SUPREME COURT OF INDIA

Shri V.S. Krishnan

Vs.

West fort Hi-tech Hospital Ltd

C.A.No.1473 of 2008

(Tarun Chatterjee and P. Sathasivam JJ.)

21.02.2008

JUDGMENT

P. Sathasivam, J.

1. Leave granted.

2. These appeals are directed against the judgment and order of the High Court of Kerala at Ernakulam dated 14.11.2006 in Company Appeal Nos. 14/2006, 15/2006, 17/2006 and 18/2006 which were filed against the order dated 5.7.2006 in Company Petition No.63 of 2005 of the Company Law Board, Additional Principal Bench, Chennai and order dated 1.3.2006 in Company Appeal No.5 of 2006 which was filed against the order dated 13.2.2006 in Company Appeal No. 145 of 2005 in Company Petition No.63/2005 of the Company Law Board.

3. The facts in S.L.P. (C) No. 19882 of 2006 are sufficient to dispose of all these appeals. Shri V.S. Krishnan and five others, who filed Company Petition No. 63 of 2005 before the Company Law Board, Additional Principal Bench, Chennai under Sections 397 and 398 read with Sections 402, 403 and Schedule XI of the Companies Act, 1956 are the appellants (Petitioners in SLP (C) No. 19882 of 2006). For convenience, we shall refer the parties as arrayed in Company Petition No. 63/2005 on the file of the Company Law Board (in short "CLB").

4. According to the petitioners, they were collectively holding in excess of 1/10th of the issued share capital of M/s west fort Hi-Tech Hospital Limited (hereinafter referred to as "the Company"). Aggrieved on account of a series of purported acts of oppression and mismanagement in the affairs of the Company, namely, illegal (a) convening of the eleventh annual general meeting; (b) issuances of further shares on right basis; (c) exclusion of the petitioners from the office of directors; (d) election of respondents 16 to 24 as Directors; (e)

transfer of shares; (f) breach of fiduciary duties by respondent Nos. 2 & 3 towards the Company as Directors; (g) manipulation of minutes of the meetings and other records; (h) statutory violations; (i) irregularities in relation to the Investigation Centre in the Hospital premises of the Company etc. invoked the provisions of Sections 397 and 398 of the Companies Act, 1956 (hereinafter referred to as "the Act") praying for the following reliefs:

> "(a) To appoint an administrator for
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> (b) Regulating the future affairs of the company;
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> (c) leasing/licensing the area earmarked for the Investigation Centre; and
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> (d) Realizing the outstanding amounts due from respondent Nos. 2-4, 22 and 23 in respect of the Investigation Centre;
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> (e) To declare that the annual general meeting held on 29.09.2005 and the resolutions passed thereon are invalid;
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> (f) To declare that respondent Nos. 2-4 vacated the office as Directors under Section 283 of the Act;
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> (g) To declare that the further issue of shares is illegal and void;
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> (h) To declare that the election of respondent Nos. 16-23 as Directors is invalid; and
>
> (i) To declare that petitioner Nos. 1-4 and respondent No.14 shall be deemed to have been re-elected as Directors. In support of their above claims, they placed relevant materials and cited various instances alleged to have been committed by the second respondent, who is the Chairman of the first respondent-Company".

5. Respondent Nos. 6-9 before the CLB supported the stand taken by the petitioners. Respondent No.14 also adopted the stand of the petitioners and further informed that he has already withdrawn the civil suit challenging the issue of shares and election of Directors at the eleventh annual general meeting of the Company.

6. The case of respondent Nos. 1 & 2 are – West fort Hi-Tech Hospital Ltd. constituted by the second respondent and his family members have been running the Hospital since 1989 independently, while the Company has been promoted in the year 1994 establishing a high specialty hospital by respondent Nos. 2 & 3 who are the promoter Directors. These respondents are permanent Directors and are not liable for retirement and cannot be removed from the Board as envisaged in Article 87. At each annual general meeting, one third of the remaining Directors are liable to retire by rotation. The alleged acts complained of in the petition do not, in any way, constitute oppression. It was pointed out that past and concluded acts complained of by the petitioners, do not fall within the purview of Section 397 of the

