Properties. This is because even if the contention raised on behalf of Aasia Properties on the interpretation of application of Article 38 of the Articles of Association, is to be accepted, the transferred shares would revert back to the transferors. There is no reason why the said shares would inure to the benefit of Aasia Properties, for it to claim an increase in its percentage of shareholding.

46. There is no substance in the contention raised on behalf of Aasia Properties that the judgement of the Supreme Court in the case of **Vijayalakshmi (Smt) vs. B. Himantharaja Chetty and another** *(supra)* should inure to its benefit as it would stand substituted in place of the transferee by exercising the right of pre-emption under the aforesaid Article. In the first place, the said judgement pertains to immovable property and the pre-emptor, as correctly pointed out on behalf of Rahejas, was an identified party. While in this case, not only Aasia Properties but also shareholders, other than the transferor, would be entitled to exercise such right of pre-emption. Hence, the theory of substitution propounded on behalf of Aasia Properties is rejected. It is also highlighted on behalf of Rahejas that while challenging such transfers subsequent to 28.01.1983, the original petitioner i.e. Aasia Properties has failed to give particulars and raise grounds of challenge that would have enabled Rahejas to meet the same. It is pointed out before this Court that majority of such transfers involved change of

name of a member company, deletion of a single name from a joint holder and transfers necessitated due to demise of shareholder to wholly owned family entities and other such instances.

47. Therefore, the CLB correctly came to the conclusion that the exercise insisted upon by Aasia Properties on the basis of its interpretation of Article 38 of the Articles of Association would be a fruitless exercise. In that light, questions 'D', 'E' and 'F' are also answered against Aasia Properties and in favour of Rahejas.

48. Questions 'G', 'H' and 'I' are taken up for consideration together as they involve the question of exercise of jurisdiction by CLB under Section 397 and 402 of the Companies Act, in the light of judgements rendered in that context. It would be appropriate to refer to the two provisions before considering the rival submissions in the context of the said questions. Sections 397 and 402 of the Companies Act read as follows:-

> "**397. Application to Tribunal for relief in cases of oppression.**—(1) Any member of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.
>
> (2) If, on any application under sub-section (1), the Court is of opinion-
>
> (a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and
>
> (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

402. Powers of Tribunal on application under section 397 or 398. - Without prejudice to the generality of the powers of the Tribunal under section 397 or 398, any order under either section may provide for—

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand; and any of the following persons, on the other, namely:—

(i) the managing director,

(ii) any other director,

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(v) the manager, upon such terms and conditions as may, in the opinion of the [Tribunal], be just and equitable in all the circumstances of the case;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual; be deemed in his insolvency to be a fraudulent preference;

(g) any other matter for which in the opinion of the Tribunal it is just and equitable that provision should be made."

49. The above-quoted provisions have come up for consideration in various cases. A bare perusal of Section 397 of the Companies Act indeed shows that twin requirements are to be satisfied before the CLB could exercise power under the said provision. The first requirement is for the CLB to come to a conclusion under Section 397(2)(a) of the

Companies Act to the effect that the affairs of the company are conducted in a manner prejudicial to public interest or in a manner oppressive to any member / members. The second requirement under Section 397(2)(b) is for the CLB to reach a conclusion that the facts justify issuing an order of winding up on the ground that it is just and equitable that the Company be wound up, but for the fact that winding up of the Company would unfairly prejudice such member. The use of the word '*and*' between clauses (a) and (b) of Section 397(2) of the Companies Act itself makes it abundantly clear that both the clauses must be satisfied before the CLB can invoke power under the said provision. It is obvious that the CLB would have to render findings on both the clauses by application of mind to the material in each individual case.

50. Section 402 of the Companies Act, quoted hereinabove, specifically shows that power thereunder can be exercised by the CLB upon requirements of Section 397 thereof being satisfied and issue directions over and above, in terms of clauses (a) to (g) of the said provision. Clause (g) refers to any matter which the CLB considers, in its opinion, to be just and equitable. It is evident that the exercise of power by the CLB under Sections 397 and 402 of the Companies Act is intertwined and unless the twin requirements of Section 397 are satisfied, the powers of wide amplitude under Section 402 cannot be resorted to. In the case of **Shanti Prasad Jain Vs. Kalinga Tubes Limited** (*supra*), the Supreme Court took note of the aforesaid position and held as follows:-

