Purnima Manthena & Anr vs Dr. Renuka Datla & Ors on 6 October, 2015

Author: Amitava Roy

Bench: Amitava Roy, V. Gopala Gowda

(REPORTABLE)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8275 OF 2015
[ARISING OUT OF S.L.P. (C) NO. 12831 OF 2015]

PURNIMA MANTHENA AND ANOTHER …..APPELLANTS
VERSUS
DR. RENUKA DATLA & OTHERS …..RESPONDENTS

WITH
CIVIL APPEAL NO. 8276 OF 2015
[ARISING OUT OF S.L.P. (C) NO. 12835 OF 2015

MAHIMA DATLA …..APPELLANT
VERSUS
DR. RENUKA DATLA & OTHERS …..RESPONDENTS

WITH
CIVIL APPEAL NO. 8277 OF 2015
[ARISING OUT OF S.L.P. (C) NO. 20338 OF 2015

G.V. RAO …..APPELLANT
VERSUS
DR. RENUKA DATLA & OTHERS …..RESPONDENTS

JUDGMENT

AMITAVA ROY,J.

Leave granted.

2. The steeled stand off encased in the decision impugned, projects the members of a family, daughters against their mother in particular, in a combative formation in their bid to wrest the reins of a company, Biological E. Limited (for short, hereinafter to be referred to as “the company”) engaged in the business of pharmaceutical products and vaccines. The differences that had surfaced soon after the demise of Dr. Vijay Kumar Datla, the predecessor-in-interest of the contending family members, who at his death, was the Managing Director of the company, have grown in acrimonious content with time, stoked by the intervening events accompanied by a host of litigation. The present appeals stem from the judgment and order dated 15.4.2015 rendered by the High Court of

Judicature at Hyderabad, for the State of Telangana and State of Andhra Pradesh, in Company Appeal No. 17 of 2014 preferred by the respondent Nos. 1, 2 and 3 herein, under Section 10F of the Companies Act, 1956 (for short hereinafter to be referred to as "the Act") assailing the order dated 6.8.2014 passed by the Company Law Board, Chennai Bench (for short, hereinafter to be referred to as "CLB") in Company Petition No. 36 of 2014 filed by them.

While entertaining the instant appeals, this Court by order dated 12.5.2015, having regard to the considerations referred to therein and as accepted by the learned counsel for the parties, did make an endeavour to effect an amicable settlement through mediation which, however, did not fructify. The learned counsel for the parties, as is recorded in the order dated 21.7.2015, on instructions, vouched that the day-to-day functioning of the company, however would be allowed to continue. The appeals, in this backdrop have, thus, been analogously heard on merits for disposal. We have heard Mr. P.S. Raman, learned senior counsel for the appellants in Civil Appeal arising out of S.L.P. (C) No. 12831 of 2015 (who are also respondent Nos. 4 & 5 in SLP (C) No. 12835 of 2015 and 5 & 6 in SLP (C) No. 20338 of 2015), Mr. Shyam Divan, learned senior counsel for the appellant in Civil Appeal arising out of S.L.P. (C) No. 12835 of 2015 (who is also respondent No. 5 and 4 in SLP (C) No. 12831 of 2015 and SLP (C) No. 20338 of 2015 respectively), Mr. P.P. Rao, learned senior counsel for the appellant in Civil Appeal arising out of S.L.P. (C) No. 20338 of 2015 (who is also respondent No. 6 in S.L.P. (C) Nos. 12831 of 2015 and 12835 of 2015) and M/s. Parag P. Tripathi and Sajan Poovaiah, learned senior counsel for Dr. Renuka Datla (respondent No. 1 in all the three Appeals).

5. Since the judgment under challenge is same in all the appeals, for the sake of convenience, the facts are being taken from Civil Appeal arising out of S.L.P. (C) No. 12835 of 2015.

6. A skeletal account of the facts in the bare minimum, as available presently on the record, would outline the contours of the respective assertions.

7. The company, which was initially promoted by the father of respondent No. 1, with time took in its fold, Mr. Venkata Krishnam Raju Datla, the father of Dr. Vijay Kumar Datla (since deceased and husband of respondent No.1). After the demise of the father of respondent No. 1, Dr. Vijay Kumar Datla, who was inducted as the Chairman and Managing Director of the company on 1.5.1972 stewarded, nurtured and nourished it from strength to strength. The respondent No. 1, his wife, joined him initially as a Medical Director, as she is a qualified medical professional and w.e.f. 29.8.1991, was drafted in as the Executive Director of the company. Dr. Vijay Kumar Datla, who continued as the Chairman-cum-Managing Director of the company over the years, expired on 20.3.2013 and at his death, he, respondent No. 1 and Mr. G.V. Rao (respondent No. 6) did constitute the Board of Directors of the company. Noticeably Dr. Vijay Kumar Datla, in his individual capacity, then did hold 81% of the shares thereof. 8 As the facts evince, Mr. G.V. Rao (respondent No. 6) offered his resignation as a director vide his letter dated 6.4.2013 with immediate effect. It has been pleaded, however, on behalf of the appellant that Mr. G.V. Rao (respondent No. 6), on being requested by the family not to abandon the company at its hour of crisis, its guardian and mentor Dr. Vijay Kumar Datla having departed, did reconsider his decision and addressed another letter dated 9.4.2013 to the Board of Directors expressing his inclination to continue as the Director of the Board, intimating as well that thereby he was withdrawing his resignation letter dated 6.4.2013.

