IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY ,THE 12TH DAY OF MARCH 2019 / 21ST PHALGUNA, 1940

Co.Appeal.No. 7 of 2012

AGAINST THE ORDER/JUDGMENT IN CP 103/2007 of COMPANY LAW BOARD, ADDITIONAL PRINCIPAL BENCH, CHENNAI, DATED 28.10.2011

APPELLANTS/PETITIONERS:

1 PRADEEP PACHIKARA
PACHIKARA HOUSE, KOLANI PO, THODUPUZHA, IDUKKI DIST, KERALA.

2 SAJU M C
MLAKUZHIYIL HOUSE, MUTTOM P O, THODUPUZHA, IDUKKI DIST, KERALA,.

3 M.M. CHACKO
MLAKUZHIYIL HOUSE, KUDAYATHOOR P O, THODUPUZHA, IDUKKI DIST., KERALA.

4 JOSEPH SIJO
MLAKUZHIYIL HOUSE, KUDAYATHOOR P O, THODUPUZHA, IDUKKI DIST., KERALA.

5 JAMES SUBIN
MLAKUZHIYIL HOUSE, KUDAYATHOOR P O, THODUPUZHA, IDUKKI DIST., KERALA.

6 THOMASKUTTY K.C.
KUDAKUTHIYIL HOUSE, PERUNAI PO, CHANGANACHERRY, KOTTAYAM DIST. KERALA.

7 SHINE AUGUSTINE
MADACKAL HOUSE, KUDAYATHOOR P O, THODUPUZHA, IDUKKI DIST., KERALA.

8 MATHEW T. LUKE
THOOKANKOTIL HOUSE, MUTTOM PO, THODUPUZHA, IDUKKI DIST. KERALA.(APPELLANTS 6 & 7, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER, SRI. PRADEEP PACHIKARA (1ST APPELLANT HEREIN). APPELLANTS 3,4,5 AND 8, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER, SRI. SAJU.M.C, THE 2ND APPELLANT HEREIN.)

BY ADVS.
PRADEEP PACHIKARA (PARTY IN PERSON)
SMT.A.AMRUTHA VIDYADHARAN FOR APPELLANT NO.2
SRI.ASWIN GOPAKUMAR FOR APPELLANT NOS.3, 4, 5 AND 8
SRI.KRISHNA PRASAD.S FOR APPELLANT NO.7
SMT.DEEPTI SUSAN GEORGE FOR APPELLANT NOS.3,4,5 AND 8
SMT.HEBA SARA ABRAHAM FOR APPELLANT NOS.3, 4, 5 AND 8
SMT.KALA G.NAMBIAR FOR APPELLANT NOS.3, 4, 5 AND 8
SMT.MANJU RAJAN FOR APPELLANT NO.2
SRI.MOHAN PULIKKAL FOR APPELLANT NO.2
SRI.RENOY VINCENT FOR APPELLANT NOS.3, 4, 5 AND 8
SRI.PEEYUS A KOTTAM FOR APPELLANT NO.6
SRI.NARAYANAN P. POTTI FOR APPELLANT NO.2

<u>RESPONDENTS/RESPONDENTS</u>:

1 M/S.SELECT SECURITIES LIMITED, KOCHI
S.T. REDDIAR & SONS, BUILDINGS, VEEKSHANAM ROAD, KOCHI-682 035.

2 PRINCE GEORGE
CHAIRMAN, M/S.SELECT SECURITIES LIMITED, S.T. REDDIAR & SONS, BUILDINGS, VEEKSHANAM ROAD, KOCHI-682 035.

3 BINNY C. THOMAS
MANAGING DIRECTOR, M/S.SELECT SECURITIES LIMITED, S.T. REDDIAR & SONS BUILDINGS, VEEKSHANAM ROAD, KOCHI-682 035.

4 SHEKHAR M.
DIRECTOR, M/S.SELECT SECURITIES LIMITED, S.T. REDDIAR & SONS BUILDINGS, VEEKSHANAM ROAD, KOCHI-682 035.

5 SURESH YEZHUVATH
DIRECTOR, M/S.SELECT SECURITIES LIMITED, S.T. REDDIAR & SONS, BUILDINGS, VEEKSHANAM ROAD, KOCHI-682 035.

6 LISA JOSE
DIRECTOR, M/S.SELECT SECURITIES LIMITED, S.T. REDDIAR & SONS, BUILDINGS, VEEKSHANAM ROAD, KOCHI-682 035.

7 J. KURIEN NELLANICKAL
DIRECTOR, M/S.SELECT SECURITIES LIMITED, S.T. REDDIAR & SONS, BUILDINGS, VEEKSHANAM ROAD, KOCHI-682 035.