> "13. … It gives a right to members of a company who comply with the conditions of Section 399 to apply to the court for relief under Section 402 of the Act or such other reliefs as may be suitable in the circumstances of the case, if the affairs of a company are being conducted in a manner oppressive to any member or members including any one or more of those applying. The court then has power to make

> such orders under Section 397 read with Section 402 as it thinks fit, if it comes to the conclusion that the affairs of the company are being conducted in a manner oppressive to any member or members and that wind up the company would unfairly prejudice such member or members, but that otherwise the facts might justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. The law however has not defined what is oppression for purposes of this section, and it is left to courts to decide on the facts of each case whether there is such oppression as - calls for action under this section."

51. This position has been consistently followed in subsequent judgements of the Supreme Court, including judgements in the case of **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*) and **Kamal Kumar Dutta Vs. Ruby General Hospital Limited** (*supra*). The relevant portion of the judgement in the case of **Kamal Kumar Dutta Vs. Ruby General Hospital Limited** (*supra*) reads as follows:-

> "30. … As per Section 397, any person who is eligible to apply under Section 399, can apply before CLB that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members and that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up. If the Tribunal is satisfied that there exists a situation where the business of the company is being conducted in a manner prejudicial to the interest or in a manner oppressive to any member or members and that winding up of the company would unfairly prejudice such member or members but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, it may with a view to bringing to an end the matters complained of, make such order as it deems fit. Therefore, what it transpires in the present context is, we have to examine whether the acts of the Company were oppressive to any member or members justifying the winding up as just and equitable. It is not necessary that in every case the relief of winding up should be made. It is an option with the Tribunal

if it considers that in order to bring to an end the matters complained of, it can pass orders for winding up if it is just and equitable or it can pass such order as it thinks fit. It does not necessarily mean that in every case such winding-up order need be passed. Similarly, under Section 398 also, if the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or that a material change not being a change brought about by, or in the interests of any creditors including debenture-holders, or any class of shareholders of the company, has taken place in the management or control of the company whether by an alteration in its Board of Directors, or Manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, the Tribunal can order winding up of the company in order to bring to an end of all this mismanagement or make such order as it thinks fit. The condition of Section 399 of the Act is also equally applicable in the present case. In fact, Section 398 talks much about the mismanagement, or apprehension of mismanagement in the affairs of the company. As against this, Section 397 deals with oppression of the members. Therefore, both Sections 397 and 398 to some extent have commonality for the purpose like, prejudicial to public interest and application for winding up can be made by members as per Section 399. Apart from this commonality, for the purpose of Section 397, if the company acts in a manner oppressive to any member or members and if it otherwise justifies on the ground of just and equitable, then the Tribunal can wind up the company or pass such order as it thinks fit. Whereas in Section 398 the basic features are that the management is working in a manner prejudicial to the interest of the company by bringing about the material changes in the management or by alteration in its Board of Directors, then in that case, if it is found by the Tribunal that in order to bring to an end or preventing further mismanagement, it can pass such order as it deems fit including that of winding up. Therefore, the parameters in both the sections i.e. Sections 397 and 398 are very clear. It will depend upon case to case. No hard-and-fast rule can be laid down. In the case of oppression to the interest of member or members, if the Tribunal is satisfied that the winding up is just and equitable then it can do so or pass any order as it thinks fit. Likewise, in Section 398 if the management wants to bring any material change in the

> management and control of the company prejudicial to the interest of the company, then in that case, appropriate order can be passed by the Tribunal. The acts which would amount to oppression to the members or mismanagement or material alteration in the control of the company or prejudice to the interest of the company would depend upon the facts of each case."

52. In this backdrop, a perusal of the impugned order passed by the CLB shows that in paragraph 30 thereof, it has held, upon an analysis of Section 397 of the Companies Act, that once oppression is established, the winding up on just and equitable grounds would be 'automatic', and that the CLB is only required to form an opinion that such winding up would not be in the interest of the company / shareholders. This Court is of the opinion that the aforesaid finding rendered by the CLB is unsustainable in the light of the settled position of law. It is wrongly held by the CLB that winding up on just and equitable grounds would be 'automatic' upon it being established that oppression had occurred. Under Section 397 of the Companies Act, the CLB is required to render findings on both clauses (a) and (b) of sub-section (2) of Section 397 upon proper application of mind to the material on record and there is no question of clause (b) being automatically satisfied upon the requirement of clause (a) being satisfied. The learned senior counsel appearing for Rahejas are justified in raising strong objection to the aforesaid finding of the CLB. Hence, the said finding deserves to be set aside and it is accordingly set aside.