Act. The Company, running a high specialty hospital, is making profits and if ordered to be wound up, the Company and its shareholders would seriously be prejudiced. There are no charges of financial irregularities in the affairs of the Company leveled against the respondents. The petitioners and respondent No.14 though continued to be Directors since the year 1998 hardly attended the Board meetings from time to time. When the petitioners were not elected by the members at the eleventh annual general meeting, they have come out with the petition with untenable allegations. Every Director other than respondent Nos. 2 & 3 is bound to retire one day or the other. Any grievance in the capacity as Director cannot be remedied under Section 397 of the Act. No relief under Section 397 would arise if the conduct complained of by the petitioner does not relate to his status as a shareholder. In addition, respondent Nos. 2 & 3 also furnished various details in support of their stand and pleaded for dismissal of the Company Petition.

7. With the above pleadings and after elaborate arguments and framing the main issue namely, "whether the petitioners have made out a case under Sections 397 and 398 and are entitled for the reliefs claimed in the Company Petition", the CLB, on 5.7.2006 passed the following order:

> "It is hereby declared that
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> (a) Further issue of shares impugned in the Company petition is illegal and void;
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> (b) The election of respondent Nos. 16 to 23 as Directors is set aside;
>
> (c) The retiring directors namely, petitioner Nos. 1-4 and the respondent Nos. 5 & 14 shall be deemed to have been automatically re-appointed as Directors at the eleventh annual general meeting and shall continue till the date of the twelfth annual general meeting for the year 2006; and
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> (d) The transfer of shares by Purushottaman in favor of respondent Nos. 16 to 21 and others is invalid. However, Purushottaman is free to transfer his shares in accordance with the law.
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> (e) The Company will convene and hold the twelfth annual general meeting in accordance with law to transact, inter alia, the following business:
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> (f) Consideration of accounts, balance sheet and the reports of the board of directors and auditors for the year 2005-2006;
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> (g) Appointment of directors in the place of those retiring and in the existing vacancies;
>
> (c) Appointment of and the fixing of the remuneration of, the auditors; and

(h) Further issue of shares.

(I) The petitioners as well as the respondent Nos. 2 to 15 are at liberty with a view to meet the financial requirements, if any, for running the hospital, to contribute any amount by way of unsecured loans carrying interest at the prevailing bank rate to be repaid from and out of the future share application money which may be subscribed by the members, on approving the resolution for further issue of shares at the twelfth annual general meeting.

(j) Hon'ble Mr. Justice K. John Mathew (Retd.) Ernakulam will preside over the twelfth annual general meeting of the Company, in terms of this order. He is at liberty to take the services of any practicing Company Secretary of his choice, in discharge of this present assignment. The remuneration of the Chairman and the Practicing Company Secretary fixed in consultation with the Company shall be borne by the latter.

(k) The Chairman will decide the entire modalities of convening holding and conducting of the twelfth annual general meeting in consultation with the company.

(l) The Board of Directors of the Company shall carry on its business strictly in accordance with the articles and initiate such action in respect of the Investigation Centre, as may be deemed necessary.

(m) The Chairman of the meeting will forward a report on the proceedings of the twelfth annual general meeting within a week from the conclusion of the twelfth annual general meeting of the company. With the above directions, the company petition stands disposed of. No order as to costs."

8. Aggrieved by the above order, respondents 1 & 2 i.e., M/s West fort Hi-Tech Hospital Ltd. and its Chairman, K. Mohandas filed Company Appeal No. 14 of 2006 before the High Court of Kerala. By the impugned judgment, the Division Bench of the High Court, after taking note of pleadings of both the parties, rival contentions and materials placed before it, partially allowed the appeals and partially set aside the order of the Company Law Board. The operative portion of the impugned order of the High Court reads as follows:

"..We hold that the general body meeting was held with valid notice. Issuance of right shares needs no interference and Company Law Board went wrong in setting aside the issue of duplicate shares to Purushothaman and subsequent transfer of his shares. We also hold that re-appointment of the retired directors after the date fixed for annual general body meeting is not correct and that part of the decision is set aside. But, we hold that CLB is right in setting aside the election of eight directors (though for other reasons mainly for technical irregularity) and special resolution under Section 81(1A) to issue shares to the public. We order that Petitioners and other NRI shareholders shall be given one month's time from today to accept the rights shares offered and it is

for them to accept the offer or not. As offered by the counsel appearing for the Company and Chairman, NRI Directors also will be re-appointed to the Board in proportion to their share holdings as on the date of next annual general meeting to be conducted after the expiry of 30 days from today. Company Law Board directed that next annual general body meeting shall be held on 30.9.2006. It is stated that it was not conducted due to pendency of the case. Therefore, it shall be positively conducted on or before 30.12.2006. In conducting the 12th annual general body meeting, procedure suggested by the Company Law Board shall be complied with and directions in paragraph 7 II, IV, V, VI and VII are not interfered with. Till next general body meeting is held, no policy decision shall be taken by the Board."

9. Questioning the above order of the High Court, these appeals have been filed before this Court by way of special leave. We heard Mr. C.A. Sundaram and Mr. Shyam Divan, learned senior counsel for the appellants and Mr. R.F. Nariman, learned senior counsel for the contesting respondents.

10. In order to find out whether the petitioners were successful in making out a case for interference by the CLB by invoking Sections 397 and 398 of the Companies Act, it is but proper to refer those provisions, ultimate decision of the CLB and the High Court. Chapter VI of the Companies Act deals with prevention of oppression and mismanagement. Section 397 deals with relief in cases of oppression and Section 398 deals with relief in cases of mismanagement. Sections 397 & 398 read as under:

"Application to Tribunal for relief in cases of oppression (1) Any member of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399. (2) If, on any application under sub-section (1), the Court is of opinion:

(a) That the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and

(b) That to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justified the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, The Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit."

11. Application to Tribunal for relief in cases of mismanagement - (1) any members of a company who complain

(a) That the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; or

(b) That a material change not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company has taken place in the management or control of the company, whether by an alteration in its Board of directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399. If, on any application under sub-section (1), the Tribunal is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Tribunal may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit."

12. In a number of judgments, this Court considered in extensor the scope of Sections 397 and 398. The following judgments could be usefully referred to:

"(a) *Needle Industries (India) Ltd. and Others vs. Needle Industries Newey (India) Holding Ltd. and Others*[1]

(b) *M.S. Madhusoodhanan & Anr. vs. Kerala Kaumudi (P) Ltd. & Ors*[2]

(c) *Dale and Carrington Investment (P) Ltd. & Anr. vs. P.K. Prathapan & Ors*[3]

(d) *Sangramsinh P. Gaekwad & Ors. Vs. Shantadevi P. Gaekwad (Dead) Through L.Rs. & Ors*[4]

(e) *Kamal Kumar Dutta & Anr. vs. Ruby General Hospital Ltd. & Ors*[5] From the above decisions, it is clear that oppression would be made out:

(f) Where the conduct is harsh, burdensome and wrong.

(g) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-à-vis the others.

(h) The action is against probity and good conduct.

(i) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if

the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

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

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

13. Before going into the claims of both parties, it is useful to refer the scope of Section 10F of the Companies Act which provides appeal against the order of the Company Law Board. Section 10F reads as under:

"10F. Appeals against the order 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."It is clear that Section 10F permits an appeal to the High Court from an order of the Company Law Board only on a question of law i.e., the Company Law Board is the final authority on facts unless such findings are perverse based on no evidence or are otherwise arbitrary. Therefore, the jurisdiction of the appellate Court under Section 10F is restricted to the question as to whether on the facts as noticed by the Company Law Board and has 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 other 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 construe relevant materials."

14. With this statutory background, let us find out whether the conduct of respondents 1 and 2 (M/s West fort Hi-Tech Hospital Ltd. & Mr. K.M. Mohandas, Chairman) has been harsh, burdensome and wrong or mala fide or for collateral purposes or against probity and good conduct. In addition, we have to find out whether such conduct was prejudicial to the interest of the petitioners/appellants and the conclusion arrived at by the CLB or the High Court is acceptable in the facts and circumstances of the case.