8 M/S. DOHA BANK
GRAND HAMAD AVENUE, P.O. BOX.3818, DOHA, QATAR.

9 M/S. SELECT STOCK BROKERS LIMITED
NEW NO.53, 2ND FLOOR, 1ST MAIN RD., C I T NAGAR WEST, CHENNAI-35.

10 M/S.SELECT DERIVATIVES AND COMMODITIES (INDIA) LTD
ST.REDDIAR & SONS BUILDINGS, VEEKSHANAM ROAD, KOCHI-682035.

11 JOHNKUTTY JAMES
KUMBILUVELIL NETTANACKAL, CHELACOMPU PO, KARUAKACHAL, KOTTAYAM-686 540, KERALA.

12 AJITH P K
APARNA, TC50/1605, AYANTHOLE, THRISSUR-680003.

13 ANIL GEORGE
ABU VILLA, PRIYADARSINI ROAD, ALUVA, KERALA,

14 MENON SREEKUMAR
SREEVALSOM, DESOM PO., ALUVA, KERALA.

15 PHILIP.L.P.
PANJIKARAN, PLOT NO 90, NORTH GIRINAGAR, ERNAKULAM.

16 SAINTSON MATHEW
ACKARAPPADAM, SOUTH PARAVOOR, ERNAKULAM.

17 VINOD KUMAR OP.
CHEMPILAYATHIL HOUSE, VALLAMKULAM EAST, THIRUVALLA, KERALA.

18 THOMAS JOSEPH
PUTHENANGADI HOUSE, MANNARKAYAM, KANJIRAPPALLY-1, KERALA.

19 THOMAS ANTONY
CHITTADIYIL HOUSE, PERUVANTHANAM P O., IDUKKI, KERALA. (DELETED)

20 BABU PRASAD
6/4, 12TH CROSS ROAD, MAGADI ROAD, BANGALORE, KARNATAKA. (DELETED)

21 MAGESH S
E-3, FLOORPHASE-3, PARKAVI APARTMENTS, MARI AMMAN KOIL STREET, CHENNAI. (DELETED)
(R19 TO R21 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF APPELLANT AS PER ORDER DATED 22/08/2012 IN IA.NO.2117/2012)

22 ROBY K.R.
ROBY VILLA, NEAR S.B.H.S, CHANGANACHERRY-1.

ADDL. R23 MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA, B-1 WING, 2ND FLOOR,PARAYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD, NEW DELHI-110003.
(ADDL.R23 IS IMPLEADED AS PER ORDER DATED 23/02/2015 IN IA.716/2015)

BY ADVS.
SRI.BECHU KURIAN THOMAS (SR.)FOR R1 AND R2
SRI.M.GOPIKRISHNAN NAMBIAR FOR R8
SRI.PAUL JACOB (P) FOR R1 AND R2
SRI.M.VIJAYAKUMAR ASG
SRI.P.GOPINATH MENON FOR R8

THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON 11.12.2018, THE COURT ON 12.03.2019 DELIVERED THE FOLLOWING:

V.CHITAMBARESH
&
R.NARAYANA PISHARADI, JJ.
****
Company Appeal No.7 of 2012

Dated this the 12th day of March, 2019

JUDGMENT

R.Narayana Pisharadi, J

This appeal is filed against the order dated 28.10.2011 passed by the Company Law Board (in short 'CLB'), Additional Principal Bench, Chennai in Company Petition No.103/2007.

2. The company petition was filed by the appellants herein under Sections 111A, 397 and 398 of the Companies Act, 1956 (hereinafter referred to as 'the Act'). The first respondent in the company petition is a public limited company. The second respondent is the Chairman and the third respondent is the Managing Director and respondents 4 to 7 are the Directors of the first respondent company. Respondent No.8 is Doha Bank. Respondents 9 and 10 are said to be subsidiary companies of the

first respondent company. Respondents 11 to 22 are employees of the first respondent company.

3. Brief facts of the case can be stated as follows: The appellants were shareholders of the first respondent company. The appellants together had held 25.021% of the total paid up capital of the company. The authorised capital of the company was increased from 2.5 crores rupees to 3 crores rupees in the Extraordinary General Meeting (in short 'EGM') held on 11.12.2006. The Board of Directors of the first respondent company decided to have a strategic tie-up with an investor and decided to accept the proposal received from Doha Bank (Respondent No.8) in that regard. In the meeting held on 05.02.2007, the Board of Directors authorised Respondent No.2 to enter into Memorandum of Understanding (in short 'MOU') or agreement with Respondent No.8 for that purpose. All the directors agreed to sell their shareholding to any party, in part or full, for a price not less than Rs.60/- within a period of six months. The appellants also executed undertakings in favour of

Respondent No.2 authorising him to transfer their shares on the aforesaid conditions. Respondent No.2 entered into MOU with Doha Bank on 21.02.2007 for sale of 49% of the stake in the company immediately and 20% stake at a later stage. As per a letter dated 10.03.2007, Doha Bank demanded 31% stake instead of 20% as mentioned in the original MOU to have a total of 80% of the stake in the first respondent company. This proposal was agreed to by the directors and the promoters including the appellants and the matter was discussed in the meeting of the Board of Directors held on 31.03.2007. The Board of Directors approved that proposal in the meeting held on 31.03.2007 and decided to sell 49% of the shares to Doha Bank at the first stage and 31% shares at the second stage. Accordingly, a revised MOU was entered into with Doha Bank on 21.04.2007. On 10.04.2007, the appellants had delivered their share certificates along with duly signed blank transfer forms to Respondent No.2. However, in the meeting of the Board of Directors held on 21.04.2007, Appellants 1 and 2 expressed their unwillingness to sell their shares. Appellants 1 to 5 instituted a suit in the Munsiff's Court, Ernakulam as O.S.No.604/2007 against transfer of shares to Doha Bank. Later, the suit was dismissed on the ground of want of jurisdiction. The transfer of shares could not be effected on account of the order of temporary injunction obtained by the appellants from the Munsiff's Court, Ernakulam. The order of injunction was vacated by the court on 11.10.2007 and the transfer of shares was approved by the Board of Directors on 29.10.2007 and effected subsequently.