53. In this situation, it was vehemently submitted on behalf of Aasia Properties that even if the settled position of law indeed indicates that both the twin requirements are to be satisfied under Section 397(2)(a) and (b) of the Companies Act, it is also a settled position of law that even if the requirements are not satisfied, the Court is not powerless to pass effective orders for substantial justice between the parties. It is the case of Aasia Properties that the CLB was conscious of the said position

and hence it exercised such a power beyond Sections 397 and 402 of the Companies Act to do substantial justice in the matter, for reasons specifically recorded in paragraphs 29 and 30 of the impugned order. In this regard, much emphasis was placed on the judgements of the Supreme Court in the cases of **Needle Industries (India) Ltd. and others vs. Needle Industries Newey (India) Holding Ltd. and others** (*supra*) and **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*).

54. In the case of **Needle Industries (India) Ltd. and others vs. Needle Industries Newey (India) Holding Ltd. and others** (*supra*), the Supreme Court found that the company petition failed, but at the same time observed that the Court was not powerless to do substantial justice between the parties. Much emphasis was placed on behalf of Aasia Properties on paragraph 199 of the judgement in the case of **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*), wherein the Supreme Court made a similar observation to the effect that in a given case, the Court can grant such relief so as to do substantial justice between the parties.

55. This Court is of the opinion that the aforesaid contention raised on behalf of Aasia Properties is based on reading certain sentences of the aforesaid judgements of the Supreme Court, out of context. A perusal of the judgement in the case of **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*) would show that in paragraph 181, it has been held as follows:-

> "181. The jurisdiction of the court to grant appropriate relief under Section 397 of the Companies Act indisputably is of wide amplitude. It is also beyond any controversy that the court while exercising its discretion is not bound by the terms contained in Section 402 of the Companies Act if in a particular fact situation a further relief or reliefs, as the court may deem fit and proper, are warranted. (See *Bennet Coleman & Co. v. Union of India* and *Syed Mahomed Ali v. R.*

> *Sundaramoorthy*) But the same would not mean that Section 397 provides for a remedy for every act of omission or commission on the part of the Board of Directors. Reliefs must be granted having regard to the exigencies of the situation and the court must arrive at a conclusion upon analysing the materials brought on record that the affairs of the company were such that it would be just and equitable to order winding up thereof and that the majority acting through the Board of Directors by reason of abusing their dominant position had oppressed the minority shareholders. The conduct, thus, complained of must be such so as to oppress a minority of the members including the petitioners vis-a-vis the entire body of shareholders which a fortiori must be an act of the majority. Furthermore, the fact situation obtaining in the case must enable the court to invoke just and equitable rules even if a case has been made out for winding up for passing an order of winding up of the company but such winding-up order would be unfair to the minority members. The interest of the company vis-a-vis the shareholders must be uppermost in the mind of the court while granting a relief under the aforementioned provisions of the Companies Act, 1956."

56. It is to be noted that the learned senior counsel appearing for Aasia Properties emphasized that the said judgement of the Supreme Court in the case of **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*) confirmed the findings rendered by the Division Bench of this Court in the case of **Bennet Coleman vs. Union of India** *(supra)*. Hence, this Court perused the said judgement of the Division Bench of this Court and found that the Court had dealt with a specific contention to the effect that although the powers under Sections 397/398 and 402 of the Companies Act were of wide amplitude, they were subject to other provisions of the said Act. It is in this context that the Division Bench of this Court examined the question as to what are the powers of the Court, when it is acting under Sections 397 or 398 read with Section 402 of the Companies Act. In that context, it was examined whether there are any restrictions on the powers of the Court while exercising powers under the said provisions, *inter alia*, compared to the powers vested in the Government in such situations. It

was noticed that while there are limitations or restrictions on the powers to be exercised by the Central Government, there are no such restrictions on the Court, while exercising such powers. It is in this context that the wide amplitude of the powers of the Court was discussed and certain observations were made. The learned Senior Counsel appearing for Rahejas submitted that, on a proper reading of the findings rendered by the Division Bench of this Court in the said case (*Bennet Coleman vs. Union of India*), it would become clear that the power is of widest amplitude necessarily where, in the context of Sections 397, 398 and 402 of the Companies Act, the Court is satisfied about the essential requirements of the said provisions being satisfied in order to exercise such power.

