Bombay High Court Rolta India Ltd. & Another vs Venire Industries Ltd. & Others on 29 October, 1999 Equivalent citations: 2000 (2) BomCR 241, 2000 100 CompCas 19 Bom, 2000 (3) MhLj 700 Author: Y Sabharwal Bench: Y Sabharwal, S Kapadia ORDER Y.K. Sabharwal, C.J. 1. The appellants are plaintiff's in the suit. They are aggrieved by the impugned Order dated 17th August, 1999 passed by the learned Single Judge declining to grant to them ad-interim order of injunction restraining the defendants from taking steps pursuant to or in implementation of the resolutions in respect of the allotment of rights shares and/ or from appointing any Additional Directors on the Board of Directors of the First defendant - Company. 2. On the request of learned Counsel for the parties, considering the facts and circumstances of the case, we have taken up for decision the application filed in the suit for grant of interim injunction, (Notice of Motion No. 2696 of 1999) instead of only considering the question of grant of ad-interim injunction. In order to appreciate the rival contentions, facts, in brief, may be noticed as follows :— 3. Plaintiff No. 2 (Kamal K. Singh) is the Chairman of plaintiff No. 1-Com-pany (for short 'RIL'), defendant No. 2 (Chetan K. Singh) is the Chairman and Managing Director of defendant No. 1-Company, which has three Directors on its Board of Directors. Defendant No. 3 is sought to be appointed as an Additional Director. Chetan is younger brother of Kamal. Defendant No. 1 -Company, which was originally known as "Rolta Motors Ltd." (for short 'RML') was incorporated on 19th May, 1983. Kamal was the Chairman and Chetan was the Director of the said Company. A Memorandum of Understanding (MoU) dated 19th April, 1991 was executed between the two brothers, under which the elder brother Kamal, his wife and family trust, which held 10551 shares equivalent to 30% of the issued capital of RML, agreed to transfer, without any monetary consideration, the said shares in favour of Chetan. RIL owned 40% of the issued capital of RML. The MoU, inter alia, provides that, till RIL holds share capital in RML of the face value of Rs. 10 lacs, it will continue to have a representative on Board of Directors of RML and that the number of Directors on the Board of Directors of RML shall not exceed three, out of which two shall be the nominees of younger brother and one shall always be the nominee of RML. The younger brother shall also procure release of the Guarantees given by the RIL and give a Counter Guarantee/ Indemnity to the plaintiffs against any claim by the bank. It also provides that till RIL holds shares of face value of Rs. 10 lacs, the younger brother and his family members would not dispose of the shareholding to any outsider. Further, the younger brother shall also change the name of the company from RML and use any other name without word 'Rolta' and shall also take steps for shifting the Registered Officer of RML from the address of RIL at Mumbai. The requisite Resolutions were passed and other documents, including Counter-guarantee/indemnity Bond and Undertaking were executed in implementation of the MoU, by defendant No. 1 and 2. Resultantly, the 30.50% shares of Kamal were transferred in favour of Chetan. 4. The Meeting of Board of Directors of RML held on 27th August, 1992 has noted the contents of the MoU in the minutes which further record that the Managing Director, Chetan Singh, stated that the Board of Directors of RML shall not have any authority or discretion

to change or modify the terms of the MoU, unless and until such changes or modifications are approved personally by Kamal Singh. Between 1992 and 1997, one S.L. Baluja was the nominee-Director of RIL on the Board of Directors of defendant No. 1. 5. It seems that the working of defendant No. 1-Company went on smoothly till middle of 1997. The differences between the two brothers started somewhere in middle of 1997. Defendant No. 1-Company, in its meeting held on 25th June, 1997, decided to increase the paid-up capital from Rs. 50 lacs to Rs. 100 lacs by issue of 50,000 equity Rights shares on pro-rata basis to the shareholders. In this meeting, it was, inter alia, decided to offer to RIL 20036 shares on 1:1 basis. This meeting was attended by Chetan and his wife. Leave of absence was granted to S.L. Baluja. It was resolved that, after the expiry of time specified in the offer letter or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose them off in such manner as they think most beneficial to the Company. The correspondence exchanged between the two brothers after 25th June, 1997 has been placed on record. According to the plaintiffs, the offer of allotment of the Rights shares was not sent/received by RIL. That has, however, been strenuously disputed by the defendants 1 and 2. Defendant No. 1-Company, in Board's Meeting dated 12th August, 1997, which was attended by Chetan, his wife and Baluja, decided to allot 20036 Rights shares of the quota of RIL to Chetan. The correspondence exchanged between the two brothers after 12th August, 1997 has also been placed on record. In the Meeting of Board of Directors of defendant No. 1-Company dated 4th October, 1997, the resignation of Baluja, nominee-Director was accepted and in his place the appointment of B.I. Joshipura as nominee-Director of RIL was approved. 6. In its Meeting dated 5th January, 1999, the Board of Directors of defendant No. 1. Company decided to issue fresh Rights issue of 62.5 lacs (second Rights issue). This was objected by Joshipura. The offer of the second Rights issue was received by RIL. RIL objected the decision to issue this, rights issue on the ground that the disputes relating to the first Rights issue had not been resolved. 