4. The crux of the allegations in the company petition is that on account of the illegal and fraudulent transfer of shares made by Respondents 2 to 7 to Respondent No.8, a foreign bank which was brought in as a strategic investor, the shareholding of the appellants was reduced from 25.051% to 2.94%. The appellants also challenged in the company petition the validity of the EGM held on 11.12.2006 on the ground that no notice of that meeting was given to them.

5. The main allegations raised by the appellants in the company petition can be enumerated as follows: (1) The second and the third respondents had lured the appellants to sell their shares promising them that their shares would be sold for a price of not less than Rs.60/- per share. (2) At the instance of the second and the third respondents, Appellants 1 to 6 executed an undertaking on 5.02.2007 authorising the second respondent to negotiate and enter into an agreement for sale of their shares within a period of six months. (3) In the meeting of the Board of Directors of the company held on 31.03.2007, Appellants 1 and 2 were informed that the second and the third respondents had entered into a MOU with Respondent No.8 on 21.02.2007 with regard to the sale of shares. (4) The MOU was made in such a manner to provide a stake of 49% initially and a further 31% at a later stage to Doha Bank. This was in violation of the representation made to the appellants by Respondents 2 and 3. (5) The respondents, without any authority, committed the appellants to a non-competition condition thereby preventing

them from engaging in similar business. (6) The agreement between the first respondent company and Respondent No.8 bank is illegal for the reason that the company cannot enter into an agreement for sale of shares owned by the shareholders. (7) On 10.04.2007, the appellants delivered their share certificates along with duly signed blank transfer forms to Respondent No.2. Coming to know that the terms of the MOU entered into with Respondent No.8 were not in terms of the decision taken by the Board of Directors in the meeting held on 31.03.2007, Appellants 1 and 2, in the meeting of the Board of Directors held on 21.04.2007, expressed their unwillingness to sell their shares and revoked the authority given to Respondent No.2 for sale of shares. They demanded return of the share certificates and the signed blank transfer forms but Respondents 2 and 3 did not comply with their demand. (8) The respondents manipulated the minutes of the meeting of the Board of Directors held on 31.03.2007. (9) The transfer of shares made by the respondents was in violation of the order of temporary injunction granted by the Munsiff's Court, Ernakulam in the suit O.S.No.604/2007 which was instituted by Appellants 1 to 5. (10) The transfer of shares effected beyond the period of six months from the date of undertaking given by the appellants is invalid. (11) As a result of the unauthorised and illegal transfer of shares of the appellants made by the appellants, the holding of the appellants has been reduced to 2.94% from 25.051%. The appellants have been reduced to a minority on account of the transfer of shares made by the respondents. (12) The authorised share capital of the company was increased from 2.5 crores rupees to 3 crores rupees in the EGM held on 11.12.2006. The appellants were not given any notice of the EGM held on 11.12.2006 and therefore, the decisions taken in that meeting are not valid. (13) The second appellant had not been given notice of the meeting of the Board of Directors held on 23.04.2007 and 01.08.2007. Appellant No.6 had not been given notice of the meetings of the Board of Directors held since 23.04.2005.

6. The appellants had also raised allegations in the

company petition regarding the retirement of the directors on rotational basis. However, during the hearing of the appeal, the appellants did not advance any arguments on this issue.

7. On the basis of the allegations raised as above, the appellants had sought the following reliefs in the company petition:

> "*1. Regulate the conduct of the affairs of the 1st respondent Company in future.*
>
> *2. To pass an order of permanent injunction restraining the Respondents, their agents, servants or any other persons claiming through or under them from alienating the whole or any portion of the shares belonging to the petitioners in the Company, or*
>
> *3. In the alternative that such shares have been illegally transferred by the Respondents, to cancel any such illegal transfers of shares that may have been made with respect to the Petitioners shares and to pass suitable orders directing the Company to rectify the register of members by restoring the names of the Petitioners as holders of the shares as held by them in the Company prior to such transfers.*

4. *To declare that the impugned Extra-Ordinary General Meeting dated 11.12.2006 as being illegal and hence further declare that the proceedings thereof as being void.*
5. *To declare that the amendment made to the Memorandum and Articles of Association for increasing the Authorised Capital of the Company in the impugned Extra-ordinary General Meeting dated 11.12.2006 as without notice or consent from the Petitioners as null and void.*
6. *To declare the item relating to the issue of the impugned shares sought to have been made by the Respondent at the Board Meetings dated 21.04.2007 and 23.04.2007 as illegal, void and thereby to cancel and nullify such issue and allotment of shares as being issued without notice or consent from the Petitioners as null and void.*
7. *To direct the Respondents to deliver the Share Certificates and duly executed share transfer deeds with respect to the Petitioners shares failing which the Company be directed to issue duplicate Share Certificates in respect of the shares which the Petitioners are entitled to.*
8. *To declare that the Board Meetings dated 14.10.2006, 23.04.2007 and 01.08.2007 as*

being illegal and hence declare the proceedings thereof to be void.