57. In order to appreciate the rival submissions, it would be appropriate that paragraphs 14 and 15 of the aforementioned judgement of the Division Bench of this Court in the case of **Bennet Coleman vs. Union of India** *(supra)* are referred to, which read as follows:-

> "14. In our view, the submissions made by Mr. Sen on the point of legality or otherwise of the impugned orders will have to be appreciated in the context of the principal question as to what are the powers of the court when it is acting in proceedings instituted under sections 397 and 398 read with section 402 of the Companies Act. The questions whether a board of directors of the type indicated in the impugned order could be reconstituted by the court or not and whether the court had power to frame an article inconsistent with the provisions of section 255 of the Act or not must in the ultimate analysis depend upon the true ambit of the powers of the court under section 397 or 398 read with section 402, for, if these sections confer upon the court jurisdiction and powers of the widest amplitude to pass appropriate orders which the circumstances of the case may require, it would be difficult to accept Mr. Sen's submissions that the impugned orders and directions are liable to be set aside on the basis that the reconstituted board or modified article 95 was not in consonance with section 255 of the Act. To correctly appreciate the ambit of the court's jurisdiction and the amplitude of the court's powers under sections 397 and 398

read with section 402 of the Companies Act, 1956, it will be necessary to consider the entire scheme of the Act pertaining to corporate management of companies. At the outset, it may be stated that all these concerned provisions occur in Part VI of the Act which deals with the management and administration of companies. It may further be pointed out that in this part there are eight chapters. Chapter I contains general provisions with regard to corporate management and administration of the companies such as registered office, registers of members and debenture-holders, annual returns, meetings and proceedings, accounts, audit, investigation, etc.; Chapter II, which includes section 255, deals with directors, their qualification, disqualification and remuneration, meetings of the board, board's powers, procedure where directors are interested, etc.; Chapter III deals with managing agents, their appointment, remuneration, restrictions on their powers, etc.; Chapter IV deals with secretaries and treasurers; Chapter IV-A deals with powers of the Central Government to remove managerial personnel from office on the recommendation of the Tribunal; Chapter V deals with arbitration, compromises, arrangements and reconstructions; Chapter VI, which includes sections 397 to 409, deals with prevention of oppression and mismanagement; Chapter VII deals with constitution and powers of advisory committee and Chapter VIII contains miscellaneous provisions. It will thus be seen that section 255 on which substantially the entire argument of Mr. Sen is based is to be found in Chapter II which deals with directors and the constitution of the board, through which agency the corporate management of the affairs of a company is usually undertaken, while Chapter VI, which contains material provisions from sections 397 to 409, deals with matters pertaining to prevention of oppression and mismanagement arising out of corporate management. In other words, it is very clear that Chapter II which includes section 255 deals with corporate management of a company through directors in normal circumstances, while Chapter VI deals with emergent situations or extraordinary circumstances where the normal corporate management has failed and has run into oppression or mismanagement and steps are required to be taken to prevent oppression and/or mismanagement in the conduct of the affairs of a company. It is in view of this scheme which is very apparent on a fair reading of the arrangement of chapters and the sections contained in each chapter which are all grouped under Part VI of the Act that the question will have to be answered as to whether the powers of the court under Chapter VI (which includes sections 397, 398 and 402) should be read as subject to the provisions contained

