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

COMPANY APPEAL NO. 30 OF 2014

Shri Rajiv Kant Laxman
Inhabitant of United Kingdom,
Aged about 55 years and residing at
25, Grimwade Avenue, Croydon,
Surrey-CRO 5 DJ,
London, United Kingdom ...Appellant

V/s.

1. Bobby Electronics Pvt. Ltd.
A company incorporated under
the Indian Companies Act, 1956
and having its registered office at
301, Garden View (Station View),
Sanpada, Plot No. 19, Section 30,
Vashi, Navi Mumbai-400 705.

2. Smt. Nirmala Dindayal Gosain,
An Adult Indian Inhabitant,
Having address at 301, Garden View
(Station View), Sanpada, Plot No. 19,
Section 30, Vashi, Navi Mumbai-400 705.

3. Madhuvi Kushdevsingh Rathore
An adult Indian Inhabitant,
Having address at 301,
Garden View (Station View),
Sanpada, Plot No. 19, Section 30,
Vashi, Navi Mumbai-400 705.

4. Balaji Ganpatrao Sonawane
An adult Indian Inhabitant,
having address at Plot No. 796,
Behind Ashirwad hospital, Section-1,
Shiravane, Nerul, Navi Mumbai-400 706.

5. Bizerba India Private Limited
a company incorporated under

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**the Indian Companies Act, 1956
and having address at Plot No. EL 100,
Mahape, MIDC, TTC Industrial Area,
Navi Mumbai (earlier having address at 27 acre,
Basement, Tikujini Wadi, Manpada, Thane, 400610.) ...Respondents**

**WITH
INTERIM APPLICATION (L) NO. 30279 OF 2022
WITH
INTERIM APPLICATION NO. 6457 OF 2025**

Mr. Vishal Kanade with Mr. Ganesh Khemka, Mr. Rohan Savant, Mr. Prasad Batavia, Ms. Siddhi Rao i/b Batavia Legal, for the Appellant.
Ms. Krupali Rajani with Ms. Sayali Nikam for the Respondents No. 1 and 2.

CORAM	**:**	**ABHAY AHUJA, J.**
RESERVED ON	**:**	**4th MAY, 2026**
PRONOUNCED ON	**:**	**5th NOVEMBER, 2026.**

JUDGMENT :

1. This is an Appeal under Section 10F of the Companies Act, 1956 (the "Act") against the order of the Company Law Board dated 4th December, 2013, by which the Appellant's Petition under Sections 111, 397, 398, 399, 402, 403 and 406 of the Act was dismissed.

2. This is the second round of litigation. In the first round, after the Company Appeal had been dismissed by order dated 15th April, 2014 as the Court found that no question of law arose, pursuant to a Special Leave Petition, the Hon'ble Supreme Court by order dated 4th August, 2017 allowed the Civil Appeal and set aside the order of this Court

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directing this Court to decide the matter afresh after hearing both the parties, duly considering the allegation that the Respondents had illegally and unauthorisedly increased the share capital of the 1st Respondent-Company and diluted the shareholding of the Appellant from 50% to 8% and increased that of the Respondent No. 2 from 1% to 92% which was contended as could not have been done without notice to the Appellant.

3. Thereafter, on 5th January, 2022, the matter was stood over to 19th January, 2022 for final hearing and came to be listed from time to time and on 4th August, 2023 it was observed that since the Company Appeal was pending since 2014, it deserved a final hearing and the matter was listed for final hearing thereafter.

4. On 29th November, 2024 the following order was passed:

> *"1. Pursuant to order dated 13th September 2024, today when the matter is called out, Mr.Vishal Kanade, learned Counsel, appearing for the Appellant submits that since this Appeal is under Section 10F of the* Companies Act, 1956, four substantial questions of law have been formulated. Learned Counsel tenders across the bar the four substantial questions of law which are reproduced as under :
>
> *Substantial Questions of Law*
>
> *(1) Whether the learned CLB was right in not giving any findings on the issue of siphoning off of funds by Respondent no.2 and Respondent no.4 on the ground of the issue being allegedly infructuous ?*

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(2) Whether the learned CLB was justified in its finding that appointment of Respondent no.3 and Respondent no.4 was not illegal,despite giving a finding that it is not certain from the record whether appointment of Respondent no.3 and Respondent no.4 was regularized in the subsequent EGM or not ?

(3) Whether the learned CLB was justified in rejecting the allegations of the Petitioner that the Respondents have altered the share capital of the company without following due process of law, despite giving a finding that "the holding of EGM and allotment of impugned shares may not be strictly in accordance with the provisions of the Act…"?

(4) Whether the learned CLB was justified in giving a finding that the Petitioner has suppressed material facts, when a bare perusal of the complaint/petition clearly shows that the Petitioner has disclosed the fact of filing of the Suit in his pleadings ?

2. Learned Counsel has made his submissions with respect to Question No.4 on delay as well as suppression.

3. For Mr.Kanade to continue his arguments with respect to Questions No.1, 2 and 3 as above, list on 17th January 2025 at 3.30 p.m. as part heard."

5. On 4th May, 2026, the arguments were concluded and the judgment was reserved after offering an opportunity to file written submissions, which have been filed.

6. The Appellant is the original Petitioner, who is a Non-Resident Indian living in London claiming to be a 50% equity shareholder in the 1st Respondent-Company.

7. Before the Company Law Board, the Appellant's case was that at the relevant time, the Appellant, his maternal uncle one Mr. Dindayal

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Gosain and the 2nd Respondent Smt. Nirmala Dindayal Gosain, were the only shareholders of the 1st Respondent-Company.

8. The contention of the Appellant before the Company Law Board was that the Respondents were guilty of various acts of oppression and mismanagement. The Appellant had filed a civil suit in the Court of Civil Judge, Senior Division, Thane seeking various declarations and at the time when the Company Petition was decided by the Company Law Board, the civil suit was pending. It has also been alleged that the Respondents illegally and unauthorisedly increased the share capital of the 1st Respondent-Company and deleted the shareholding of the Appellant from 50% to 8% while increasing that of the 2nd Respondent from 1% to 92%. The Appellant also complained of his removal as a Director of the Company without notice and without any validly called meeting. Allegations were also made regarding a refusal to grant inspection. The Respondents contested the Company Petition before the Company Law Board and denied that the Appellant was ever appointed as a Director.

9. Questions of maintainability were raised and after the Company Law Board held that the Petition was maintainable, proceeded to consider the matter on merits. The Company Law Board on facts held

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that the Appellant was guilty of suppression as in that vital material was kept from the Petition, although it has been contended by the learned Counsel appearing for the Appellant that there was no suppression and that the necessary facts had been mentioned in the Petition, however, the Company Law Board held that a mere mention was not sufficient and it required disclosure and copies.

10. As regards the question of increase in authorised share capital, the Company Law Board came to the conclusion as a matter of fact that the 1st Respondent-Company needed funds to meet certain requirements, although there may have been some irregularity in the holding of the Extraordinary General Meeting (the "EGM"). That there may have been an isolated instance termed as a solitary act of oppression, however, in order to succeed, the Appellant would have had to show continuous acts of oppression. The Company Law Board also noted in paragraph 37 of the impugned order that when the 1st Respondent-Company was in dire need of its funds rather than support the Company, the Appellant demanded a return of his investment. Accordingly, an amount of Rs. 2,50,000/- was paid out by the Respondents to the Appellant and the Company Law Board held that in the face of such conduct it did not lie in the mouth of the Appellant to

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say that there was no justification for increasing the share capital of the 1st Respondent-Company.

11. In paragraph 40, the Company Law Board dealt with the Appellant's submission regarding directorships. It was observed that not only there was a delay on the part of the Appellant, but it was also not established that his consent was ever required for the appointment of the other Directors.

12. It is to be noted that although Respondents No. 1, 2 and 4 had been served and the Respondent No. 3 has been served by substituted service, only Respondents No. 1 and 2 are represented.

13. Section 10F of the Act reads as under:-

> *"10F. Appeals against the orders of the Company Law Board: Any person aggrieved by any decision or order of the Company Law Board [made before the commencement of the Companies (Second Amendment) Act, 2002] may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."*

14. As can be seen, the said section permits any person aggrieved by any decision of the Company Law Board to file an appeal within 60 days from the date of communication of the decision or order of the

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Company Law Board to him on any question of law arising out of such order.