9. *Declare that the 2nd and 6th petitioners are not directors liable to retire by rotation at the 15th AGM and consequently restrain the Respondents from transacting at the said AGM, items 2 and 3 in the AGM notice dated 22.10.2007.*

10. *To direct the 1st Respondent Company to make suitable arrangements to obtain the release of the security provided by the 1st Petitioner's wife to the Indusind Bank in respect of the borrowing made by the Company.*

11. *Make the number of directors in the 1st Respondent Company to such number and proportions to represent adequately the Petitioners interest on the Board so that the constitution of the Board is in relation to the shareholding of the Petitioners.*

12. *Remove the 2nd and 3rd Respondent as Directors of the Company and declare that such persons are unfit to manage the Company.*

13. *Pass such further orders as this Hon'ble Board may deem fit to grant relief from the acts complained of."*

8. Respondents 1 to 7, 9 and 10 filed joint counter statement in the company petition refuting the allegations raised

by the appellants. They contended that the company petition filed under Sections 397 and 398 of the Act is not maintainable. They also contended that all the decisions regarding the transfer of shares to Doha Bank were taken by the Board of Directors of the company and that the appellants opted to sell their shareholding in the company and voluntarily transferred their shares. They denied the allegation that they manipulated the minutes of the meeting of the Board of Directors held on 31.03.2007. They contended that the transfer of shares could not be effected on account of the order of temporary injunction obtained by the appellants from the Munsiff's Court, Ernakulam. The order of injunction was vacated by the court on 11.10.2007 and the transfer of shares was approved by the Board of Directors only on 29.10.2007. They further contended that the company has obtained necessary approvals from SEBI and stock exchanges for the change in the management. They refuted the allegation that the appellants had no notice or knowledge of the EGM held on 11.12.2006 and contended that the appellants were very much aware of the meeting of the Board of Directors held on 14.10.2006 and the EGM held on 11.12.2006.

9. The CLB formulated the following issues for consideration: (1) Whether the acts complained of by the petitioners amounted to oppression and mismanagement by respondents 2 and 3 ? (2) Whether the petitioners are entitled to revoke the irrevocable authority given by them to Prince George (R2)? (3) Whether the petitioners are raising baseless allegations and creating unnecessary obstructions in the management of the company for a collateral purpose? (4) Whether circumstances exist warranting a just and equitable winding up of the company?.

10. The CLB has found that there is no reason to hold that Respondents 2 to 7 worked against the interest of the company and caused any prejudice to the appellants. The CLB also found that the appellants were very well aware of all the terms and conditions of the MOUs entered into with Doha Bank by Respondent No.2 and that they had voluntarily transferred their

shares by delivering the share certificates and signed transfer deeds to Respondent No.2. The CLB rejected the contention of the appellants that they had revoked the authority given to Respondent No.2 for transfer of their shares. The CLB further found that after permitting Respondent No.2 to act upon the undertaking given by them, the appellants could not have revoked the authority given to him for transfer of shares. The CLB also found that after having opted to sell their shareholding in the company to any party, in full or part, within six months, for not less than Rs.60/- per share, the attempt of the appellants is to twist the facts and make it appear that they have been illegally deprived of their shareholding and that the resolutions of the meeting of the Board of Directors held on 31.03.2007 disprove all allegations raised by the appellants. The CLB rejected the allegation raised by the appellants that the respondents had manipulated the minutes of the meeting of the Board of Directors held on 31.03.2007. The CLB found that there is no merit in the contention of the appellants that the transfer of shares effected after the expiry of the period of six months from the date of the undertaking given by them is invalid. The CLB found that after instituting a suit and obtaining an order of temporary injunction against transfer of shares, the appellants cannot contend that the shares were not transferred within the time stipulated in the undertaking. The CLB also found that Appellant No.2 had attended the EGM held on 11.12.2006 and that the appellants had notice of that meeting. In order to put an end to the dispute, the CLB gave two options to the appellants; either to get back their shares in the company by accepting the offer from Doha Bank or to confirm the sale of their shares to Doha Bank and also to sell their remaining shares to the bank or to the respondents. On the basis of these findings, the CLB disposed of the company petition.

11. We have heard the first appellant who appeared as party in person and the counsel who appeared for the other appellants. We have also heard the counsel who appeared for the respondents.

12. At the outset, we may take note of the fact that neither the appellants nor the respondents had adduced any oral or documentary evidence before the CLB as in a trial. The CLB has heard the submissions made by the counsel for the parties and perused the documents produced by them before it and passed the impugned order.

13. The scope of the jurisdiction of this Court in an appeal under Section 10F of the Act may be adverted to here. Section 10F of the Act provides for appeal to the High Court by any person aggrieved by any decision or order of the Company Law Board on any question of law arising out of such order.

14. In **Commissioner of Income Tax, Bombay v. The Scindia Steam Navigation Company Limited : AIR 1961 SC 1633**, a Constitution Bench of the Apex Court, while dilating on the circumstances under which a question of law would arise out of an order of the Appellate Tribunal, as envisaged in Section 66(1) of the Income Tax Act, 1922, has summed up the following principles: (1) When a question is raised before the

Tribunal and is dealt with by it, it is clearly one arising out of its order. (2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is therefore one arising out of its order. (3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order. (4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it. It was held, stating the position compendiously, it is only a question that has been raised before or decided by the Tribunal that could be held to arise out of its order.