15. According to the petitioners, they are native of Thrissur, Kerala State but settled abroad and contributed to the tune of 1.28 crores by way of share capital. It is also their case that respondent No.2 (the Chairman of the Company) is heavily depending on the financial assistance provided by these petitioners (NRIs), on the understanding that they would be offered directorship permanently. Article 77 provides that the Directors are required to hold 2500 equity shares in the Company as qualification shares. By pointing out the contents of letter dated 04.12.2001 of the second respondent, petitioners have claimed that because of his assurance that they would be made Directors they contributed more to the share capital of the Company which eased the financial crunch and also helped to develop facilities in the Hospital. In other words, according to them, the second respondent has been heavily dependent upon the financial backup provided by NRIs and the understanding to offer directorship to such contributors. It is the grievance of the petitioners that the second respondent in spite of getting substantial money towards share capital did not fulfill the promise made by him as per his letter dated 04.12.2001 addressed to the petitioners. On this aspect, the CLB while accepting the stand of the petitioners has concluded that there is a 'legitimate expectation' in favor of the petitioners 1-4 for their continuance in the Board of Directors of the Company.

16. The issue of re-appointment of retired directors on the theory of 'legitimate expectation' was considered by the High Court in detail. It is the stand of the second respondent (Chairman of the Company), that there was no specific promise that these petitioners would be given directorship permanently. The materials placed and discussed before the CLB show that there was full disclosure of retirement of one-third directors and election to that place are in accordance with the Act and Articles of Association and theory of 'legitimate expectation' has no application. It was also highlighted before the CLB as well as the High Court that out of eight directors elected, six were not related to Chairman. It was asserted that Chairman and his family stood personal guarantee to Rs.21.99 crores whereas NRI directors have not stood personal guarantee for any loan. Though CLB has observed that the principle of 'legitimate expectation' is applicable in the case of the petitioners, in the light of the materials placed and the stand taken by the contesting respondents, we are of the view that the claim 'legitimate expectation' cannot be extended to and there is no specific promise that the petitioners would be given directorship permanently. Even otherwise, the same cannot be accepted in view of the mandate of the statute that 1/3rd of the directors have to retire in a year by rotation. Accordingly, we accept the conclusion arrived at by the High Court and reject the decision of the CLB on this aspect.

17. Now let us consider another important issue i.e., validity of the Annual General Meeting which held on 29.09.2005. According to the petitioners, there was no proper notice in terms of Section 172 read with Section 53(1) and (2) of the Companies Act, hence, they had no knowledge about the said meeting and in view of the same, the decisions taken in the said meeting are null and void and not enforceable. The pith and substance of the ground of attack relating to oppression and mismanagement is the convening of XIth Annual General Body Meeting without proper notice. In such circumstances, we have to find out whether the Annual General Body Meeting, convened on 29.09.2005, was in violation of the statutory

requirements or not. According to the second respondent, XIth Annual General Body Meeting was convened on 29.09.2005 at 11.00 a.m. at Casino Hotels Limited, Trichur. In fact, in the Board meeting, held on 24.08.2005, a reference was made to the next Annual General Meeting which states that the Board decided to hold the meeting on Thursday, the 29th September, 2005 at 11.00 a.m. at Casino Hotels Limited, Trichur. It further states that the particulars as to the date, place and time for the meeting was incorporated in the draft notice and thereafter it was approved and Sri K. M. Mohandas, CMD was authorized to sign the same. It is relevant to mention that the above Board meeting was attended by the first petitioner. In such circumstances, it cannot be claimed that the first petitioner and his supporters were not aware of the meeting.

18. It is relevant to mention that even though the CLB has noticed respondent No.14 who was acting in association with the petitioner Nos. 1-4 in the affairs of the company and respondent Nos. 6-9 other directors participated in the AGM held on 29.09.2005 raised an apprehension that whether mere knowledge of the meeting would tantamount to serving notice in terms of Section 172. 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 (i) every member of the company, in any manner authorized by sub-sections (1) to (4) of Section 53; (ii) persons entitled to a share in consequence of the death or insolvency of a member, by sending it through post in a pre-paid letter addressed to them by name in India supplied for the purpose by the persons claiming to be so entitled or until such address has been so supplied (iii) the auditor of the company, in any manner authorized by 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 Section 53 (1) and (2) of the Act has to be followed. It is the case of respondent Nos. 1 and 2 that proper notices in terms of Section 172 read with Section 53 (1) and (2) have duly been sent to all the share holders including the petitioners in respect of the AGM dated 29.09.2005. It was contended on the side of the petitioners that in the absence of any other corroborative evidence, it is not safe to accept the notices sent through 'certificate of posting' and it cannot be presumed that the addressee had the knowledge of the meeting.