15. On 29th November, 2024, this Court had framed the following questions of law:

(1) Whether the learned Company Law Board was right in not giving any findings on the issue of siphoning off of funds by Respondent no.2 and Respondent no.4 on the ground of the issue being allegedly infructuous ?

(2) Whether the learned Company Law Board was justified in its finding that appointment of Respondent no.3 and Respondent no.4 was not illegal,despite giving a finding that it is not certain from the record whether appointment of Respondent no.3 and Respondent no.4 was regularized in the subsequent EGM or not ?

(3) Whether the learned Company Law Board was justified in rejecting the allegations of the Petitioner that the Respondents have altered the share capital of the company without following due process of law, despite giving a finding that "the holding of EGM and allotment of impugned shares may not be strictly in accordance with the provisions of the Act…"?

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(4) Whether the learned Company Law Board was justified in giving a finding that the Petitioner has suppressed material facts, when a bare perusal of the complaint/petition clearly shows that the Petitioner has disclosed the fact of filing of the Suit in his pleadings ?

16. This Court has on various dates heard the learned Counsel appearing for the Appellant as well as the Respondents.

17. Mr. Kanade, learned Counsel appearing for the Appellant has addressed this Court on eight aspects relating to the aforesaid four questions.

18. With respect to Question No.3 regarding increase in authorised share capital, Mr. Kanade has submitted that :

A. Article 5(b) of the Articles of Association (the “AoA”) was breached and therefore the entire 2009 dilution collapses as :

(i) Respondent No. 2 submits at paragraphs 64 to 66 of her written submissions that no shareholder has an inherent right to proportionate allotment and at paragraph 61 that no notice was due to the Appellant because his name was "not consistently reflected" in the register. Learned Counsel went so far as to submit that no clause of the AoA had been violated. That is incorrect.

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(ii) Article 5(b) of the AoA contains a mandatory pre-emption restriction: a member may not transfer shares to a non-member so long as an existing member is willing to purchase. Respondent No.2's own authority in the decision of the Hon'ble Supreme Court in the case of ***Smt. Claude-Lila Parulekar v. Sakal Papers Pvt. Ltd.***,[1] and ***V.B. Rangaraj v. V.B. Gopalakrishnan***[2], hold such restrictions in the AoA to be valid, mandatory and binding. The decision of the Hon'ble Supreme Court in the case of ***John Tinson & Co. v. Surjeet Malhan***[3] confirms the AoA is a binding contract between the parties.

(iii) On Article 5(b), the Respondents' case collapses in five steps :

Step 1- On 19th April, 2007, the Respondent No. 3 was appointed as the Additional Director holding zero shares; the Respondent No. 2 thereafter caused 50 shares to be transferred to Respondent No. 3 without offer to the Appellant. This transfer is ultra vires Article 5(b) and void: *Smt. Claude-Lila Parulekar v. Sakal Papers Pvt. Ltd. (supra)*, and *V.B. Rangaraj v. V.B. Gopalakrishna (supra)* and ***M.S. Madhusoodhanan Vs. Kerala Kaumudi (P) Ltd.***[4].

Step 2: With that transfer void, only two valid members remained-the Appellant and the Respondent No.2.

1. (2005) 11 SCC 73.
2. (1992) 1 SCC 160.
3. (1997) 9 SCC 651.
4 (2004) 9 SCC 204

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Step 3: Section 174 of the Act fixes quorum for a private company at two members personally present.

Step 4: It is undisputed that no notice of the EGM dated 20th March, 2009 was given to the Appellant, nor did the Appellant in fact attend the EGM. The Appellant having received no notice and not having attended, the Respondent No.2 was the sole member present; Section 174 quorum was therefore not met.

Step 5: Therefore, the Special Resolution increasing authorised capital from Rs.10 lakh to Rs. 70 lakh is non-est; the 55,910 shares allotted to Respondent No. 2 fall with it. 50:49:1 is the only legally recognizable shareholding structure.

(iv) This argument is independent and dispositive. Even if every other Respondent contention were accepted, Article 5(b) alone restores the original shareholding. Construction of the AoA is a pure question of law squarely within Section 10F.

B. The 2009 increase fails the test laid down in ***Dale & Carrington Investments (P) Ltd. v. P.K. Prathapan***[5] on every limb:-

(i) The decisions of the Hon'ble Supreme Court in the cases of *Dale & Carrington Investments (P) Ltd. v. P.K. Prathapan (supra)* and ***Kamal***

5. (2005) 1 SCC 212.

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Kumar Dutta v. Ruby General Hospital[6], hold an allotment invalid where (i) made without a valid meeting/notice/quorum, (ii) without *bona fide* need for funds, or (iii) for an extraneous purpose. The burden is on the directors. The Respondent No.2 fails each limb :

(a) No valid meeting established under Article 5(b) above.

(b) No *bona fide* need: the original alleged MIDC demolition notice of 2006 has never been produced; no Board minutes authorising reconstruction or discussing necessity of fresh issue of shares exist on record; no valuation was conducted for the new share allotment; allotment of new shares was at par value despite a steep capital increase; the Respondent No.1 owned a fully developed industrial property generating stable rentals from the Respondent No. 5 and could have raised debt. There is also evidence on record to suggest that the structure was never in fact "demolished" as claimed by the Respondent No.2, but only rectified and partly reconstructed.

(c) Extraneous purpose: the Respondent No.2's shareholding increased from 1% to 92%; Appellant from 50% to 7%. The 2007 share-transfer to the Respondent No.3 (the Respondent No.2's sister) was the precursor designed to manufacture a voting bloc. The pattern is on all fours with the decision of the Madras High Court in the case of

6. (2006) 7 SCC 613.

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Micromeritics Engineers Pvt. Ltd. v. S. Munusamy[7] - "abuse of fiduciary power, intended to create an artificial majority".

(d) The Company Law Board's self-contradiction: at paragraph 36 of the impugned order, it is expressly recorded that the EGM "may not be strictly in accordance with the provisions of the Companies Act", yet found no oppression. That is the very perversity captured by Question No. 3.

C. ***Nanalal Zaver v. Bombay Life Assurance Co. Ltd.***[8] does not assist the Respondent No.2 :

(i) The Respondent No.2's reliance on the decision of the Hon'ble Supreme Court in the case of *Nanalal Zaver v. Bombay Life Assurance Co. Ltd. (supra)*, is misplaced. Therein, the further issue was in fact proportional and the Hon'ble Supreme Court therefore upheld the allotment while emphasising that "every shareholder will get his proportion if he so desires". Here, no proportional offer was made to the Appellant; the object was to change control, not to retain it. *Nanalal Zaver v. Bombay Life Assurance Co. Ltd. (supra)* therefore condemns, rather than supports, the present allotment.

7. 2002 SCC OnLine Mad 325.
8. 1950 SCR 391.

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D. The Respondent No. 2's "statutory certificates" and "insufficient capital" points fail :

(i) The Respondent No.2 relies (paragraphs 50 and 53 to 54) on the Occupation Certificate, Building Completion Certificate, drainage and tree-plantation certificates of 11th June, 2008 to argue she must have funded the work. The certificates only show that a building exists, they do not show who funded it. The letter produced by the Respondent No.2, as MIDC demolition notice of 11th June, 2008 is in fact is reissuance letter of Expansion Notice dated 28th August, 2006. (Referred to paragraph 14 of the Additional IA and Ex."F" filed by the Respondent No.2 with her written submission). The Respondent No.2 has produced no contractor invoices, no rejected loan application, no bank trail from her personal account to the Respondent No.1's contractors. Furthermore, it is unexplained by the Respondent No.2 how the Respondent No.5 continued as lessee on the Respondent No.1's premises through 2006 to 2012, despite them undergoing "demolition" and "reconstruction" in the interregnum, as claimed by the Respondent No. 2. The burden under *Dale & Carrington Investments (P) Ltd. v. P.K. Prathapan (supra)* is unmet.