15. The Company Law Board is the final authority on facts. Unless such findings are perverse or based on no evidence or otherwise arbitrary, there is no scope for interference in appeal. Therefore, the jurisdiction of the appellate court under Section 10F of the Act is restricted. The only other basis on which the appellate court would interfere under Section 10F of the Act is

when the conclusion of the Company Law Board is (a) against law or (b) arose from consideration of irrelevant material or (c) made on omission to consider relevant materials (See **V.S.Krishnan v. Westfort Hi-tech Hospital Limited : (2008) 3 SCC 363**).

16. There are two major issues raised by the appellants in the case. The first one is with regard to the transfer of shares held by them to Doha Bank (Respondent No.8) as a part of the strategic tie-up. It is alleged by the appellants that their stake in the first respondent company has been reduced from 25.021% to 2.94% as result of the fraudulent and illegal transfer of shares to Doha Bank. The second issue raised by the appellants is with regard to the decision taken for increasing the authorised share capital of the company from 2.5 crores rupees to 3 crores rupees in the EGM held on 11.12.2006. The appellants have alleged that no notice of the EGM held on 11.12.2006 had been given to them and therefore, the decision taken in that meeting regarding the increase in the share capital of the company is not valid and legal.

17. As noticed earlier, Section 10F of the Act engrafts the requirement of the existence of a question of law arising from the decision of the CLB as an essential pre-condition for the maintainability of an appeal thereunder. The findings made by the CLB on the two major issues noticed above are factual findings based on the documents produced before it and the contentions raised by the parties. The questions of law raised before this Court by the appellants had not been raised before the CLB. According to the dictum laid down in **Scindia Steam Navigation Company Limited** (supra), when a question of law is neither raised before the CLB nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it. Though the appeal is liable to be rejected on this very short ground, considering the elaborate arguments advanced by the counsel for the parties, we are inclined to go into the merits of the main and material submissions made before us.

18. Admittedly, the appellants had given their share

certificates and signed blank transfer forms to Respondent No.2, pursuant to the decision taken by the Board of Directors in its meeting held on 31.03.2007. The plea of the appellants in the company petition is that they were lured by Respondents 2 and 3 who approached them with the proposal for sale of shares in connection with the strategic tie-up. In other words, the plea is that Respondents 2 and 3 played fraud upon the appellants in obtaining the undertaking and also the share certificates and signed blank transfer forms from them. The allegation that Respondents 2 and 3 made false representation to the appellants and lured them to accept the proposal for sale of their shares could have been proved by the appellants only by adducing oral evidence, especially in the absence of any document executed by them incorporating the terms and conditions of the alleged deal between them and Respondents 2 and 3. No oral evidence was adduced by the appellants before the CLB. Without exercising the right to lead oral evidence before the CLB, the appellants cannot now contend that the CLB has not considered the evidence before it or that the CLB has misread the evidence. It is to be noted that on the basis of any of the documents produced by them before the CLB, the appellants could not establish that the second and the third respondents had lured them or played fraud upon them to accept the proposal for sale of the shares.

19. In **Needle Industries (India) Limited v. Needle Industries Newly (India) Holdings Limited : AIR 1981 SC 1298**, it has been held as follows:

> *"We appreciate that it is generally, unsatisfactory to record a finding involving grave consequences to a person on the basis of affidavits and documents without asking that person to submit to cross examination. It is true that men may lie but documents will not and often, documents speak louder than words. But a total reliance on the written word, when probity and fairness of conduct are in issue, involves the risk that the person accused of wrongful conduct is denied an opportunity to controvert the inferences said to arise from the documents. But then, Shri Nariman's objection seems to us a belated attempt*

to avoid an inquiry into the conduct and motives of Devagnanam. The Company Petition was argued both in the Trial Court and in the Appellate Court on the basis of affidavits filed by the parties, the correspondence and the documents. The learned Appellate Judges of the High Court have observed in their judgment that it was admitted, that before the learned trial Judge, both sides had agreed to proceed with the matter on the basis of affidavits and correspondence only and neither party asked for a trial in the sense of examination of witnesses. In these circumstances, the High Court was right in holding that, having taken up the particular attitude, it was not open to Devagnanam and his group to contend that the allegation of mala fides could not be examined, on the basis of affidavits and the correspondence only. There, is ample material on the record of this case in the form of affidavits, correspondence and other documents, on the basis of which proper and necessary inferences can safely and legitimately be drawn".

20. In the instant case, not even affidavit evidence was adduced by the appellants to prove their plea that fraud was played upon by them by Respondents 2 and 3. On the other

hand, on the basis of the documents produced by the parties, the CLB found that the plea raised by the appellants regarding fraudulent sale of their shares by the respondents is false and frivolous.

21. On the basis of the minutes of the meeting of the Board of Directors held on 05.02.2007, the CLB has found that the directors had considered the proposal for strategic tie-up with Doha Bank and authorised Respondent No.2 to negotiate with Doha Bank and finalise the terms and conditions and to enter into MOU/agreements with that bank. The appellants have no case that no such decision was taken by the Board of Directors in the meeting held on 05.02.2007. Therefore, the strategic tie-up with Doha Bank was not an idea mooted by Respondents 2 and 3 but by the Board of Directors of the first respondent company.