7. The First defendant-Company wrote a letter dated 22nd June, 1999 to Joshipura that in the Board Meeting fixed for 26th June, 1999, it, inter alia, proposed to induct one Dr. S.S. Singh-defendant No. 3 as the 4th Director. This was protested by Joshipura, inter alia, on the ground of short notice of the meeting. The First defendant-Company addressed a letter dated 21st July, 1999 to Joshipura recording that, at the last Board Meeting, Dr. Singh was not taken up as a Director, but, at the next Board Meeting, he would be so taken. It was objected on the ground that the proposed appointment of Additional Director was contrary to the MoU, inasmuch as the MoU contemplates that, till RIL holds share capital of the face value of Rs. 10 lacs, the number of Directors cannot exceed three. The meeting of Board of Directors of defendant No. 1 was fixed for 11th August, 1999 and one of the items of agenda was appointment of defendant No. 3 as its Additional Director. At this stage the present suit was filed. On 10th August, 1999, an ex-parte ad-interim order was granted restraining defendants 1 and 2 from appointing defendant No. 3 as a Director on the Board of the First Defendant Company. This order was valid till 17th August,

1999, on which date, the impugned order was passed vacating the order dated 10th August, 1999. 8. In this Appeal and Notice of Motion, pending the decision of the suit, two interim reliefs are sought by the plaintiffs, (1) Restraining the defendants from taking any steps pursuant to or in implementation or in furtherance of the resolutions passed in respect of the allotment of rights shares and (2) Restraining the appointment of any Additional Director on the Board of Directors of defendant No. 1-Company. 9. In support of the first relief, the contention of the learned Counsel for the appellants is that the meeting dated 25th June, 1997, in which decision was taken to issue Rights shares, was itself illegal as Baluja, the nominee-Director of RIL was not given any written notice of the meeting and, thus, section 286 of the Companies Act has been violated. The further contention is that RIL was not sent any letter of offer in respect of this issue and the letter of offer alleged to have been sent by defendant No. 1-Company under Certificate of Posting, was never received by RIL. Counsel also contends that other correspondence was always sent through courier and, therefore, it cannot be believed that the alleged letter of offer was sent by defendant No. 1-Comapny to RIL. Another contention urged is that there was no quorum for the meeting of 12th August, 1997 when the shares of quota of RIL were allotted in favour of Chetan. The contention of Mr. Chinoy is that chetan was an interested Director, since additional allotment was sought to be made in his favour, and therefore, he was not entitled to vote and thus there was no quorum. 10. We have perused various letters exchanged between the two brothers as also other material on record, including the Letter of Offer which defendant No. 1 says was sent to RIL and also the Certificate of Posting. On perusal thereof, we find it difficult to accept the contention that the Letter of Offer was not sent to RIL. To our mind, it seems that at no stage, the plaintiffs were interested in contributing any amount in defendant No. 1-Company. In none of the letters, even after 12th August, 1997, it was stated that RIL was interested in subscribing to the Rights shares. What the plaintiffs have been stating in the correspondence and that too in the guarded language is that they would consider the offer of allotment of Rights shares. In the letter of offer which defendant No. 1 says was sent to RIL, it has also been stated that if offer is not accepted, the First defendant-Company would consider grant of additional shares to others. There was no other applicant, except Chetan who had sought allotment of additional shares. Further, in the plaint, the factum of the holding of meeting on 26th June, 1997 itself was disputed, but that plea was given up by learned Counsel for the appellants. Now it has not been disputed that Baluja had the notice for the meeting of 25th June, 1997. Mr. Chinoy contends that no written notice was sent to him. It is clear from the material on record that the defendants were not acting in a clandestine manner. In fact, on the next date after the meeting, i.e., on 26th June, 1997, Chetan wrote a letter to Kamal, inter alia, stating that it would be good if RIL could subscribe to the shares and participate in the growth of first defendant-Company. He also stated that he would ensure that the shares are not issued to any outsiders and that he has avoided issue of Rights shares for the last five years, but now it had become unavoidable. Kamal was thus requested to confirm the willingness of RIL to participate in