19. As regards the Question No.1 on siphoning of funds, Mr. Kanade has submitted that :

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(i) The Company Law Board declined to render any finding on siphoning on the sole ground that the Respondent No.5 had vacated in 2012, treating the issue as "infructuous". The finding is perverse:

(a) The Respondent No.5 occupied the Respondent No.1's premises under the Leave and Licence Agreement dated 30th April, 2006 at Rs.1,30,608/- p.m., later revised to Rs. 1,58,755/- p.m. by 22nd July, 2010 agreement; these licence fees through 2006-2012 were demonstrably diverted and never accounted for. The Respondent No.5's subsequent vacating of the Respondent No.1's premises is irrelevant to the already completed diversion of income.

(b) The rental stream did not stop in 2012. By Board Resolution dated 8th April, 2013, the Respondent No.1 (through the Respondent No.2's unilateral action) appointed G-Source Technologies (I) Pvt. Ltd. as licensee at Rs. 2.5 lakh p.m., despite the Appellant's recorded objection. Thereafter, from 2015, Aramex India Pvt. Ltd. occupied the premises again without notice to or consent of the Appellant. Aramex's own email dated 6th April, 2020 confirms it holds registered Lease & Licence with the Respondent No.1. The premises have been continuously rented; rentals have continuously been received by the Respondent No.1 and no dividend has ever been declared and no funds have flowed to the Appellant despite him holding significant shares in

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the Respondent No.1. Instead, the Respondent No.1 has declared losses almost every year since the Respondent No.2 forcefully assumed control.

(c) The Respondent No.2 has not denied the extraction. The Respondent No.2's plea recorded in her written statement before the Company Law Board that the rental was needed for the maintenance of herself and her children is itself an admission of breach of fiduciary duty under Section 166 of the 2013 Act. The Respondent No.1's rental is corporate income; its conversion to personal use is misappropriation. It has been submitted that the Respondent No.2's failure to furnish accounts, Leave & Licence agreements and bank statements of the Respondent No.1 despite numerous requests for production by Appellant Counsel as well as enquiries by the Bench. During the course of final arguments, necessarily invites adverse presumption under Section 114 of the Indian Evidence Act, 1872 as these bank records were exclusively within the possession of the Respondent No.2

(d) The Respondent No.1's own ROC filings disclose director remuneration of Rs. 1,5 lakh in FY 2017-18 jumping to Rs. 10.25 lakh in FY 2018-19, Rs. 10.54 lakh in FY 2019-20 and Rs.11.34 lakh in FY 2020-21-a 656% spike while the Respondent No.1 concurrently declared losses of Rs.1.65/4.18/3.46/3.55 lakh for those four years

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respectively. The spike coincides precisely with the Respondent No.2's induction of her sons (Krishna and Rishabh, both appointed invalidly) as purported directors, therefore, evidencing how the Respondent No.2 converted the Respondent No.1 from a healthy corporate rent-yielding enterprise into a private family vehicle stripped of shareholder value.

(ii) Mr. Kanade has submitted that this disregard of the contemporaneous record, reliance on an irrelevant event (the Respondent No.5's 2012 vacating) for a 2006-2012 issue and a finding contrary to the Respondent No.2's own admissions, all squarely within the perversity threshold of the decision of the Hon'ble Supreme Court in the case of ***Purnima Manthena v. Renuka Datla***[9].

20. Coming to the Question No.2 regarding appointment of the Respondent No.2's relatives as directors, Mr. Kanade has submitted that:

(i) The Question No.2 2 is on the precise contradiction at Paragraphs 39 to 40 of the impugned order: the Company Law Board upheld the appointments while expressly admitting it was "not certain from the material available on record" whether they had been regularised at any subsequent AGM. A finding rendered on acknowledged uncertainty is *per se perverse.*

9.(2016) 1 SCC 237 (Para 45).

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(ii) Statutory position: Under Section 260 of the Act (Section 161(1) of the 2013 Act), an Additional Director holds office only until the next AGM and ceases automatically if not regularised: ***Krishnaprasad Jwaladutt Pilani v Colaba Land & Mills Co. Ltd.***[10]. The Respondent No.3 was appointed on 19th April, 2007 and the Respondent No. 4 on 21st August, 2010 per the ROC. The Respondents have produced no regularisation across seventeen years of AGMs. Their offices stand vacated by operation of law.

(iii) Mr. Rishabh Gosain has resided in Australia for several years. Under Section 167(1)(b) of the 2013 Act, a director vacates office by operation of law on absence from board meetings for twelve consecutive months. His office is, therefore, vacant. Any remuneration drawn post-vacation is ultra vires the Respondent No.1 and amounts to misappropriation.

21. As regards Question No.4 regarding suppression and delay, Mr. Kanade has submitted as under :

A. No suppression.

(i) Suppression in law requires deliberate concealment of a material fact such that its absence renders the decision unjust: The decision of the Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu v.***

10. AIR 1959 Bom 543.

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Jagannath[11]; ***Government of NCT of Delhi v. BSK Realtors LLP***[12]. None of these elements is present.

(ii) The Thane Suit (S.C.S. No. 668/2008) was explicitly disclosed at paragraphs 22, 23 and 29 of the Company Petition and its withdrawal on 31st August, 2012 was disclosed at paragraph 15 of the Rejoinder.

(iii) The Respondents were themselves Defendants in the Thane Suit; the existence of the proceedings was within their personal knowledge: "where facts are known to both parties, the omission by one... does not render it suppression": ***Pushpam Pharmaceutical Co. v. CCE***[13]. Mere non-annexing of the actual Plaint in its entirety as filed before the Thane Court cannot amount to suppression.

B. The Respondent No. 2's own authorities cut against her.

(i) ***Arunima Baruah v. Union of India***[14] holds that a litigant who returns with disclosed facts approaches with clean hands precisely the Appellant's position. ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar***[15], requires materiality a fact whose absence would have affected the merits. The Thane Suit (concerning a 2006 directorship) had no bearing on the 2009 dilution challenge.

11. (1994) 1 SCC 1.
12. (2024) 7 SCC 370.
13. 1995 Supp (3) SCC 462.
14. (2007) 6 SCC 120.
15. (2004) 7 SCC 166.

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(ii) The Respondent No.2's reliance on ***Sangramsinh P. Gaekwad & Ors Vs. Shantadevi P. Gaekwad (Dead) Thr. Lrs & Ors.***[16], on "clean hands" applies against the Respondent No.2, who has failed to produce the alleged original 2006 demolition notice; failed to produce the board minutes; produced an Abbey Bank statement when called upon to prove HDFC encashment; and has failed to produce the Respondent No.1's bank statements from 2007 despite the Appellant's repeated requests.

C. No delay.

(i) Knowledge of the 2009 dilution arose only on 9th June, 2010 (the Respondent No.2's written statement in the Thane Suit) and through the ROC search of 6th September, 2011. The Petition was filed in February, 2012. The Respondents' own concealment delayed discovery; they cannot now profit from it. Continuing oppression is independently actionable: ***V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd.***[17].

22. With respect to disgorgement of rental income, Mr. Kanade has submitted as under :

(i) Interim Application (L) No. 30279 of 2022 and Interim Application (L) No. 29050 of 2022 were filed for protection and disgorgement of the Respondent No. 1's rental income usurped by the

16. (2005) 11 SCC 314.
17. (2008) 3 SCC 363.

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Respondent No.2 since Mr. Dindayal Gosain's demise on 25th January, 2007. The relief was specifically pleaded at prayer (k) of the Interim Application: "That this Hon'ble Court be pleased to order Respondent No. 1 and Respondent No. 2 to compensate the Appellant 50%... from the rental income received since 2007 which totals to approximate 5 Crore".

(ii) The Respondent No.1's only asset is Plot No. EL-100, Mahape, MIDC, TTC Industrial Area, Navi Mumbai; its only income source is the rental from that property. The Appellant has been a 50% shareholder since 6th March, 2000 a position admitted by the Respondent No.2 in her advocate's letter dated 10th April, 2007 (Exhibit T to the Petition) and unchanged on the Respondent No. 2's own case until the impugned 2009 dilution.