in the other chapters which deal with normal corporate management of a company and, in our view, in the context of this scheme having regard to the object that is sought to be achieved by sections 397 and 398 read with section 402, the powers of the court thereunder cannot be so read. Further, an analysis of the sections contained in Chapter VI of Part VI of the Act will also indicate that the powers of the court under section 397 or 398 read with section 402 cannot be read as being subject to the other provisions contained in sections dealing with usual corporate management of a company in normal circumstances. As stated earlier, Chapter VI deals with the prevention of oppression and mismanagement and the provisions therein have been divided under two heads under head A powers have been conferred upon the court to deal with cases of oppression and mismanagement in a company falling under sections 397 and 398 of the Act while under head B similar powers have been given to the Central Government to deal with cases of oppression and mismanagement in a company but it will be clear that some limitations have been placed on the Government's powers while there are no limitations or restrictions on the court's powers to pass orders that may be required for bringing to an end the oppression or mismanagement complained of and to prevent further oppression or mismanagement in future or to see that the affairs of the company are not being conducted in a manner prejudicial to public interest. In other words, whenever the legislature wanted to do so it has made a distinction between powers conferred on the Government (vide section 408) and powers conferred on the court (vide section 402) while dealing with similar emergent situations or extraordinary circumstances arising in the management of a company and in the case of the Government it has placed restrictions or limitations on the Government's powers but no restrictions or limitations of anything have been prescribed on the court's powers; if the legislature had desired that the court's powers while acting under section 397 or 398 read with section 402 should be exercised subject to or in consonance with the other provisions of the Act it would have said so. Moreover, the topics or subjects dealt with by sections 397 and 398 are such that it becomes impossible to read any such restriction or limitation on the powers of the court acting under section 402. Under section 397 read with section 402 power has been conferred on the court “to make such orders as it thinks fit” if it comes to the conclusion that the affairs of a company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members and that to wind up the company would

unfairly prejudice such member or members but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up “with a view to bringing to an end the matters complained of”. Similarly, under section 398 read with section 402 power has been conferred upon the court “to make such orders as it thinks fit” if it comes to the conclusion that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or that a material change has taken place in the management or control of the company by reason of which it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, “with a view to bringing to an end or preventing the matters complained of or apprehended”. Both the wide nature of the power conferred on the court and the object or objects sought to be achieved by the exercise of such power are clearly indicated in sections 397 and 398. Without prejudice to the generality of the powers conferred on the court under these sections, section 402 proceeds to indicate what type of orders the court could pass and clauses (a) to (g) are clearly illustrative and not exhaustive of the type of such orders. Clauses (a) and (g) indicate the widest amplitude of the court's power: under clause (a) the court's order may provide for the regulation of the conduct of the company's affairs in future and under clause (g) the court's order may provide for any other matter for which in the opinion of the court it is just and equitable that provision should be made. An examination of the aforesaid sections clearly brings out two aspects, first, the very wide nature of the power conferred on the court, and, secondly, the object that is sought to be achieved by the exercise of such power with the result that the only limitation that could be impliedly read on the exercise of the power would be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by these sections and beyond this limitation which arises by necessary implication it is difficult to read any other restriction or limitation on the exercise of the court's power. We are, therefore, unable to accept Mr. Sen's contention that the court's powers under section 398 read with section 402 should be read as subject to the other provisions of the Act dealing with normal corporate management or that the court's orders and directions issued thereunder must be in consonance with the other provisions of the Act.

15. There is another aspect of sections 397, 398 and 402 which also shows that no such limitation as is sought to be

suggested by Mr. Sen can be read on the court's power while acting under the sections. Section 397 clearly suggests that the court must come to the conclusion that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members of the company and that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up before any order could be passed by it. In other words, instead of destroying the corporate existence of a company the court has been enabled to continue its corporate existence by passing such orders as it thinks fit in order to achieve the objective of removing the oppression to any member or members of a company or to prevent the company's affairs from being conducted in a manner prejudicial to public interest. Similarly, sub-section (2) of section 398 clearly provides that where the court is of the opinion that the affairs of the company are being conducted in a manner suggested in sub-section (1), then, the court may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit. In other words, sections 397 and 398 are intended to avoid winding up of the company if possible and keep it going while at the same time relieving the minority shareholders from acts of oppression and mismanagement or preventing its affairs being conducted in a manner prejudicial to public interest and if that be the objective the court must have power to interfere with the normal corporate management of the company. If under section 398 read with section 402 the court is required by its order to provide for the regulation of the conduct of the company's affairs in future because of oppression or mismanagement that has occurred during the course of normal corporate management, the court must have the power to supplant the entire corporate management, or rather corporate mismanagement by resorting to non-corporate management which may take the form of appointing an administrator or a special officer or a committee of advisers, etc., who could be in charge of the affairs of the company. If the court were to have no such power the very object of the section would be defeated. We must observe in fairness to Mr. Sen that it was not disputed by him that the powers of the court under section 398 read with section 402 of the Companies Act were wide enough to enable the court to appoint an administrator or a special officer or a committee of advisers for the future management of the company and thereby supplant completely the