the Rights issue. Kamal in terms of his letter dated 2nd July, 1997 expressed reservations to the idea of issue of Rights shares and gave other options to raise capital. Chetan again, by his letter dated 3rd July, 1997, expressed the need to raise the liability-free funds and stated that, in case RIL is willing to put in funds in proportion of its shareholding, it is most welcome and percentage sharesholding would stand at the same rate as of the said date. It was also stated that as per present Maruti Udyog Ltd. policies, they cannot issue shares to public, unless the issue is directly for dealership expansion. 11. On the aforesaid facts and circumstances of the present case, the decision of Calcutta High Court in Ramashankar Prasad and others v. Sindri Iron Foundry (P.) Ltd. & Ors., on the question of sending of notice under Certificate of Posting will have no applicability. It is apparent that the conclusion in the said decision that the notice was never sent and the Certificate of Posting had been obtained in respect thereof, was arrived at on the facts of that case. As already noticed, defendants Nos. 1 and 2 were not acting in a clandestine manner. If the object of defendants was to keep plaintiffs in dark, Chetan would not have writted letter dated 26th June and subsequent letters to Kamal, which are all admitted and have rather been acknowledged by Kamal. Repeated requests were made welcoming RIL to put in funds in proportion of their shareholding by contributing to the rights issue, If the intentions of defendants Nos. 1 and 2 were not honest, they would not have sent the type of letters actually sent. Further, on these facts, it is also not possible to accept the contention that Chetan was an interested Director and there was no quorum for the meeting as urged on behalf of the plaintiffs. 12. The decision of the Supreme Court in Firestone Type And Rubber Co. v. Synthetics and Chemicals Ltd. and others, 41 Com.Cas. 377 has no applicability to the facts and circumstances of the present case. There was no such conflict of interests in the case in hand so as to contravene section 300 of the Companies Act. Further, the allotment of the first Rights issue was made in August, 1997. The present suit was filed two years later. The question of injuncting the defendants from taking any steps pursuant to or in implementation of or in furtherance of the Resolutions in respect of the allotment of rights issue does not arise. Chetan does not deserve to be restrained from exercising his rights on the basis of the Rights shares. At this stage, the said allotments cannot be held to be void. 13. Reverting now to the second relief, Mr. Chinoy strenuously contends that the appointment of Additional Director by defendant No. 1-Company is in clear contravention of Clause 8 of the MoU, on the basis of which Kamal, without any monetary consideration, had transferred his shareholding of about 30% comprising of more than 10,000 shares in favour of his younger brother Chetan. Learned Counsel further contends that RML is a party to the MoU and has acted on the basis of the MoU and has also confirmed it. The submission of the learned Counsel is that the judgment of the Supreme Court in the case of V.B. Rangaraj v. V.B. Gopalakrishnan and others, 35 Com.Cas. 352, on basis whereof the learned Single Judge declined ad-interim relief, has no applicability to the present case. It is true, as already noticed, Clause 8, inter alia, postulates that, till RIL holds shares in defendant No. 1-Company of the face value of Rs. 10 lacs, the number of Directors on

its Board of Directors shall not exceed three. It is not in dispute that RIL holds shares of the face value of more than Rs. 10 lacs. 14. At this stage, we may note that Mr. Kapadia, learned Counsel for the defendants/respondents, has seriously disputed the contention that the defendant No. 1-company is a party to the MoU or has acted upon it or confirmed it and has also seriously disputed the contention that the MoU is a Shareholders Agreement. Besides it, he has also raised the objection of misjoinder of causes of action. But, for the present purposes, assuming aforesaid contentions in favour of plaintiffs, we would examine the matter. 15. The important question to be determined is about the enforceability of Clause 8 of the MoU to the extent it restricts the power of Directors to increase the number of Directors of RML from more than three. 16. Now, some undisputed aspects, defendant No. 1 is a closely held family company, though some outsiders, family friends and relatives have also a small shareholding. There is no restriction in the Articles of Association of defendant No. 1 of the Type contemplated by Clause 8 of the MoU regarding number of Directors. It has been provided in the Articles of Association that until otherwise determined by a General Meeting, the number of Directors shall be not less than three and not more than twelve (Article 113). It has also been provided that the Board shall have power at any time and from time to time to appoint any person as a Director as an addition to the Board but the total number of directors shall not any time exceed the maximum number fixed by the Articles (Article 117). Section 252 of the Companies Act, inter alia, provides that every public company shall have at least three Directors. There has been no amendment of Articles of Association on the aspect of number of Directors. But for Clause 8, the Board of Directors has the power to appoint any person as a Director as provided in the Articles of Association. 17. The question is, on aforesaid facts, can Chetan as a Director be restrained from voting in favour of appointment of an Additional Director. 18. Let us, first examine Rangaraj's case. In that case, the main question that fell for consideration was whether the shareholders can among themselves enter into an agreement, which is contrary to or inconsistent with the Articles of Association of the Company. In the said decision, the High Court had held that the sale of shares by the first defendant in favour of defendant Nos. 4 to 6 was invalid being in breach of agreement between two brothers to the effect that each of the brothers of the family would always continue to hold an equal number of shares and that if any member in either branch wishes to sell he would give the first option of the purchase to the members of that branch and only if the offer is not accepted, shares would be sold to others. In this view it was held that the plaintiffs and second defendant became entitled to purchase the said shares and the Agreement was binding on the Company, which was bound in law to register the said shares in plaintiffs name. It was not in dispute that the Articles of Association of the Company were not amended to bring them in confirmity with the agreement between two brothers. In that case one of the contentions urged was that the agreement was entered into to maintain the ownership of the Company in the Family and to ensure that the two branches of the family had an equal share in the management and profits and losses of the Company and further