(iii) That despite multiple directions and opportunities, the Respondent No.2 has not filed the Respondent No.1's books of account or rental statements on the record of this Appeal. The Appellant has, therefore, reconstructed the rental stream from the Respondent No.1's own ROC filings (Annual Returns and Financial Statements) for the years where filings are available, supplementing for the remaining years on the basis of the contemporaneous Leave & Licence Agreements at Rs.1,30,608 p.m. (2006 Agreement with the Respondent No. 5),

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Rs.1,58,755 p.m. (2010 Agreement with the Respondent No. 5) and rentals receivable from Aramex from 2013 and has set out the Appellant's reconstruction in the following table :

Sr. No.	Financial Year & Approximate annual rental income of the Respondent No. 1:	Particulars
1	FY 2007- 15,67,296	12 months Rs.1,30,608 (Para 3 of Bizerba Leave & Licence)
2	FY 2008 15,67,296	assumed same as previous year, despite 5% annual increase clause in lease agreement
3	FY 2009- 15,67,296	assumed same as previous year, despite 5% annual increase clause in lease agreement
4	FY 2010-18,79,560	from ROC return
5	FY 2011-21,36,304	from ROC return
6	FY 2012-21,36,304	(assumed same annual increase clause in lease agreement) previous year, despite 5%
7	FY 2013-15,73,280	from ROC return
8	FY 2014	nil reported.
9	FY 2015-9,83,150	from ROC return
10	FY 2016-21,52,500	from ROC return
11	FY 2017-22,81,650	from ROC return
12	FY 2018-24,15,210	from ROC return
13	FY 2019-40,26,115	from ROC return
14	FY 2020-49,96,324	from ROC return
15	FY 2021 -27,98,250	from ROC return
16	FY 2022-45,83,900	from ROC return
17	FY 2023-31,44,100	from ROC return
18	FY 2024-36,39,600	from ROC return
19	FY 2025 36,39,600	assumed same as previous year, despite 5% annual increase clause in lease agreement
20	FY 2026 36,39,600	assumed same as previous year, despite 5% annual increase clause in lease agreement

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(iv) Aggregate rental: Rs. 5.07 crore. The Appellant's 50% share, approximately Rs. 2.5 crore, remains payable to him by way of disgorgement, with interest.

23. It has further been submitted by Mr. Kanade that since Section 10F intervention lies on perversity, error of law, its record on irrelevant material, each of the said grounds have been independently made out as in :-

(i) Perversity: self-contradictory finding at paragraph 36; "uncertainty" at paragraphs 39 and 40; treatment of siphoning as "infructuous" upon the Respondent No.5's vacating.

(ii) Error of law: construction of Article 5(b); application of Section 174 quorum; operation of Section 167(1)(b).

(iii) Disregard of relevant material: auditors' correspondence including Income-Tax PAN Services Unit, treating the Appellant as a director and seeking his PAN (2nd November, 2006, 28th November, 2006, 4th January, 2007, 7th April, 2007); Exhibit B to the Rejoinder showing the GBP 13,500 personal-loan debit; the Appellant's remittances of GBP 3,500 (27th January, 2003) and Rs.13.65 lakh across 2003-2004, and the nine remittances by Appellant at Exhibit EE (Colly) showing total payments of Rs. 43,08,706/-.

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(iv) Reliance on irrelevant material: treating the Respondent No.5's 2012 vacating dispositive of a 2006-2012 issue; treating an Abbey Bank statement as proof of HDFC DD encashment.

24. It has been submitted that the Respondent No.2's authorities support the Appellant. ***Malleswara Finance & Investments Co. v. Company Law Board***[18] , holds that propriety is a question of fact but only when Company Law Board findings are sound; on facts therein, the Company Law Board's striking-down of the impugned allotment was upheld. *Micromeritics Engineers Pvt. Ltd. v. S. Munusamy (supra)* upheld a Company Law Board finding of "abuse of fiduciary power, intended to create an artificial majority" a description that fits this case precisely.

25. As regards the refund narrative, Mr. Kanade has submitted that the same is falsified in view of the following :

A. GBP 14,000 repayment was against a personal loan advanced by Appellant to DG; in any case, unilateral repayment cannot lead to redemption of the Respondent No.1's shares :

(i) At Paragraph 11 of the Rejoinder, the Appellant pleaded that the GBP 14,000 represented (i) repayment of GBP 13,500 advanced to Mr. Dindayal Gosain personally on 8th January, 1999 and (ii) GBP 500 paid

18. (1995) 82 Comp Cas 836 (Mad).

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in cash on a holiday. Exhibit B to the Rejoinder is the bank statement showing the GBP 13,500 debit. The Respondents have produced no document evidencing that this sum related to the Respondent No.1 rather than to DG personally no receipt from RI, no entry in the Respondent No.1's books, no Board minute authorising any refund.

B. The Rs.2,50,000 DD: documentary chasm :

(i) The Company Law Board at paragraph 37 held that DD No. 433055 dated 22nd December, 2005 of HDFC Bank was "encashed" by the Appellant. That finding rests on nothing:

(a) The only account summary annexed by the Respondent No.2 is at pages 292-293, it is of an Abbey Bank account held by Mr. V. M. Kapil and Dindayal Gosain, not HDFC.

(b) The DD copy at Page 294 is on its face from HDFC Bank.

(c) There is no entry on any document on record evidencing encashment of DD No. 433055. At best, the Respondent No.2 has proved "dispatch", not "delivery" or "encashment".

(d) The Appellant categorically denied receipt at paragraph 11 of the Rejoinder, the postal receipt is dated 21st December, 2005 - a day before the alleged DD.

(ii) Even assuming without admitting the Respondent No. 2's refund theory, the Appellant made a total of 9 transfers between 2000-2004,

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totalling to Rs.43,08,706/- (Exhibit E and Exhibit EE) being Rs. 3.5 Lakhs towards 50% purchase cost of the land and remainder Rs.39.58 Lakhs towards development of structure thereon. Even assuming that GBP 14,000 has been returned, it would account for only 25% of the original investment and cannot extinguish the Appellant's entire stake in the Respondent No.1 in any case.

(iii) Equity shareholding of the Respondent No.1 cannot be extinguished by a personal cheque. Section 108 of the Act mandates a duly stamped, executed instrument of transfer. None exists between the Appellant and the Respondent No. 2/ Respondent No.1. The burden of proving dispatch, delivery and encashment lies on the Respondent No.2 under Section 103 of the Indian Evidence Act. The Respondent No. 2 has proved none.

26. With respect to the Appellants quasi partnership and contested Wills, it has been submitted that the 2nd November, 2006 Board Resolution was an appointment and not a provisional offer. That the Board Resolution dated 2nd November, 2006 reads as *"Mr. Rajiv Kant Laxman be and is hereby appointed as Director of the Company…*" and it was signed by both Mr. Dindayal Gosain and the Respondent No.2, the only directors at the time. That the Appellant's acceptance letter of the same date concluded the contract of directorship and the

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Appellant's presence at the meeting is admitted by the Respondent No.2 in her advocate's letter dated 10th April, 2007 (Exhibit T). That on 4th November, 2006, Mr. Dindayal Gosain further wrote offering the Appellant the Managing Directorship, which was accepted in writing on the same letter.

27. It has been submitted that the Company Law Board's characterisation of this as a "provisional offer" is perverse, the resolution contains no language of contingency -no "subject to no “provisionally" and non-filing of Form 32 was a ministerial default of the Respondent No.1/the Respondent No.2. That a wrongdoer cannot benefit from its own default, especially when the law requires the Respondent No.1 to file within 30 days with the ROC, information regarding a director's appointment as per Section 170(2) of the 2013 Act.

28. It has been submitted that the Respondent No. 2’s s allegation of force and fraud is a bare assertion and fraud must be specifically pleaded with particulars and strictly proved as per the decisions of the Hon’ble Supreme Court in the cases of ***Bishundeo Narain v. Seogeni Rai***,[19] and ***Ananthaswamy v. Boraiah***[20]. That the Naupada complaint is not evidence, it is the Respondent No.2's allegation and not proof of

19. AIR 1951 SC 280.
20.(2004) 8 SCC 588.

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forgery, the very issue the Appellant disputes and in any case, this complaint is merely an afterthought, crafted deliberately as a ploy to manufacture evidence after filing of the Company Law Board Petition by the Appellant, having been registered after a delay of 7 years in 2013, and therefore, ought not to be given any probative value.