22. It was based on the decision taken by the Board of Directors in the meeting held on 05.02.2007 that MOU dated 21.02.2007 was signed by Respondent No.2 with Doha Bank. As

per the MOU dated 21.02.2007, Doha Bank had agreed to acquire 49% of the shares of the first respondent company. But, by letter dated 10.03.2007, the bank had informed Respondent No.2 that they intend to purchase the balance 31% of the shares and they wanted to revise the MOU accordingly.

23. The proposal regarding the revised MOU was considered by the Board of Directors of the company in the meeting held on 31.03.2007. The revised proposal was approved by the Board of Directors in the meeting held on 31.03.2007. It was pursuant to the decision of the Board of Directors taken in the meeting held on 31.03.2007 that the appellants entrusted the share certificates and signed blank transfer forms to Respondent No.2 on 10.04.2007. A revised MOU was entered into with the Doha Bank on 21.04.2007.

24. It is a common practice for a seller of shares to sign an instrument of transfer with the name of the transferee in blank. The buyer may then insert his own name in the blank transfer form or without doing so, he may re-sell and hand over the

blank transfer form to a new purchaser, who may again either insert his own name in it as the transferee or he may re-sell and deliver it still in blank to another purchaser from him and so on. Delivery of the share certificates with the transfer form executed in blank does not invest the holder of the certificates with the ownership of the shares in the sense that no further act is required in order to perfect his right. The transferor continues to be the share holder recognised by the company. When the blank transfer forms and share certificates are delivered under a contract by a registered holder of shares and the buyer sells the shares and delivers the blank transfer forms and shares to a bona fide purchaser for value, or where blank transfer forms and the share certificates are delivered by a registered holder of shares to his broker for sale in the market and the broker sells the same as the agent of the registered holder to a bona fide purchaser for value, the bona fide purchaser gets a good title to the shares and can insert his own name in the transfer form and procure himself to be registered as the owner (See **Fazal D.**

Allana v. Mangaldas M. Pakvasa : AIR 1922 Bom 303).

25. Transfer of shares by execution of blank transfer forms with delivery of share certificates is an accepted practice. They are known as 'blank transfers'. In such transfer, the equities between the transferor and the transferee do not touch the company. It clothes the transferee with an equitable ownership but not full ownership (See **M/s Howrah Trading Co. Ltd. v. Commissioner of Income Tax, Calcutta : AIR 1959 SC 775**).

26. In **Vasudev Ramachandra Shelat v. Pranlal Jayanand Thacker : AIR 1974 SC 1728**, the Apex Court considered the question whether the mere purported gift of certain shares, without actual registration with the company, would create a right on the donee. The Supreme Court drew a distinction, relying on the Privy Council decision in M.P.Barucha v. Sarabhai and Company : AIR 1926 PC 38, between "the title to get on the register" and "the full property in the shares". The first was held to have been acquired by mere delivery, with the

required intention, of the shares certificate and a blank form signed by the transferor. The second is only obtained when the transferee, in exercise of his right to become a share holder, gets his name on the register in place of the transferor. It was held that, the antecedent right in the person to whom the share certificate is given with a signed blank transfer form under a transaction meant to confer a right or title upon him to become a share holder, is enforceable so long as no obstacle to it is shown to exist in any of the articles of association of a company or a person with a superior right or title, legal or equitable, does not appear to be there. It was further held that the donation of such a right, as a form of property, was shown to be complete so that nothing was left to be done so far as the vesting of such a right in the donee is concerned. The actual transfers in the registers of the companies concerned were to constitute mere enforcement of this right. They were necessary to enable the donee to exercise the rights of the shareholder. The mere fact that such transfers had to be recorded in accordance with the company law did not detract from the completeness of what was donated.

27. Share is movable property, with all the attributes of such property. A share is transferable. While a transfer may be effective between transferor and transferee from the date of transfer, the transfer is truly complete and the transferee becomes a shareholder in the true and full sense of the term, with all the rights of a shareholder, only when the transfer is registered in the company's register. A transfer effective between the transferor and the transferee is not effective as against the company and persons without notice of the transfer until the transfer is registered in the company's register. On the transfer of shares, the transferee becomes the owner of the beneficial interest though the legal title continues with the transferor (See **Life Insurance Corporation of India v. Escorts Ltd : AIR 1986 SC 1370**).

28. It was in the meeting of the Board of Directors held on 31.03.2007 that the proposal for entering into a revised MOU

with Doha Bank was approved. The appellants had only subsequently, that is, on 10.04.2007, delivered the share certificates and signed blank transfer forms to Respondent No.2. It means that they had no objection to the proposal for share of transfers which was approved in the meeting of the Board of Directors held on 31.03.2007.

29. The appellants have got a plea that the proposal approved by the Board of Directors in the meeting held on 31.03.2007 did not contain any condition regarding non-compete fee and such a condition was incorporated by manipulating the minutes of the meeting held on 31.03.2007. It is their plea that it was without knowing the condition regarding non-compete fee that they delivered the share certificates and the signed blank transfer forms to Respondent No.2.

30. Admittedly, the draft of the minutes of the resolutions passed by the Board of Directors on 31.03.2007, did not contain the following resolution:

"Resolved further that the valuation of 49% of

> shares proposed to be sold to Doha Bank includes the consideration of shares and non-compete fee which will be disbursed as per the decision of the Board".