that there was nothing in the Articles which prohibits such Agreement and the two branches of the family being parties to the agreement, it was enforceable against them. Answering the question in negative, the Supreme Court held that the agreement imposed additional restrictions on the member's right of transfer of his shares which were not stipulated in the Articles and, therefore, were not binding either on the shareholders or on the Company. It was also held that the shares are moveable property and transfer thereof is regulated by the Articles of Association of the Company. Mr. Chinoy pointing out that the only question considered in Rangaraj's case was about the non enforceability of the restriction on the transfer of shares of the Company which restriction was not specified in the Articles and thus held by Supreme Court to be not binding on the Company or the shareholders, contends that in the present case, the question is about the enforceability of Clause 8 of MoU against Chetan who under the very MoU was given shares without any monetary consideration. Counsel contends that MoU was like a shareholders agreement providing for voting in a particular manner which has always been held to be enforceable. Thus, according to Mr. Chinoy, Rangaraj's case has no applicability to the present case. A little later we will examine what are shareholders or pooling agreements and their enforceability and whether enforceability of such agreements can be extended to the present case which limits or denudes powers of Directors. 19. To reinforce the proposition that the restriction, on transfer of shares, which is not specified in the Articles of Association, is not binding either on the company or on the Shareholders, the earlier decision of the Supreme Court in Shanti Prasad Jain v. Kalinga Tubes Ltd., 35 Com.Cas. 351, was also referred to. In Kalinga Tubes, the company was not party to the Agreement, which, inter alia provided that the appellant, Shanti Prasad Jain, would be allotted shares in the Company equal to those held by Patnaik and Loganathan after increasing the share capital of the Company, so that the Company would have three groups of shareholders represented by Jain, Patnaik and Loganathan holding equal number of shares, besides a foreign company and one Rath, who, between themselves, held shares worth Rs. 4 lacs. Those shareholders, however, were not parties to the agreement. In the said case, too, the Agreement was followed by certain Resolutions passed by the Company by which some of the terms of the Agreement were carried out. Further, no change was made in the Articles of Association of the company to bring them in conformity with the terms of the Agreement. It was held by Supreme Court that the agreement was not binding on the company as the terms thereof were not incorporated in the Articles of Association. Pointing out that Kalinga Tubes case is one under sections 397 and 398 of the Companies Act dealing with the question of operation and mismanagement, Mr. Chinoy contends that unlike the present case, in Kalinga Tubes, the agreement was between a non-member and two members of the company and, therefore, that decision has no applicability to the present case particularly when plaintiffs are seeking enforcement of agreement against Chetan like any other enforceable shareholders agreement. One of the basis for denial of relief to Jain in Kalinga Tubes case was absence of stipulation in the Articles of the Company. As pointed out by Mr. Chinoy, it is no doubt true that the reference to Gore Brown on Companies, Palmer's

Company Law, Halsbury's Laws of England and Penningtaon's Company Law in Rangaraj's case as also in Kalinga Tubes was in relation to restriction on transfer of shares when there is no such restriction incorporated in the Articles of Association for the proposition that the shareholders' right of transfer of shares cannot be taken away, unless so provided in the Articles of Association, and is not with reference to enforcement of shareholders agreement. In the present case, we are concerned with the question whether a shareholders in his capacity as a Director can be injuncted or not to vote for increasing the number of Directors in view of terms of Agreement but in absence of any such restriction in the Articles of Association. 