29. It has been submitted that the Respondent No. 1 was incorporated by the Appellant and Mr. Dindayal Gosain on near-equal capital with mutual confidence and an expectation of joint management and Mr. Dindayal Gosain's letter dated 21st January, 2000 at Exhibit C expressly records that the Appellant's remittances were in consideration towards the "partnership" of the Appellant and Late Mr. Dindayal Gosain in the MIDC property, which is the very definition of a quasi-partnership as held in the cases of *Sangramsinh P. Gaekwad & Ors Vs. Shantadevi P. Gaekwad (Dead) Thr. Lrs & Ors. (supra)* and ***Ebrahimi v. Westbourne Galleries Ltd.***[21]. That the Company Law Board's rejection on the ground of the Appellant's UK residence is legally untenable as the residence is irrelevant to the existence of a quasi-partnership.

30. It has been submitted that the Respondent No. 2's assumption of Mr. Dindayal Gosain's entire 49% shareholding rests on the Will dated 5th April, 2006 and that foundation is contested at every level. That

21. (1973) AC 360.

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Probate was granted by the Civil Judge, Senior Division, Thane only on 19th December, 2020 i.e., eleven years after the Respondent No. 2 voted Mr. Dindayal Gosain's shares at the impugned EGM of 20th March, 2009. That under Section 213 of the Indian Succession Act, 1925, a legatee can establish no right under a Will until probate is granted and on 20th March, 2009, the Respondent No. 2 had not probated, adjudicated or uncontested title to Mr. Dindayal Gosain's 49% and the Respondent No. 2 voted shares, she did not lawfully hold. That the probate itself is now under challenge before this Court in First Appeal No. 524 of 2021 (admitted on 4th October, 2024) and the Respondent No. 2 has undertaken not to execute the decree pending the first appeal and therefore, her title remains inchoate and defeasible; as a contested testamentary claim cannot be bootstrapped into a *fait accompli* of corporate control.

31. It has been submitted that the Appellant's case is further that Mr. Dindayal Gosain's true last Will and Testament dated 6th November, 2006, which post dates and revokes the 5th April, 2006 Will confirms the Appellant's 50% share in the said property and the income arising therefrom and the Will issue remains *sub judice* and cannot disentitle the Appellant in this Appeal.

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32. Mr. Kanade has submitted that in any event, even taking the 5th April 2006 Will at its highest, it bequeaths Mr. Dindayal Gosain's interest to the Respondent No.2 and her two minor sons equally and the Respondent No.2 was therefore entitled, on her own case, to only one-third of 49% plus her original 1% approximately 17.33%, not the entire 49% as she has wrongfully assumed, to the exclusion of her own minor children, in breach of the very Will on which she relies. That the Respondent No. 2 ought not to be allowed her own document selectively. That there exists no Will dated 5th April, 2007 as repeatedly referred to by learned Counsel for the Respondents No. 1 and 2 in written submissions of the Respondent No. 2.

33. Mr. Kanade has also relied upon the following decisions in support of his contentions :

(i) ***T. Ashok Pai vs. CLB***[22], and

(ii) ***K.C. Builders vs. ACIT***[23].

34. Mr. Kanade has submitted that accordingly this Court may grant the following reliefs:

(a) Allow Company Appeal No. 30 of 2014 and set aside the Impugned Order dated 4th December 2013 passed by the Company Law Board in Company Petition No. 29 of 2012;

22 (2007) 7 SCC 162
23 (2004) 2 SCC 731

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(b) Declare that the purported Special Resolution dated 20th March 2009 increasing the authorised share capital of RI from INR 10,00,000 to INR 70,00,000, and the consequential allotment of 55,910 equity shares to the Respondent No. 2, are non-est, mull and void ab initio, and of no legal effect;

(c) Declare the transfer of 50 equity shares to the Respondent No. 3 in 2007 as ultra vires Article 5(b) of the Articles of Association of the Respondent No. 1, null and void;

(d) Declare that the Appellant continues to hold 50% of the issued and paid-up equity share capital of the Respondent No. 1, and direct rectification of the register of members of the Respondent No. 1 accordingly under Section 59 of the Companies Act, 2013;

(e) Declare that the appointments of the Respondents No. 3 and 4, and Mr. Krishna Gosain as directors of the Respondent No. 1 stand void and/or vacated for non-regularisation under Section 260 of the Companies Act, 1956; and further declare that Mr. Rishabh Dindayal Gosain's office as director stands vacated by operation of law under Section 167(1)(b) of the Companies Act, 2013;

(f) Declare that the Board Resolution dated 2nd November 2006 appointing the Appellant as Director of the Respondent No.1 is legal, valid and binding on the Respondent No.1 and its directors, and direct

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the Respondents No.1 and 2 to complete all consequential formalities with the Registrar of Companies;

(g) Direct rendition and accounting of the Respondent No.1's accounts from 2006 till date,and order complete disgorgement and payment to the Appellant of his 50% share, presently estimated at INR 2.5 Crore, plus additional interest thereon;

(h) Direct that all future rental income earned from the said property be deposited with this Court pending final disposal, with the Appellant entitled to his 50% share thereof,

(i) Restore status quo ante as existing on 25th January 2007, being the date of the demise of Late Mr. Dindayal Gosain; and

(j) Pass such further and other orders as this Court may deem fit and proper in the facts and circumstances of the case.

35. On the other hand, Ms. Rajani, learned Counsel, appearing for Respondents No.1 and 2 has opposed the submissions by Mr. Kanade on behalf of the Appellant, reiterating the submissions made in the written statement before the Company Law Board.

36. The arguments on behalf of the Respondents can be summarised as under :

(i) The Appellant holds 7.70% of the issued share capital of Respondent No.1. He is thereby below the mandatory threshold of

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10% prescribed under Section 399 of the Act, and his Petition is, for this reason alone, not maintainable at its inception.

(ii) The Company Law Board's findings on share capital increase (Q3), siphoning (Q1), director appointments (Q2), and quasi-partnership are all findings of fact, supported by evidence on record, and are not susceptible to interference in an appeal under Section 10F. *(Malleswara Finance & Investments Co. v. Company Law Board (supra) Para 136; Purnima Manthena v. Renuka Datla (supra), Para 45*.

(iii) The *bona fide* requirement of funds for factory reconstruction is conclusively established by the MIDC Circular dated 11th June 2008 (page 304 of Written Statement), the Board Resolution dated 25th August 2008 (page 327 of Written Statement), documenting the loan-to-equity conversion mechanism, the Chartered Accountant's Report dated 2nd June 2009 (page 328 of Written Statement), and the completion certificates (Exhibit F). The Company Law Board's positive finding at Para 36 of the Impugned Order (page 86) merits full deference.

(iv) The Appellant suppressed the parallel Thane Civil Suit No.668 of 2008 before the Company Law Board, demanded and received repayment of his investment (HDFC Bank Demand Draft dated 22nd December 2005; page 294 of Written Statement, Saraswat Bank record). He does not approach this Court with clean hands.

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(v) The foundational documents relied upon by the Appellant, the Board Resolution dated 2nd November 2006, the letter dated 3rd November 2006 and the Will dated 6th November 2006, are fabricated documents. These documents have not been proved as required by Section 68 of the Indian Evidence Act, 1872, and are accordingly no evidentiary value.

(vi) The Appellant's claim that GBP 13,500 was a personal loan to Late Mr. Dindayal Gosain and that GBP 500 was paid in cash 'during a holiday' is directly falsified by the record : the Bobby Electronics letter dated 2nd September 2006 at page 205 (Exhibit F, pages 375-377) establishes that the Appellant was only present in the United Kingdom between April 1999 and July 1999. He has been called upon but has failed to identify the occasion of this alleged holiday, there is none on the record.

(vii) Further, as reflected in the Company's Annual Returns for 2001-2002 the Appellant is recorded therein as a debenture holder, and not as a shareholder. The AoA, on its final page, records the equity subscriptions solely of Mr. Dindayal Gosain and Mrs. Nirmala Gosain, 100 shares each. The Appellant's name does not appear.