9. On the same day i.e. 9.4.2013, a meeting of the Board of Directors was convened by Mr. G.V. Rao, in the capacity of a Director of the company, which was attended amongst others, by the three daughters of the respondent No.1 i.e. Ms. Purnima Manthena (respondent No. 4), Ms. Indira Pusapati (respondent no. 5) and Ms. Mahima Datla (appellant). The respondent No. 1 did not attend the meeting and as the minutes of the proceedings would record, leave of absence was granted to her. In the same meeting, Mrs. Indira Pusapati (respondent No. 5) was inducted as the Director of the company to fill up the casual vacancy caused by the death of Dr. Vijay Kumar Datla. Mr. G.V Rao (respondent No. 6), was authorised, inter alia, to verify all acts and deeds as would be necessary, expedient and desirable to give effect to the resolutions adopted. 10 Thereafter, on 10.4.2013 and 11.4.2013 as well, meetings of the Board of Directors of the company were held. In these meetings also, respondent No. 1 did not attend and leave of absence was granted. In the meeting dated 10.4.2013, along with two directors namely; Mr. G.V. Rao (respondent No. 6) and Ms. Indira Pusapati (respondent No. 5), Mrs. Purnima Manthena (respondent No. 4) and Ms. Mahima Datla (appellant), amongst others, were present. The meeting took note of a will dated 14.2.2005, said to be executed by Dr. Vijay Kumar Datla in favour of Ms. Mahima Datla (appellant) and resolved to transmit the equity shares held by him and as referred to in the aforesaid will, in favour of Ms. Mahima Datla (appellant). In the same meeting, it was further resolved to appoint Ms. Mahima Datla (appellant) and Ms. Purnima Manthena (respondent No. 4) as the Additional Directors of the company, to hold the said office up to the conclusion of next annual general meeting. Mr. G.V. Rao (respondent No.

6), Director of the company was authorised to verify all acts, deeds as would be necessary, expedient and desirable to give effect to the resolutions adopted.

11 In its next meeting held on 11.4.2013, in which respondent No. 1 was absent and leave of absence was granted to her, Ms. Mahima Datla (appellant) was appointed as the Managing Director of the company for a period of three years w.e.f. 11.4.2013. It was resolved as well to request the Chairman to advise respondent No. 1 to officially communicate the appointment of Ms. Mahima Datla (appellant) as Managing Director of the company.

Though the pleaded assertion of respondent No. 1 is that she was neither noticed nor informed of the meetings held on 9.4.2013, 10.4.2013 and 11.4.2013 and that the proceedings thereof were a nullity, as the meeting dated 9.4.2013 could not have been validly convened by Mr. G.V. Rao (respondent No. 6), who had, prior thereto, resigned from the company and further that the meeting dated 9.4.2013 was sans the prescribed quorum, the progression of events attest that on 15.4.2013, a letter had been addressed by her (respondent No. 1) to the constituent fraternity of the company, conveying the news of appointment of her daughters i.e. Mrs. Purnima Manthena (respondent No. 4), Mrs. Indira Pusapati (respondent No.

5) and Ms. Mahima Datla (appellant) as the Directors of the Board thereof, with particular reference to the appointment of Ms. Mahima Datla (appellant) as the Managing Director, thereby seeking the “blessings and guidance” of all concerned for enabling her to discharge her new responsibility. Respondent No. 1, however, at a later point of time, did allege exertion of pressure and undue influence by the other Directors to which she wilted, being in an anguished and forsaken state of

mind, still mourning the sudden demise of her husband, Dr. Vijay Kumar Datla. While the matter rested at that, the respondent No. 1, Mrs. Purnima Manthena (respondent No. 4), Mrs. Indira Pusapati (respondent No. 5) and Ms. Mahima Datla (appellant) addressed a letter dated 24.5.2013 to the Board of Directors conveying the decision of the members of the HUF on consensus to divide 4594 shares thereof (HUF) held by Dr. Vijay Kumar Datla, in equal shares. They also appended to the letter, a Memorandum Of Undertaking to this effect and requested the company to effect transmission of shares in their favour, on the said basis. Incidentally on the same day i.e. 24.5.2013, a meeting of the Board of Directors was convened in which, as respondent No. 1 was absent, leave of absence was granted to her. In the said meeting, amongst other, taking note of the Memorandum Of Understanding referred to in the aforementioned letter dated 24.5.2013 signed by the respondent No. 1 and Mrs. Purnima Manthena (respondent No. 4), Mrs. Indira Pusapati (respondent No. 5) and Ms. Mahima Datla (appellant), 4594 equity shares held by Dr. Vijay Kumar Datla (HUF) were transmitted in their favour in equal shares.