20. The argument of Mr. Chinoy is that there is no legal mandate that the Company must have more than three Directors. The only mandate is that the minimum number of Directors should be three. As per Articles the maximum number could be twelve. He contends that, in these circumstances, a shareholder Director can enter into an agreement stipulating not to exceed the minimum number of three Directors. According to the learned Counsel, these are in the nature of proprietary rights as opposed to corporate rights and like shareholders or pooling agreements, such right could be circumscribed by the will of the shareholders reflected by the Agreement entered into by them. 21. Regarding pooling agreement, it may be noted that it is an agreement between two or more shareholders which generally provides that in exercising any voting rights, the shares held by the shareholders shall be voted as provided therein; it is a contract to the effect that the shares held by them shall be voted as one single unit. The shareholders bind one another to vote as they mutually agree. In a pooling agreement, each shareholder retains sole ownership of shares binding himself only to vote for a specific person or in a certain way. These agreements are enforceable because the right to vote is a proprietary right- The right to vote may be aided and effectuated by a contract. Generally, pooling agreements are thought of in relation to control of private companies and smaller public companies. (See Law Quarterly Review, Vol. 84 p. 561). 22. A pooling agreement may be utilised in connection with the election of Directors and shareholders' Resolutions where shareholders have a right to vote. However, a pooling agreement cannot be used to supersede the statutory rights given to the Board of Directors to manage the company, the underlying reason being that the shareholders cannot achieve by pooling agreement that which is prohibited to them, if they are voting individually. Therefore, the power of shareholders to unite is not extended to contracts, whereby restrictions are placed on the powers of Directors to manage the business of the Corporation. It is for this reason that a pooling agreement cannot be between Directors regarding their powers as Directors. There is vast differ- ence in principle between the case of a shareholder binding himself by such a contract and the Director of the Company undertaking such an obligation by compromising his fiduciary status. The shareholder is dealing with his own property. He is entitled to consider his own interests, without regard to interests of other shareholders. However, Directors are fiduciaries of the Company and the shareholders. It is their duty to do what they consider best in the interests of the Company. They cannot abdicate their independent judgment by entering into pooling agreements. The

Company works through two main organs, viz. the shareholders and the Board of Directors. 23. In fact, in U.S.A. the law has made further advances. The American Courts have accepted that Directors are fiduciaries of the various constituencies in the Corporation. With globalisation, the concepts of merger and amalgamation have come into picture. With the Companies issuing shares to employees and workers and also to set of creditors, the American Courts have accepted that in the company there are various constituencies like shareholders' constituency, workers' constituency, creditors' constituency etc. This advancement of law has been very vividly mentioned in Harvard International Law Journal, Volume 38, page 540 under the Chapter dealing with Constituency Status. Implication for Director Fiduciary Duties. The Article mentions the advancement of Corporate Law. It is clear that Directors shall not only act exclusively in the interests of shareholders or with reference to stock prices, but shall also be obliged to charter a course for the company which is in its best interest without regard to fixed investment horizon. 24. Applying the aforesaid principle, in particular the principle of fixed investment horizon, it would be noticed that the MoU was entered into essentially to favour a fixed investment pattern; It was to protect the family interest in the event of division of the shareholding. It was never contemplated that the company would do well and would require infusion of capital. If this is the purpose, for which the MOU was entered into, and if this object is required to be kept in mind, then, it is clear that the MoU, which imposes a ban on the increase on the number of Directors for all times, is likely to denude the powers of the Board of Directors and may cause sterilisation of Directors, a terminology used in America. It is for this reason that the American Courts have taken the view that the pooling agreements, which are based on fixed investment objectives, should not be made enforceable, if such agreements come in the way of Directors' decision to charter a course which favours expansion of the company. It is also because the Directors should not only look to the shareholders' interest or to maximise the shareholders' value in the context of a takeover, but it is their duty to make the Corporation progressive. This approach is also very necessary because it encourages the growth of the company which is vital for the economic progress of the company. Moreover, the various authorities indicate that the pooling agreements are short-term measures, viz., up to the next Annual General Meeting. They were never meant to operate in perpetuity. They are essentially meant to protect the proprietary interest of the shareholders. The courts have been slow in granting enforcement of such agreements. See [Hickman v. Kent Marsh Shipbreakers Association), 1915(1) Ch D. 881. 25. The aforesaid decision also lays down that an agreement between shareholders cannot be construed to be a contract binding on the company even if the company has taken note of the pooling agreement or even if the company has acted thereon and, on this basis, the English Courts have denied specific performance of such agreements. The aforesaid judgment also lays down that, even if the Articles provides that the Directors shall give effect to the pooling agreement between the shareholders, still, such an agreement shall not be construed as part of the Articles and that acts performed pursuant to such an agreement cannot be ratified subsequently.