37. This Court, in compliance with the directions in order dated 4th August 2017 passed by the Hon'ble Supreme Court, has heard both the

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learned Counsel at length and examined the matter afresh and considered the rival contentions as also the Appellant's allegation of illegality and unauthorised increase in share capital as will be seen hereinafter in discussion with respect to Question No.3.

38. A Company Law Board, as it then was, was the final authority on finding of fact unless such findings were perverse, based on no evidence or was arbitrary. The jurisdiction of the Appellate Court under Section 10F was restricted to the question as to whether or by the facts as noticed by the Company Law Board and placed before it, an inference could reasonably be arrived at that such conduct was against probity and good conduct or was *mala fide* or for a collateral purpose or was burdensome, harsh or wrongful. The only basis on which the Appellate Court would interfere under Section 10F was if such conclusion was (a) against law or (b) arose from consideration of irrelevant material or (c) omission to consider relevant materials.

39. A question of law as is contemplated in Section 10F of the Act would arise indubitably if a decision which was the foundation thereof suffers from perversity, following a patent error on a fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or non-germane determinants.

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40. With the above background, let us consider the first question of law.

40.1 In my view the contention that Respondents No. 2 to 4 siphoned off funds through a Leave and License Agreement and that the Company Law Board's rejection of this allegation is perverse, is not sustainable. The Company Law Board's decision constitutes a factual determination based on the evidence or the absence thereof produced by the Appellant. The matters raised by the Appellant are in the nature of direct challenge to factual findings and the sufficiency of evidence, both of which the Company Law Board, has, as the final fact finding authority already considered and adjudicated.

40.2 The increase in share capital was necessitated by a *bona fide* and pressing requirement for factory reconstruction in light of a demolition notice. In my view therefore it was not necessary for the Company Law Board to give any finding on the issue of siphoning of funds.

40.3 As far as oppression is concerned, the oppression necessitates a clear and visible departure from standards of probity and fair dealing in the conduct of the Company's affairs, causing prejudice to its members in their capacity as such. In my view the Appellant has failed to establish such a departure.

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40.4 The first question of law is accordingly answered in the affirmative against the Appellant.

41. Coming to the second question of law whereby the Appellant has contested that the appointment of Respondents No.3 and 4 were made at a General Body Meeting on 21st August 2010, entirely in compliance with the Act and the AoA, I am of the view that the Appellant, not being a director and holding only 8% shares at the time, had no right of contest or veto board appointments. Regarding the Appellant's submissions with respect to the directorships, apart from the delay, the Appellant has not been able to establish that his consent was required for the appointment of the other directors. Also challenge after two years' delay disentitles him to relief. A directorship is a personal fiduciary office and cannot be bequeathed by Will. The Hon'ble Supreme Court in the case of *John Tinson & Co. (P) Ltd. Vs. Mrs. Surjeet Malhan (supra)* has observed that an AoA is a binding contract, and since the Appellant's name was not included, he had no contractual right to the position of director. The appointments have been validated by the Respondents by lawfully exercising its power. I am therefore of the view that the Company Law Board was justified in its finding that the appointment of Respondents No.3 and 4 was not illegal.

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41.1 The second question of law is also answered in the affirmative in favour of the Respondents and against the Appellant.

42. As regards the third question of law, while there cannot be any quarrel with the principle laid down by the Hon'ble Supreme Court in the case of *Dale and Carrington Investments (P) Ltd. Vs. P.K. Prathapan (supra)* regarding the fiduciary duty of directors to act in the Company's best interest and to disclose relevant information to shareholders, particularly in matters of share allotment, however, in the present case, all allotments were made in good faith and in accordance with corporate requirements and circumstances must be considered in order to sustain a presumption.

42.1 It is seen that the increase in authorised share capital was a gradual and *bona fide* process undertaken solely to meet the Company's urgent financial requirements, and cannot be characterised as an oppressive measure within the meaning of Sections 397 and 398 of the Act. It was not executed in one sudden step but implemented over a period of time, in response to genuine business exigencies, culminating in the Special Resolution passed at the Extra Ordinary General Meeting on 20th March 2009.

42.2 The increase from Rs.10,00,000/- to Rs.70,00,000/- was necessitated by an external compulsion, viz. the demolition notice

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issued by the MIDC on 28th August 2006 which required reconstruction of the factory premises. Respondent No.2 undertook the reconstruction over a period of time, ultimately completing a new 1011.66 sq. meter facility. This was supported by the requisite statutory documentation, including the occupation certificate, building completion certificate, drainage completion certificate, and tree plantation certificate, all annexed as Exhibit E to the Respondents' written statement before the Company Law Board.

42.3 I therefore agree with the submission on behalf of the Respondents that this capital enhancement was not an isolated manoeuver to dilute the Appellant's shareholding, but a carefully considered business decision for the long-term benefit of all shareholders.

42.4 The Company Law Board specifically found, as a matter of fact, that the increase was to meet the requirement of funds and therefore is not an oppressive act. Such a finding is entitled to deference under the restricted scope of Section 10F jurisdiction under the Act, which precludes re-appreciation of evidence or substitution of factual determinations unless the finding is perverse, unsupported by evidence, or arbitrary none of which has been demonstrated by the Appellant.

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42.5 The Appellant's assertion that no proof was adduced for Respondent No.2's investment of Rs.70,00,000/- is directly contradicted by the evidence on record. The Respondents have produced not only the statutory certificates but also Exhibit G to the Written Statement before the Company Law Board, along with the Company's ledger and supporting bills, all of which confirm the investment and the increase in fixed assets to Rs.1,07,92,150/-. The Appellant has not disputed the authenticity of these documents before the Company Law Board.

42.6 It is also noteworthy that, at the time of reconstruction, the Company's capital was substantially less than Rs.70,00,000/-, making it financially impossible for the Company to have funded the construction from its own resources. This fact alone disproves the Appellant's speculative contention that the expenditure came from Company funds.

42.7 The Hon'ble Supreme Court in the case of *Nanalal Zaver v. Bombay Life Assurance Co. Ltd. (supra)* has clarified that directors hold fiduciary duty to act in the Company's best interest, and that the *bona fide* exercise of such powers for the benefit of the Company cannot be impugned as oppressive merely because it affects shareholding proportions. In the facts of this case, the capital increase appears to be in furtherance of the Company's commercial survival and growth and not for any collateral purpose. The capital increase was done to save

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the Company, not for personal gain or to oppress the Appellant. The said decision in my view protects this kind of *bona fide* corporate purpose. The onus is on the Appellant to prove that the appointments were part of a continuous scheme of oppression, rather than isolated instances of alleged irregularity, which the Appellant has failed to prove.

42.8 The increase in authorised share capital from Rs. 10 lakh to Rs. 70 lakh in my view was therefore a legitimate and necessary corporate action, in compliance with Sections 94 to 104 of the Act and the Company's AoA. The Appellant's challenge rests entirely on conjecture, is unsupported by probative evidence, and is therefore liable to be rejected.

42.9 The increase in the Company's shareholding was necessitated due to the demolition notice issued by the MIDC on 28th August 2006 which required reconstruction of the factory premises, and not by any *mala fide* act of the Respondents. The percentage of shareholding is inherently dependent on the level of investment made. The Hon'ble Supreme Court in the case of ***Shanti Prasad Jain Vs Kalinga Tubes Limited***[24] has held that one holding a greater number of shares is the majority share-holder.

24 AIR 1965 SC 1535

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42.10 The observation of the Company Law Board that even when the 1st Respondent was in dire need of funds, the Appellant demanded return of his investment and Rs.2,50,000/- was paid out by the Respondents to the Appellant is a conduct in the face of which it does not lie in the mouth of the Appellant to say that there was no justification for increasing the share capital of the 1st Respondent-Company.

42.11 As regards the Appellant's reliance on ***Smt. Kanak Lata Ghose vs. Amal Kumar Ghose***[25], this Court is of the view that any presumption in his favour is rebutted by the documentary proof of repayment of his investment. The Appellant has failed to produce any documents establishing substantial investment in the Company and it is an admitted fact that Respondent No. 2 refunded the investment upon the Appellant's demand.

42.12 The Appellant's grievance proceeds on a misconception of law and fact. While the percentage of shareholding may fluctuate upon further issue of shares, the quantum of shares actually subscribed by the Appellant has never been reduced, cancelled, or altered. The Appellant's financial interest in the Company remains precisely what was invested.