19. The High Court has noticed that in the Board Meeting held on 24.08.2005, it was decided to hold a next AGM on 29.09.2005 at 11.00 AM. Item No. 4 reads as follows:-

> "Notice of the Next Annual General Meeting:
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> The draft notice for the next Annual General Meeting was read. The Board then decided to hold the meeting on Thursday, the 29th September, 2005 at 11.00 AM at Casino Hotels Limited, Trichur. The particulars as to date, place and time for the meeting was incorporated in the draft notice, and then it was approved, and Sri K.M.

Mohandas, CMD was authorized to sign the same."It is clear from the materials placed; the said Board Meeting was attended by the first petitioner. Though on the basis of the said information/knowledge it cannot be construed that the same would satisfy the mandate of Section 172 read with Section 53 (1) and (2) of the Act, the fact that a decision was taken in the Board Meeting held on 24.08.2005 that next AGM is to be held on 29.09.2005 at 11.00 AM at Casino Hotel, Trichur cannot be ignored. In addition to the same, as said earlier, respondent No.14 and 6 to 9 who are supposed to be natural directors participated in the AGM held on 29.09.2005. It is not the case of the respondent Nos. 1 and 2 or even the petitioners that notice was dispensed with in respect of the AGM held on 29.09.2005. On the other hand, the respondents have produced certificates of posting to establish the service of notice on the directors and other shareholders. It is also demonstrated that those notices were given under certificate of posting as provided under Section 53 (1) and (2) and evidence for the same were also produced. As pointed out earlier, the first petitioner, being a party to the Board Meeting wherein date, place and agenda of the AGM were fixed cannot make a complaint along with his supporters that they did not receive notice of the meeting. The materials placed clearly show that NRI directors participated in the meeting and respondent No.14 who was acting along with the appellants had also participated. Section 172 as well as Section 53 emphasized "giving notice". We have already adverted to how notice should be given for AGM as per Section 172 (2) and Section 53 (1) and (2) of the Act. In view of the fact that the company has placed materials to substantiate that notices, in terms of the above provisions, were given, as rightly pointed out by learned senior counsel for the contesting respondents, statutory presumption under Section 53 will apply though they said act is rebuttable. In view of the fact that there are materials to show that notices were sent, the burden is on the addressee to rebut the statutory presumption. The High Court, on verification of those materials, has concluded that "postal receipt with post office seal was produced to show that notice was sent to all shareholders by certificate of posting in the correct address as per the report". Sub-section (2) of Section 53 makes it clear that after expiry of 48 hours a notice duly addressed and stamped and sent under certificate of posting is deemed to have been duly served. In M.S. Madhusoodhanan vs. Kerala Kaumudi (P) Ltd. (supra), this Court held that the fact of posting has to be proved by the sender and that statutory presumption is only a rebuttable presumption. In the case on hand, dispatch of notice in time by certificate of posting was proved. In addition to the same, the High Court has very much relied on the fact that first appellant was party to the Board Meeting which decided the convening of AGM on 29.09.2005. The above information pressed into service by respondent Nos. 1 and 2 cannot, lightly be ignored."

20. It is true that the CLB has found that only 40 out of 300 shareholders attended the meeting. Based on the same, the CLB accepted the case of the petitioners and found that the AGM held on 29.09.2005 was defective. Before the CLB as well as the High Court, it was demonstrated by the contesting respondents that in previous AGM also number of attendance was below 35. In the 9th AGM, the persons attended were 32 and 10th AGM, it was 35. In

this regard, it is relevant to refer in the order in I.A. 4727 of 2005 in O.S. 942 of 2005 which is a suit filed by respondent No.14. The Civil Court, based on the documents produced, has concluded that proper notice was served on the shareholders with regard to AGM held on 29.09.2005. The person who filed the said suit had prayed for injunction against conducting AGM, participated in the AGM and in fact he applied for re-election. Though the shareholders voted against him and other NRI directors, the information support stand of the respondents 1 and 2. The High Court has rightly concluded that AGM held on 29.09.2005 was legal and acceptable and we agree with the same.