> corporate management through the board of directors and it was conceded that it should be so for the simple reason that if as a result of corporate management that has been allowed to run for a certain period oppression or mismanagement has resulted, the court should have power to substitute the entire corporate management by some form of non-corporate management and while doing so the court cannot obviously have any regard or be subject to the other provisions dealing with the corporate form of management. But what was urged by Mr. Sen was that if while acting under section 398 read with section 402 the court thought fit to have recourse to a mode of corporate type of management, for example, if the court felt proper to have a board of directors for future management, then such corporate mode of management to be provided by the court should conform to other provisions of the Act dealing with corporate management. Secondly, it will all depend upon the facts and circumstances of each case as to how, in what manner and to what extent the court should allow the voice of the shareholders' directors on the board of directors to prevail over that of the other directors and we do not think that the court's powers in that behalf could in any manner be curbed. In our view, therefore, the position is clear that while acting under section 398 read with section 402 of the Companies Act the court has ample jurisdiction and very wide powers to pass such orders and give such directions as it thinks fit to achieve the object and there would be no limitation or restriction on such power that the same should be exercised subject to the other provisions of the Act dealing with normal corporate management or that such orders and directions should be in consonance with such provisions of the Act."

58. A perusal of the above-quoted paragraphs of the said judgement would show that the Division Bench of this Court did not delineate on powers of the Court even in situations where oppression under Section 397 of the Companies Act was not established. The discussion, debate as also the findings focussed on the powers of widest amplitude exercised by the Court within the domain of the said provisions. Obviously, this would require the factors indicated in Section 397 of the Companies Act to be satisfied, for the Court to exercise such powers of widest amplitude in the context of Section 402 of the Companies Act. Therefore, reliance placed on behalf of Aasia Properties on the said judgement cannot take

its case any further.

59. Even if much emphasis is placed on behalf of Aasia Properties on paragraph 172 of the judgement of the Supreme Court in **Needle Industries (India) Ltd. and others vs. Needle Industries Newey (India) Holding Ltd. and others** (*supra*) and paragraph 199 of **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*), wherein the Supreme Court has indicated that the Court would always have the power to do substantial justice between the parties, observations made in other portions of the said judgements cannot be ignored. Paragraphs 196 to 201 of the judgement in the case of **Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad (dead) through LRs** (*supra*) read as follows:-

> "196. The court in an application under Sections 397 and 398 may also look to the conduct of the parties. While enunciating the doctrine of prejudice and unfairness borne in Section 459 of the English Companies Act, the Court stressed the existence of prejudice to the minority which is unfair and not just prejudice *per se*.
>
> 197. The court may also refuse to grant relief where the petitioner does not come to court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair and that the relief granted should be restricted. (*See London School of Electronics, Re35.*)
>
> 198. Furthermore, when the petitioners have consented to and even benefited from the company being run in a way which would normally be regarded as unfairly prejudicial to their interests or they might have shown no interest in pursuing their legitimate interest in being involved in the company. [*See RA Noble & Sons (Clothing) Ltd., Re38*]
>
> 199. In a given case the court despite holding that no case of oppression has been made out may grant such relief so as to do substantial justice between the parties.
>
> 200. It is now well settled that a case for grant of relief under Sections 397 and 398 of the Companies Act must be made out in the petition itself and the defects contained therein cannot be cured nor the lacuna filled up by other evidence oral or documentary. (*See Bengal Luxmi Cotton*

Mills Ltd., In re32.)

201. In *Shanti Prasad Jain v. Union of India*, it was held that the power of the Company Court is very wide and not restricted by any limitation contained in Section 402 thereof or otherwise."