The minutes of the resolutions passed by the Board of Directors in the meeting held on 31.03.2007 were approved by the Board only in the next meeting held on 21.04.2007 and the minutes so approved contained the resolution referred to above. The contention of the respondents is that when the minutes of the resolutions passed in the meeting held on 31.03.2007 came up for approval on 21.04.2007, some of the members insisted for providing an explanation that the valuation of shares shall include the consideration of shares and non-compete fee and it was after due deliberations, the Board decided to include the aforesaid resolution (which is quoted above) in the minutes. The CLB has found that this contention raised by the respondents is acceptable. We find no reason to take a different view on this factual finding made by the CLB. It also negatives the plea of the appellants that the respondents manipulated the minutes of the meeting of the Board of Directors held on 31.03.2007. Normally, the minutes of the meeting of the Board of Directors would be approved only in the next meeting. If any of the directors suggests any modification or change in the minutes of the earlier meeting, a decision in that regard would be taken by the Board of Directors in the next meeting. It is an accepted practice to obtain confirmation of the minutes as an accurate record of the decisions made at the previous meeting by submitting it at the next meeting. It is, therefore, apparent that the confirmation of the minutes in the next meeting reflects an accurate record of the decisions made at the previous meeting.

31. The aforesaid conclusion does not in any way help the appellants to contend that they were not aware of the non-compete fee before the date 21.04.2007. As per the MOU dated 21.02.2007, Doha Bank had agreed to acquire a stake of 49% of the share capital of the first respondent company at a consideration of 2.6 million US dollars from the existing

promoters, out of which 1.30 US dollars had to be paid as consideration for shares and 1.30 Million US dollars had to be paid as non-compete fee. The appellants were very well aware of the terms and conditions contained in the MOU dated 21.02.2007 including the non-compete fee. The condition regarding the payment of non-compete fee was not an innovation made by Respondents 2 to 7 on 31.03.2007 or subsequently. Therefore, the plea of the appellants that they became aware of the non-compete fee only on 21.04.2007 is without any merit.

32. The appellants have contended before this Court that the CLB did not consider their plea that Respondents 2 to 7 had manipulated the minutes of the meeting of the Board of Directors held on 31.03.2007. There is no merit in this contention. The CLB has considered this plea in detail in paragraph 22 of its order.

33. Admittedly, the appellants had executed a letter of undertaking on 05.02.2007 authorising Respondent No.2 to

negotiate and enter into any agreement with any party for selling their shares for a price of not less than Rs.60/- per share within six months from the date of the undertaking. However, the appellants would contend that on 21.04.2007, they had revoked the authority given to Respondent No.2. The CLB has found that there is no evidence to show that the appellant had revoked the authority given to Respondent No.2. We see no sufficient ground to interfere with this factual finding made by the CLB.

34. Even assuming that the appellants had on 21.04.2007 orally revoked the authority given to Respondent No.2, it was of no consequence. Relying upon the letter of undertaking given by the appellants, Respondent No.2 had entered into MOU with Doha Bank within the period of validity of the undertaking. Once, Respondent No.2 and the other stake holders had acted upon the authority given by the appellants and proceeded with the proposal to implement the strategic tie-up with Doha Bank, the appellants had no right to revoke the authority given to

Respondent No.2.

35. The appellants would contend that the period of validity of the undertaking given by them was six months from the date of its execution and the aforesaid period expired on 05.08.2007 but the transfer of shares was effected as approved by the Board of Directors in the meeting held on 29.10.2007 only. It is contended that the transfer of shares effected after the expiry of the period of validity of the undertaking given by the appellants is invalid. But, this contention ignores the fact that Appellants 1 to 5 had instituted the suit O.S.No.604/2007 in the Munsiff's Court, Ernakulam and obtained an order of temporary injunction against transfer of shares. The order of injunction was vacated only on 11.10.2007. Therefore, the appellants cannot contend that transfer of shares effected after the expiry of the period of the undertaking given by them is not valid.

36. Even if it is accepted that the authority given to Respondent No.2 by the appellants was not existence at the time of the transfer of shares, it is of no consequence. The reason is

that the appellants had delivered their share certificates and signed blank transfer forms to Respondent No.2 as early as on 10.04.2007. On such delivery of the share certificates and the signed blank transfer forms to Respondent No.2, the sale of shares was complete except for the registration of the shares as per the provisions of the Act. Thereafter, the right of the appellants was only to get the price/value of the shares.

37. Advocate Sri.Mohan Pulickkal, who has represented Appellant No.2, has contended that if a member who holds the majority of the shares in a company is reduced to the position of minority in the company by an act of the company or by its Board of Directors, such act must be considered to be an act of oppression to the said member. Learned counsel has contended that shareholders enjoy many privileges in the control and management of the affairs of the company by virtue of the provisions of company law and depriving such rights and privileges illegally and fraudulently would be an act of oppression to the members concerned. Learned counsel contended that if

the affairs of the company are so conducted as will result in such kind of oppression to any member or members, the affairs of the company must be considered to be as 'being conducted in a manner oppressive to any member or members' as laid down in Section 397 of the Act.

38. We have no quarrel with the aforesaid proposition. But, in the instant case, the fact remains that the sale of shares was made by the appellants themselves and not by Respondents 2 to 7. After effecting sale of shares by delivering the sale certificates and signed blank transfer forms, the appellants cannot be heard to say that they have been reduced to a minority. As found earlier, there is no evidence at all to find that the second and the third respondents had played fraud upon the appellants and lured them to sell their shares.