21. It is pointed out that the CLB set aside the election of respondent Nos. 16 to 23 as directors only on the ground that there is no valid notice. The discussion in the earlier paragraphs proves that this finding is not acceptable. The High Court verified the notice dated 24.08.2005 sent for AGM dated 29.09.2005 wherein the names of the retiring directors were subsequently mentioned. It was also demonstrated before the CLB and the High Court that proper advertisement in the Indian Express and Deepika were given in terms of Section 157(1) A of the Act. Though the CLB has not accepted the same, the High Court has rightly found that the same was in compliance with the statutory provisions. There is no error or illegality in the said finding of the High Court.

22. The next issue relates to re-appointment of retired directors on the theory of legitimate expectation which we have already discussed in the earlier paragraphs. However, the High Court found that appointment of 8 directors without a "specific agenda" is irregular due to technical reason and that as per the agenda only 6 directors can be elected. We agree with the said conclusion.

23. Now coming to the next issue, namely, allotment of "right shares" to the public, the CLB has concluded that without a "special resolution" by 2/3rd majority shareholders cannot be offered to outsiders. Inasmuch as the above said conclusion is in terms of the statutory provisions, the High Court has rightly approved the same and we are also in agreement with the said conclusion. In this respect, it is useful to refer to the decision of this Court in Needle Industries (India) Ltd. vs. Needle Industries Newey (India) Holding Ltd. (supra). It was held that directors have absolute powers to issue right share provided they are acting under good faith.

24. The other issue relates to issuance of duplicate shares of Purshottaman. It is relevant to mention that the same Board approved the said action when the first petitioner also attended the meeting. On the other hand, the CLB set aside the issue of duplicate shares to Purshottaman. It was pointed out before the High Court that the said decision was not challenged in the petition by any of the petitioners and the decision was taken by the Board of Directors to issue duplicate shares in place of lost shares. As said earlier, transferring the shares of Purshottaman was approved in the same Board Meeting wherein the first petitioner attended. It is also brought to the notice of the Court that duplicate shares were issued on receipt of indemnity bond as provided under Section 84(2). In those circumstances, the High Court has concluded that indemnity bond and documents produced would show that share

transfer was also affected validly. Further the decision to issue duplicate shares to Purshottaman and transfer of the same were not challenged in the company petition. In view of the same, we agree with the ultimate decision arrived by the High Court.

25. Coming to the allegation as to acts of mis-management particularly regarding the arrangement with special investigating centre, it was proved that the agreement with the special investigating centre was made when the petitioners 1 to 4 as well as their supporting NRI directors were in the Board and in active management. However, the High Court has directed the company auditor to go through the agreement with the special investigating centre and also the accounts and submit a report and thereafter, the same should be placed before the Board for appropriate action. The said direction is reasonable and acceptable.

26. As rightly pointed out that CLB missed a most basic principle of Section 397, namely, that mere unfairness does not constitute oppression. When the petitioners were given the right to subscribe to the 'rights issue' along with all others in the same proportion, no prejudice, whatsoever, could have been caused to them. It is not in dispute even by the petitioners that the need for more funds was an admitted position. In Needle Industries (supra) this Court has pointed out if there is a need for funds the fact that the directors have incidentally enriched themselves would not entail a court to set aside the issue of shares. In fact, no unfair prejudice has been caused to the petitioners. The CLB failed to take note of all these vital aspects and relied on irrelevant materials. Apart from these, it is pointed out that the company having turned the corner and doing well, it would be fair exercise of discretion by this Court not to interfere with the High Court judgment.

27. In the light of the above discussion, we are of the view that the impugned judgment of the High Court is fair to both sides and safeguards the interest of the directors and shareholders; hence there is no valid ground to interfere under Article 136 of the Constitution of India. Consequently, the main appeal filed by V.S. Krishnan and Others fails and the same is dismissed. In view of the said conclusion, other appeals are also dismissed. No costs.

[1]*(1981) 3 SCC 0333*
[2]*(2004) 9 SCC 0204*
[3]*(2005) 1 SCC 0212*
[4]*(2005) 11 SCC 0314*
[5]*(2006) 7 SCC 0613*