25 AIR 1970 CAL 328

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42.13 In the present case, the Appellant alleges that his holding reduced from 50% to 8%. The Company had no discretion in the matter and was legally bound to implement the increase. Furthermore, the Appellant was merely a shareholder and not a director, he cannot claim prejudice in the manner of management decisions taken pursuant to judicial directions, particularly when his ownership of the originally subscribed shares has not been impaired.

42.14 In response to the contention of the Appellant that no notice of the EGM was given to him despite being a 50% shareholder, the Respondents have submitted that the formal shareholder status of Appellant was questionable, particularly considering his residence in London and lack of a Permanent Account Number ("PAN") prior to his alleged temporary directorship and that the Appellant's name was not consistently reflected in the AoA or the register of members, which would ordinarily entitle a person to formal notifications. I am unable to disagree.

42.15 The Respondents have contended that the documents relied upon by the Appellant to assert his alleged 50% shareholding including the purported Board Resolution dated 2nd November 2006 and the alleged Will of Late Dindayal Gosain are fabricated and that if the

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Appellant was not a duly registered director in the records of the Company, there existed no legal obligation upon the Company to issue notices of meetings to him. I agree.

42.16 The Hon'ble Supreme Court in the case of ***T.N.K. Govindaraju Chetty and Co Limited and Ors. Vs. Kadri Mills CBE Limited and Ors.***[26] has held that persons not registered in the official records of the Company do not have the standing to demand notice for corporate actions or to seek remedies under oppression and mismanagement provisions.

42.17 The non-inclusion of one's the shareholders' register or AoA generally means that formal notification for corporate changes is not legally required. In relation to share allotments, unless the AoA specifically provide otherwise, no shareholder inherently possesses a right proportionate allotment of future shares. Therefore, in the absence of a clause in the AoA granting proportionate entitlement, any increase in share capital and resulting dilution of a shareholder's percentage if effected in accordance with the Company's rules and for *bona fide* purposes cannot constitute oppression.

42.18 A notice of a meeting is not required to be sent to persons not registered on the records of the Company or its transfer agent on the

26 (1999) 96 Comp Cas 871 (CLB)

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relevant date. Since the Appellant's name was never formally recorded, the Appellant was under no legal entitlement to receive notifications for any change, including those related to share capital increases or other corporate adjustments.

42.19 The decision in the case of *John Tinson & Co. (P) Ltd. v. Mrs. Surjeet Malhan (supra)* is relevant. The Hon'ble Supreme Court observed that the AoA of a private Company constitutes a contract between the parties. The Appellant not being named in the AoA, no such contractual relationship existed.

42.20 Having demanded and received repayment of the investment, the Appellant cannot now, after more than two years, allege oppressive management.

42.21 With respect to the allegation of allotment of 0.8% shares to Respondent No. 3 without a resolution or notice, the Respondents have denied the same and stating that all allotments were made in accordance with the needs of the Company. The increase in Respondent No.2's shareholding to 92% and the reduction of the Appellant's to 8% are direct consequences of a *bona fide* capital increase and the Appellant's own failure to subscribe to new shares. I agree.

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42.22 An EGM was duly convened on 20th March 2009 to alter the share capital, in compliance with Sections 94 to 104 of the Act and the Company's AoA.

42.23 In view of the above discussion, the conclusion of the Company Law Board as a matter of fact that the 1st Respondent-Company needed funds to meet certain requirements, although there may have been some irregularity in the holding of the EGM which in my view cannot be faulted with as the Respondent No.1-Company is also a Private Limited Company. An isolated instance cannot be termed as an act of oppression and also the Appellant would have to show continuous acts of oppression which is not the case here.

42.24 Therefore, I am of the view that the Company Law Board was justified in rejecting the allegations of the Appellant that the Respondents have altered the share capital of the Company without following due process of law.

42.25 Accordingly, Question No.3 that whether the Company Law Board was justified in rejecting the allegations of the Appellant that the Respondents have altered the share capital of the Company, is answered in the affirmative in favour of the Respondents and against the Appellant as the alteration has been by following due process of law.

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43. Coming to Question No.4, I agree with the Respondents that scattered references buried within pleadings, without making the fact of the parallel proceedings clear and candid, do not constitute meaningful disclosure.

43.1 The Hon'ble Supreme Court in the case of ***G. Narayanaswamy Reddy (Dead) By L.Rs. vs. Government of Karnataka and Anr.***[27] held in Paragraph 5:

> "*It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions*."

43.2 Disclosure after the fact such as in a rejoinder, merely attempts to cure the initial suppression at the time of filing. This undermines the integrity of proceedings, as both the respondent and the adjudicating body are deprived of the opportunity to address the facts from the outset. The fact that the Company Law Board examined the issue at all is proof that the alleged clear disclosure was neither clear nor sufficient, thereby wasting judicial time and resources.

27 1991 AIR 1726

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43.3 It is pertinent to observe that events relating to allotment of shares and appointment of new directors took place in 2010, during the pendency of the suit, yet the Appellant did not seek any interim reliefs therein and withdrew the civil suit with Senior Division Civil Judge in Thane praying for declaration that alleged Board Resolution dated 02nd November 2006 be given legal effect of the Appellant being appointed as the Director of Respondent No.1 Company. The Appellant withdrew the said suit after the conclusion of the final hearing without providing a clear reason. Respondent No. 2 has lodged a complaint at Naupada Police Station, Thane, which is under investigation as the genuineness of the Will is thus *sub judice* in civil as well as criminal proceedings. It appears that the Appellant was well aware of his non-appointment as director of the Respondent No.1.

43.4 The Appellant's Appeal Memo stating they have done no suppression disregards the settled principle that materiality must be assessed at the time of filing as the later withdrawal of the suit does not retrospectively erase the existence of parallel proceedings at the time the petition was lodged, nor does it absolve the duty of full disclosure before the Company Law Board. While such withdrawal may have some bearing on the merits of the substantive relief sought, it does not cleanse the impropriety of withholding relevant facts.

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43.5 The Calcutta High Court in the case of ***Rohini Nandan Goswami Vs. Ocean Accident and Guarantee Co.***[28] held that materiality does not always require independent proof, at times, it is evident from the nature of the fact itself. The test remains whether the fact bears on the risk (or issue) in question. If it does, it is material; if it does not, it is immaterial. Therefore, in my view, the Company Law Board was justified in giving a finding that the Appellant has suppressed material facts.

43.6 In view of the above discussion, the Question No.4 that whether the Company Law Board was justified in giving the finding that the Appellant has suppressed material facts, is answered in the affirmative against the Appellant.

44. Appropos the above discussion, in my view, there is therefore, neither any perversity, nor a patent error on any principle of law nor disregard of relevant material nor cognizance of irrelevant or non-germane determinants in the findings of the Company Law Board, nor a case where the conclusion is against the law or arising from the consideration of irrelevant material or omission to consider relevant material nor conduct against probity and good conduct or conduct that was *mala fide* or for a collateral purpose or was burdensome, harsh or wrongful has been made out.

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28 AIR 1960 CAL 696

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45. The Appellant's assertion that there was no delay in filing the Company Petition is contradicted by the record, which shows that several petitions were filed and withdrawn over time. In 2008, the Appellant instituted a civil suit and subsequently withdrew it without satisfactory explanation. Such actions not only undermine the credibility of the Appellant's claim of delayed awareness but also demonstrate an abuse of the legal process.

46. Mr. Kanade has relied upon the decision of the Hon'ble Supreme Court in the case of *Claude-Lila Parulekar Vs. Sakal Papers (supra)* however, the said decision is distinguishable on two counts: first, the Appellant was not a named party to the AoA and accordingly, cannot invoke Article 5(b) and second, whether a pre-emption clause was or was not breached is a question of fact decided by the Company Law Board adversely to the Appellant and is not open to re-examination under Section 10F of the Act. Further, in the said decision, the Petitioner was an undisputed named member with clear rights unlike the Appellant herein and therefore, the said decision does not aid the case of the Appellant.