39. The other issue raised by the appellants is that the decision to increase the share capital of the company was taken in the EGM held on 11.12.2006 but they had not been given any notice of the EGM. Appellant No.2 had admittedly attended the

EGM held on 11.12.2006. The CLB has found that he had attended the previous meeting of the Board of Directors in which the decision to conduct the EGM was taken. In such circumstances, it cannot be found that none of the appellants was aware of the EGM held on 11.12.2006.

40. Section 172 of the Act speaks about the contents and manner of service of notice and persons on whom the same is to be served. Sub-section (1) mandates that every notice of a meeting of a company shall specify the place, the day, hour of meeting and shall contain a statement of business to be transacted thereat. Sub-section (2) mandates that notice of every meeting of the company shall be given to every member of the company, in any manner authorized by sub-sections (1) to (4) of Section 53. Sub-section (3) makes it clear that the accidental omission to give notice to, or the non receipt of notice by, any member or other person to whom it should be given shall not invalidate the proceedings at the meeting. Apart from the above procedure, while sending notice for any meeting, the

procedure prescribed in Sections 53(1) and (2) of the Act has to be followed.

41. Respondents 2 to 7 could not produce any proof before the CLB to establish that they had duly sent notice in terms of Section 172 read with Sections 53(1) and (2) to the appellants regarding the EGM on 11.12.2006. But, the fact remains that Appellant No.2 had attended the EGM held on 11.12.2006. Therefore, it cannot be found that the appellants had no notice of the EGM held on 11.12.2006. Appellant No.2 could not contend that he had not received the notice of the EGM held on 11.12.2006 because he had attended that meeting. He has no case that he had attended the meeting without receiving any notice.

42. Moreover, as rightly pointed out by the CLB, non-service of notice regarding the EGM held on 11.12.2006 is projected by the appellants in the company petition filed on 10.11.2007, only with ulterior motives. If the EGM held on 11.12.2006 was without notice to the appellants and if the

appellants had any objection to the decision taken in that meeting to increase the paid up capital of the company, they would not have initially co-operated with the proposal for the strategic tie-up with Doha Bank.

43. The counsel who appeared for the appellants would point out violation of various provisions of the Companies Act by Respondents 2 to 7. It is also contended that there was violation of the provisions of the Foreign Exchange Management Act in the transfer of shares to Doha Bank. No such plea is raised in the company petition. There is no plea in the company petition that Respondents 2 to 7 had violated any of the provisions of the Foreign Exchange Management Act. Except with regard to the appointment and retirement of the directors of the company, there is also no averment in the company petition that Respondents 2 to 7 had violated any specific provision of the Companies Act. The order of the CLB also indicates that, with regard to violation of the provisions of the Companies Act or the Foreign Exchange Management Act, no

arguments had been addressed before it. Therefore, this Court cannot consider such a plea in this appeal. At the cost of repetition, based on the decision of the Constitution Bench of the Apex Court in **Scindia Steam Navigation Company Limited** (supra), we may state that when a question of law is neither raised before the CLB nor considered by it, it is not a question arising out of its order notwithstanding the fact that it may arise on the findings rendered by the CLB.

44. During the course of hearing of the appeal, we had enquired with the counsel for Doha Bank whether the bank was prepared to pay the appellants the price of the shares at the present value. Learned counsel for the bank, after getting instructions, submitted that the bank is ready to pay the appellants the value of their shares at the present rate. However, the appellants, especially Appellant No.1, the leader of their group, did not accept this offer.

45. During the course of hearing of the appeal, Respondents 2 to 7 have admitted that one lakh shares, after

the EGM held on 11.12.2006, have been allotted to the subsidiary company of the first respondent company and the allotment is hit by Section 42(1) of the Act. But this is not a ground projected in the company petition for taking action under Sections 397 and 398 of the Act and therefore, no relief could be granted to the appellants on that ground. Necessarily, legal consequences would follow on account of transfer of shares to the subsidiary company.

46. The attempt made by the appellants before the CLB was to obtain reliefs under Sections 397 and 398 of the Act without adducing any oral evidence and without even adducing any affidavit evidence on the alleged fraudulent acts committed by Respondents 2 to 7. Appellants 2 and 6 were not merely shareholders but also directors of the company. Appellant No.1, though not a director (it is stated that for technical reasons he could not be appointed as director of the company and his nominee, Appellant No.6, was appointed as director) had attended many meetings of the Board of Directors. They have

pretended ignorance about the decisions taken in the meetings of the Board of Directors.

47. We do not find any justifiable reason to interfere with the findings of fact rendered by the CLB. The plea of the appellants that they have been reduced to a minority on account of the act of Respondents 2 to 7 could not be established. The appellants have not made out any case to show that inferences drawn by the CLB are not on the basis of the materials produced before it and no reasonable person would draw such inferences on the facts of the case. As noticed earlier, the appellants are, even now, not prepared to accept the offer made by Doha Bank to pay them the price of their shares at the present value. The appeal is liable to be dismissed.

Consequently, the appeal is dismissed. All interlocutory applications pending are closed. No costs.

(sd/-) **V.CHITAMBARESH, JUDGE**

(sd/-) **R.NARAYANA PISHARADI, JUDGE**

jsr/11/03/2019

True Copy PS to Judge