It further lays down that, even if such an agreement is treated as being part of the Articles, still, it would not result in a binding contract qua the company. 26. In the case of Browne v. Trinidad, reported in 33, Ch.Dn. 1, the pooling agreement provided that the founder-member shall not be removed as a Director for all times. He was subsequently sought to be removed. The Court took the view that, even if the Directors had acted upon the agreement in the past, such acts will not be binding on the company. 27. A reading of the above judgments indicate that the courts have been slow to enforce such pooling agreements. The pooling agreements, which are enforced are concerning only the right to vote of the shareholders. The courts have not been granting specific performance of the agreements whereby the powers of the Directors stand denuded. 28. The Supreme Court of Canada in Ringuet v. Bergeron, 1960(24) D.L.R. 449(2-d), dealing with shareholders entering into agreement to vote unanimously and observing such agreements not to be illegal, at the same time held that the fiduciary relationship occupied by Directors requires the exercise of these entire duties and attention to the best interest of the company and its shareholders. It was accordingly held that the discretion of the Directors to act in the administration of the affairs of the company cannot be fettered by agreement and, therefore, such agreement was invalid. 29. In Boulting v. Association of Cinematograph Television and Allied Technicians, reported in 1963(2) Q.B. 606, Lord Denning M.R. while dealing with fiduciary nature of Directors' duties and also referring to the opinion of Lord Cranworth L.C. in Aberdeen Railway Co. v. Blaikie Brothers, 1854(1) Macq, 461, 471, H.L. (Sc.) said : "It seems to me that no one, who has duties of a fiduciary nature to discharge, can be allowed to enter into an engagement by which he binds himself to disregard those duties or to act inconsistently with them. No stipulation is lawful by which he agrees to carry out his duties in accordance with the instructions of another rather than on his own conscientious judgment; or by which he agrees to subordinate the interests of those whom he must protect to the interests of someone else." 30. It is thus clear that the specific performance of pooling agreements between shareholders to vote in a particular manner cannot be extended to denude or sterlise the powers of directors and any such agreement would be unenforceable. . 31. Applying the aforesaid propositions to the present case, it would be noticed that the company was in need to increase the capital. There was also need for professionalisation, but it would be deprived of it despite the fact that there is no such restriction in the Articles of Association. It is on the basis of Clause 8 of the MOU. In our view, the curtailment of the powers of Director by enforcement of such a clause would not be permissible. Clause 8 would result in curtailment of the fiduciary rights and duties of the Directors. The shareholders cannot infringe upon the Directors' fiduciary rights and duties. Even Directors cannot enter into an agreement, thereby agreeing not to increase the number of Directors when there is no such restriction in the Articles of Association. The shareholders cannot dictate the terms to the Directors, except by amendment of Articles of Association or by removal of Directors. The agreement infringes upon the right of the first defendant to have more number of Directors, in the interests of the company. The grant of interim injunction would amount to

stultifying management of the company. 32. For the aforesaid reasons, to our mind, Clause 8 of the MoU, to the extent it provides that the number of Directors shall not exceed three till Rolta India Ltd. holds share capital in the company of the face value of Rs. 10 lacs, cannot be specifically enforced and, in this view, the question of restraining defendant No. 1 and 2 by issue of interim injunction does not arise. Therefore, appellants are not entitled to the second relief as well. The observations made in this judgment are prima facie for the purpose of decision of the appeal and Notice of Motion and will not affect the rights and contentions of the parties on merits which are subject-matter of the suit. 33. For the aforesaid reasons, we dismiss the appeal and Notice of Motion. In the facts and circumstances of the case, parties are left to bear their own costs. 34. Status quo regarding the appointment of the Additional Director will continue for a period of six weeks from today. 35. Appeal and Notice of Motion dismissed.