47. Mr. Kanade has also relied upon the decision of the Hon'ble Supreme Court in the case of *M.S. Madhusoodhanan Vs. Kerala*

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Kaumudi (P) Ltd. (supra) however, the said decision involved an established family Company with undisputed membership and the foundational dispute about the Appellant's membership did not arise in the facts of that case. Further, the said decision was decided on facts and the findings of the Hon'ble Supreme Court were based on the evidence before the subordinate Courts and the quasi-partnership finding in the said decision was based in a genuine family nexus whereas in the facts of the present case, the Appellant is unrelated to the Gosain family by blood or marriage and therefore, the said decision is also distinguishable and does not aid the case of the Appellant.

48. The Hon'ble Supreme Court in the case of *Purnima Manthena Vs. Renuka Datla (supra)* has observed that a patent error on a fundamental principle of law or disregard to relevant materials is required and as the Company Law Board has considered the MIDC Notice, construction documents, lease chronology, investment evidence and the Appellant's non-participation and as the Appellant offers alternate inferences precisely what paragraph 45 of the said decision excludes therefore, the decision also does not aid the case of the Appellant.

49. The Madras High Court in the case of *Malleswara Finance & Investments Co. v. Company Law Board (supra) in* paragraph 136 has

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held that the questions of share capital increase are pure questions of fact not amenable to Section 10F appeals. Further, in the facts of that case, the Court struck down an improper allotment upholding the Company Law Board's fact-finding and in the facts of the present case, the Company Law Board upheld the allotment, equally a factual finding protected from appellate disturbance and therefore, the said decision does not aid the case of the Appellant.

50. Mr. Kanade has also relied upon the decision of the Madras High Court in the case of *Micrometrics Engineers Vs. S. Munusamy (supra)* however, in the facts of that case, the Court upheld the Company Law Board's fact finding on oppression whereas in the facts of the present case, the Company Law Board found no oppression, a finding equally entitled to appellate protection. The said decision does not aid the case of the Appellant who seeks to reverse a Company Law Board's finding of no oppression as it is settled law that Section 10F cannot be used to re-examine the Company Law Board's factual conclusions and therefore, the said decision does not aid the case of the Appellant.

51. The Hon'ble Supreme Court in the case of *S. P. Chengalvaraya Naidu Vs. Jagannath (supra)* has observed that a litigant approaching the Court on a false or suppressed factual basis is not entitled to relief and the Appellant's non-disclosure of the prayers in

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the Thane Suit and conduct in suppressing parallel proceedings falls squarely within the mischief identified in this decision and therefore, the said decision also does not aid the case of the Appellant.

52. Mr. Kanade has also relied upon the decision of the Hon'ble Supreme Court in the case of *T. Ashok Pai Vs. CLB (supra)* however, the concealment of prayers in the Thane Suit, a Suit filed on identical directorship question by the Appellant was deliberate and material and as the Company Law Board found the Appellant's disclosure of the Thane Suit insufficient, I am of the view that the Appellant's reliance on the said decision does not aid their case.

53. Mr. Kanade has also relied upon the decision of the Hon'ble Supreme Court in the case of *K.C. Builders Vs. ACIT (supra)* however, the Appellant's pattern of filing and withdrawing Suits without disclosure of the prayers or outcomes, reflects a deliberate and strategic withholding that falls within the definition of suppression articulated in this decision and further, the non-disclosure of the Thane Suit was not a *bona fide* mistake, the Appellant was a party to both the proceedings on an identical question and therefore, the said decision does not aid the case of the Appellant.

54. Mr. Kanade has also relied upon the decision of the Hon'ble Supreme Court in the case of *Govt. of NCT Vs. BSK Realtors LLP*

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(supra) however, the suppression of the parallel directorship proceedings on the precise question at the heart of the Company Law Board petition was to be disclosed by the Appellant and therefore, the finding of the Company Law Board on the suppression of material is a factual finding and therefore, the said decision also does not aid the case of the Appellant.

55. Mr. Kanade has also relied upon the decision of the Hon'ble Supreme Court in the case of *Pushpam Pharmaceutical Co. Vs. Collector of Central Excise (supra)* however, the principle laid down in this decision applies to suppression before an authority that itself possessed the knowledge and as the Company Law Board did not possess knowledge of the prayers and proceedings of the Thane Suit which had to be excavated from the Appellant's buried references. The duty of frank disclosure runs to the adjudicating authority and not merely to the opponent and therefore, the said decision also does not aid the case of the Appellant.

56. The Hon'ble Supreme Court in the case of *Arunima Baruah Vs. Union of India (supra)* had held that the appropriate remedy upon prior suppression is to withdraw and refile with full disclosure whereas the Appellant has not followed this course. This decision presupposes a fresh petition with full candour which is the very step that the

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Appellant has declined to take and therefore, the said decision does not aid the case of the Appellant.

57. In the case of *S.J.S Business Enterprises Vs. State of Bihar (supra)*, the omitted facts were genuinely minor and unrelated to the merit however, in the present case, the Thane Suit was on the identical directorship question and was pending at the time of the filing of the petition before the Company Law Board and was withdrawn only upon after the Company Law Board's final hearing which are neither minor nor non-material omissions as they go to the foundation of the Appellant's claim to the directorship and the *bona fides* of his approach to the Company Law Board and therefore, the said decision does not aid the case of the Appellant.

58. Mr. Kanade has also relied upon the decision of the Hon'ble Supreme Court in the case of *V. S. Krishnan Vs. Westfort Hi-Tech Hospital (supra)* however, the said decision would only assist the case of the Appellant if the conduct complained of was itself oppressive and continuing however, as the Company Law Board found no oppression, the Appellant cannot invoke continuing oppression in in respect of conduct that has been adjudicated as non-oppressive as the same does not alter the underlying finding and therefore, the said decision does not aid the case of the Appellant.

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59. Mr. Kanade has relied upon the decision of the Hon'ble Supreme Court in the case of *Ananthaswamy Vs. Boraiah (supra)* for the proposition that the Respondents' fraud allegation must be 'strictly proved' however, the FIR (JMFC Thane, 29th July 2013), the medical evidence of Mr. Dindayal Gosain's progressive paralysis, the inconsistency in signatures, and the affidavit of 20th April 2006 collectively constitute cogent evidence and the Appellant's own documents viz. the alleged Board Resolution and November 2006 Will have not been proved per Section 68 Evidence Act and as the said decision requires strict proof which has not been provided by the Appellant, the said decision does not aid the case of the Appellant.

60. The Hon'ble Supreme Court in the case of *Sangramsinh P Gaekwad Vs. Shantadevi P. Gaekwad (supra)* held that strict satisfaction of criteria was required against easily accepting the quasi-partnership plea. In the facts of the present case, the Company was incorporated 2000, before Appellant's involvement; Appellant not in AoA; invested only in 2003 for construction; demanded money back; never participated in management and therefore, none of the criterias are met. Further, Appellant suppressed the Thane Suit, relied on allegedly forged documents, and demands re-examination of facts meaning that

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they did not approach the Company Law Board with clean hands and as the Company Law Board found no oppression; same events cannot be relabelled as 'continuing' and therefore, the said case does not aid the case of the Appellant.

61. Mr. Kanade has relied upon the decision in the case of *Ebrahimi Vs. Westbourne Galleries Ltd. (supra)* which proceeds on the premise of a mutual understanding of joint participation in management between persons who associate on the basis of personal trust however, in the facts of the present case, the Appellant was not a promoter; was not named in the AoA; invested only in 2003 for a limited construction purpose demanded return of his investment; and never participated in management and therefore, this decision does not aid the case of the Appellant.

62. In view of the aforesaid, the other arguments by the learned Counsel have not been deemed necessary to be dealt with.

63. Consequently, even the other decisions cited by the Appellant, although enunciating and elucidating the settled principles of law do not aid the case of the Appellant as also are distinguishable on facts and therefore, this Court has deemed it appropriate to not deal with the same.

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64. In view of the above discussion and the questions of law answered as above, this Court does not find any merit in the Appeal and therefore, the reliefs sought for by Mr. Kanade on behalf of the Appellant cannot be granted.

65. Ergo, the Appeal deserves to be dismissed and is hereby dismissed. The pending Interim Applications to accordingly stand disposed. No costs.

(ABHAY AHUJA, J.)

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