60. A perusal of paragraphs 196, 197, 198, 200 and 201 of the above-quoted judgement would show the context in which the observation is made by the Supreme Court in paragraph 199 thereof. The whole discussion in the said judgement, including in the above-quoted paragraph 181, is in the context of Sections 397 and 402 of the Companies Act and this cannot be ignored. It is also relevant to note that the Supreme Court itself in the case of **Hanuman Prasad Bagri and others vs. Bagress Cereals Private Limited and others** (*supra*), had an occasion to refer to the said judgement in the case of **Needle Industries (India) Ltd. and others vs. Needle Industries Newey (India) Holding Ltd. and others** (*supra*). In that context, the Supreme Court in the case of **Hanuman Prasad Bagri and others vs. Bagress Cereals Private Limited and others** (*supra*) observed as follows:-

"2. Relying upon the decision in *Needle Industries (India) (P) Ltd. v. Needle Industries Newey (India) Holding Ltd.* it is claimed that even if a case of oppression is not made out by the petitioners, the court is not powerless under Section 397 of the Act to do substantial justice between the parties and, therefore, on the facts available in the case the order made by the learned Company Judge should have been maintained. It is pleaded that it is not possible for the petitioners and the respondents to carry on business of the Company together and the only solution is that one group of shareholders should purchase the shares of the other group and that the petitioners have no objection in selling shares of their group at a proper value.

3. Section 397(2) of the Act provides that an order wtould be made on an application made under sub-section (1) if the court is of the opinion — (1) that the Company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members; (2) that the facts would justify the making of a winding-up order on

> the ground that it was just and equitable that the Company should be wound up; and (3) that the winding-up order would unfairly prejudice the applicants. No case appears to have been made out that the Company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members. Therefore, we have to pay our attention only to the aspect that the winding up of the Company would unfairly prejudice the members of the Company who have a grievance and are the applicants before the court and that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the Company should be wound up. In order to be successful on this ground, the petitioners have to make out a case for winding up of the Company on just and equitable grounds. If the facts fall short of the case set out for winding up on just and equitable grounds no relief can be granted to the petitioners. On the other hand the party resisting the winding up can demonstrate that there are neither just nor equitable grounds for winding up and an order for winding up would be unjust and unfair to them. On these tests, the Division Bench examined the matter before it."

61. Thus, it becomes evident that the requirements of Section 397 of the Companies Act are indeed required to be satisfied for the CLB in the instant case to have exercised jurisdiction, even if of wide amplitude, considering Section 402 of the Companies Act. It cannot be disputed that a Court or an authority, which is created by a Statute, can exercise power limited to the scope provided under that Statute itself. Such a Court or authority cannot exercise powers beyond the provisions of such a Statute. In that sense, it is evident that the CLB, in the present case, assumed jurisdiction to entertain and pass orders on the company petition filed by Aasia Properties, invoking jurisdiction under Section 397 of the Companies Act, only upon Aasia Properties satisfying the twin requirement indicated under the said provision. Upon failure to satisfy the said requirements, the CLB would have no power or authority to pass an order.

62. Even if it was to be held that such power could be exercised, it would necessarily have to be justified by the facts of the individual case.

It cannot be said that the party that approaches the CLB invoking jurisdiction under Section 397 of the Companies Act and seeking even wide-ranging reliefs under Section 402 thereof, is absolved of the burden of satisfying the statutory provisions, to claim the relief, which was not even claimed in the petition filed before the CLB. Therefore, this Court is unable to agree with the finding rendered by the CLB in paragraph 30 of the impugned order and questions 'G' to 'I' are answered accordingly.

63. Question 'J' pertains to the direction issued by the CLB in the impugned order, declaring that Aasia Properties has right to nominate a non-functional director on the Board of the Company. This direction has been issued despite rendering a specific finding against Aasia Properties that it failed to prove any oral understanding or arrangement about its right to nominate the director on the Board of the Company. The CLB considered the entire material on record and came to a considered conclusion that there could be no legitimate expectation on the part of Aasia Properties and that it failed to make out its case of an 'oral understanding' about right to nominate a director on the Board of the Company. This Court has also considered the material on record and it is found that no such oral understanding or arrangement can be discerned from the material on record. The Additional Director - Ashok Hinduja, initially appointed, was not confirmed and / or resigned as per record of the Company. This came to the knowledge of Aasia Properties admittedly as far back as in 1989. Only in the company petition filed in September 2005 and earlier in communications exchanged between the parties, a few months before that, Aasia Properties, for the first time, floated the theory of such oral understanding. In that light, the CLB correctly came to the conclusion that no such oral understanding was discernible and hence, held against Aasia Properties. Therefore, the case of oppression with which Aasia Properties came to the CLB stood rejected on merits. In that light, the scope to exercise power under

Section 397 of the Companies Act was not satisfied and the CLB ought to have stopped at that stage.

64. But, having rendered a negative finding against the original petitioner i.e. Aasia Properties on the question of alleged oppression, the CLB proceeded on the basis of 'equitable considerations'. This approach of the CLB is erroneous. In the first place, delay itself would defeat equity. There is no dispute about the fact that at least from 1989 onwards, if not earlier, Aasia Properties were aware that 1/3rd shares of the Shah Group had been transferred to the B. Raheja Group and that, according to the Company, Ashok Hinduja was no longer the director of the Company. Aasia Properties was holding 1/3rd shares and it continued to do so. It is undisputed that rights shares were always offered to it, ensuring that 1/3rd shareholding of Aasia Properties was and is maintained throughout. It is a matter of record and so found by the CLB that whenever Aasia Properties demanded documents and inspection, the same was indeed granted by the Company. These factors indicate that Aasia Properties essentially played the role of an investor in the Company. The hotel run by the Company has been doing excellent business and there is no dispute that Aasia Properties, as 1/3rd shareholder, is enjoying benefit of such business. Therefore, the fact that Aasia Properties approached the CLB, 23 years after the first alleged trigger point of the cause of action or at least 17 years after gaining knowledge about transfer of 1/3rd shares by the Shah Group to the B. Raheja Group and the claim of the Company that Ashok Hinduja was no longer the Director, shows that there was indeed delay on the part of Aasia Properties to claim any relief and this would clearly be a relevant factor even if equities were to be considered. But, the CLB ignored all these factors and proceeded on equitable considerations to hold in paragraph 29 of the impugned order that, in the light of the long association of Aasia Properties as 1/3rd shareholder and it being an

investor, denial of 'equitable right to have a nominee on the Board' was an act of oppression. Strangely, the CLB invented its own case of oppression, despite having rejected the claim with which the original petitioner i.e. Aasia Properties had approached the CLB as regards the theory of oppression. Thereupon, the CLB compounded the error by holding in paragraph 30 that, once oppression was established, winding up on just and equitable grounds was automatic and thereupon granted the impugned declaration of the right of Aasia Properties to have its nominee as a non-functional director on the Board of the Company. The said approach adopted by the CLB is found to be unsustainable and hence it is liable to be set aside.

65. This Court is of the opinion that the impugned direction issued by the CLB granting limited relief to Aasia Properties cannot be justified on the ground that being the 1/3rd shareholder, it has the right at least to be an observer and to be a non-functional director on the Board of the Company. When Aasia Properties failed to succeed in its stated case before the CLB and in the absence of any such provision in the Articles of Association of the Company, there was no basis for the CLB to have issued such a direction. The said direction, on facts and on law, is unsustainable and hence deserves to be set aside. Question 'J' is accordingly answered against Aasia Properties and in favour of Rahejas.

66. Question 'K' pertains to the aspect of limitation. The CLB has rendered findings in favour of Aasia Properties in the impugned order. Rahejas have challenged the same again on the ground that if the trigger point for the cause of action occurred in the year 1981-82 or at least in the year 1989, filing of the company petition in September 2005 was barred by limitation. But, the CLB has taken into account the assertions made on behalf of Aasia Properties with regard to the inspection provided in the year 2004, when it became aware about the alleged

manipulations in the record giving cause of action for approaching the CLB. Since the allegation of oppression of minority shareholder was a ground taken before the CLB and Aasia Properties made specific assertions with regard to the material being available in the year 2004, showing continuous oppression and hence the need to approach the CLB, this Court is of the opinion that the finding rendered by the CLB in that regard does not deserve any interference. Hence, question 'K' is answered by holding that the original petition filed by Aasia Properties before the CLB cannot be said to be hit by limitation.

67. In the light of the findings rendered hereinabove, this Court is of the opinion that the impugned order deserves to be set aside to the limited extent of the direction issued in favour of Aasia Properties on the basis of a declaration that it had a right to nominate a non-functional director on the Board of the Company. Accordingly, the said direction is set aside. All other findings rendered against Aasia Properties deserve to be confirmed. In that light, Appeal No.6 of 2006 is allowed and Appeal No.11 of 2006 is dismissed.

68. Pending applications, if any, also stand disposed of.

(MANISH PITALE, J.)

Priya / Minal