A meeting of the Board of Directors was thereafter convened on 22.8.2013 of which a notice was served on the respondent No. 1. She did attend the meeting albeit with reservations, whereafter through a host of letters, addressed to the Board of Directors, she highlighted her objections, inter alia, to the validity of the meetings held on 9.4.2013, 10.4.2013 and 11.4.2013 in particular and the resolutions adopted therein.

16. On the receipt of notice of the Annual General Meeting of the company, which was scheduled to be held on 28.11.2013, respondent No. 1 filed an application under Section 409 of the Act before the CLB, which was registered as Company Petition No. 1 of 2013, seeking principally a declaration that the appointments of her three daughters namely; Ms. Purnima Manthena (respondent No. 4), Mrs. Indira Pusapati (respondent No.

5) and Ms. Mahima Datla (appellant) as Directors of the company by virtue of the meetings held on 9.4.2013, 10.4.2013 and 11.4.2013 to be a nullity. While seeking a further declaration that Mr. G.V. Rao (respondent No. 6) having resigned from the Board of Directors of the company on 6.4.2013 with immediate effect, he was neither entitled to continue as the Director nor did he have any authority to convene the aforesaid meetings and transact the business therein, she also prayed that all acts, deeds and decisions taken in and pursuant to the resolutions in the said meetings be adjudged to be void and not binding on the company. Apart from seeking a permanent injunction restraining her three daughters namely; Ms. Purnima Manthena (respondent No. 4), Ms. Indira Pusapati (respondent No. 5), Ms. Mahima Datla (appellant) and Mr. G.V. Rao (respondent No. 6) from functioning as Directors of the company, by way of interim relief, she prayed for a restraint on the ensuing Annual General Meeting fixed on 28.11.2013 and to appoint two ad hoc Directors for administering the day-to-day affairs of the company along with her.

17. By its ruling dated 17.12.2013, the CLB, after considering the rival pleadings and the documents laid before it, observed on a prima facie evaluation of the facts portrayed, that the respondent No. 1 had recognised her three daughters Ms. Purnima Manthena (respondent No. 4), Mrs. Indira Pusapati (respondent No. 5) as the Directors and Ms. Mahima Datla (appellant) to be the Managing Director of the company. It was of the view that, though she received the letter of withdrawal of

resignation of Mr G.V. Rao-respondent No. 6, she had not responded thereto either accepting or rejecting the same. On an appraisal of the pleaded facts and the documents on record, the CLB returned a finding that there was neither any change in the Board of Directors nor in the management of the company nor there was any likelihood of change in the ownership of the company nor any likelihood of the new management taking over the company nor any change in the shareholding pattern of the company and concluded in the context of Section 409 of the Act that respondent No. 1 had not made out any ground for grant of any interim relief, as prayed. Noting the assertion of the respondents therein that the company had the necessary reserves to meets its debts and that Mahima Datla (appellant herein) had stood as a guarantor for the loans obtained from the banks, the CLB was, thus, of the view that the apprehension of the respondent No. 1, as expressed, was not substantiated by any documentary evidence. Having recorded that the respondent No. 1 was continuing as the Executive Director of the company and that Mahima Datla (appellant herein) being associated with its affairs was well acquainted therewith and that in the proposed Annual General Meeting to be held on 18.12.2013 (which got deferred to this date from 28.11.2013), the company was going to transact the business, as notified, which did not disclose any proposed change in the management or the ownership or taking over by external agency, the CLB declined to grant stay of the said meeting. This was more so, in view of the statutory mandate qua Annual General Meeting of a company under the Act. The respondent No. 1 was left at liberty to participate in the said Annual General Meeting and the company was permitted to conduct the same and take resolutions as per the notice. The resolutions to be passed in the Annual General Meeting were, however, made subject to the outcome of the Company Petition No.1 of 2013.

18. Though the respondent No.1, being aggrieved by this order, did prefer an appeal under Section 10F of the Act being Company Appeal No. 1 of 2014, she participated in the Annual General Meeting held on 18.12.2013 in which, resolutions on the appointment of the appellants as Directors/Managing Director and amongst others, the enhanced remuneration of respondent No. 1 were adopted. Eventually on 24.2.2014, the appeal stood disposed of as infructuous on the concurrence of the parties to join for the necessary endeavours for early disposal of the Company Petition No. 1 of 2013.

19 Close on the heels of the disposal of aforesaid Company Appeal No. 1 of 2014, the respondent No. 1 instituted a suit being O.S. No. 184 of 2014 in the Court of Chief Judge, City Civil Court, Hyderabad substantially traversing the above facts and seeking a decree for a declaration to be the absolute owner of the shares of the company as enumerated in Schedule A to the plaint, on the strength of a will claimed to have been executed in her favour by Dr. Vijay Kumar Datla (since deceased) and a direction to the defendants therein to transfer the same by recording her name in relation thereto and to hand over the possession of the share certificates to her. Her alternative prayer, without prejudice to this relief, was for delineating her extent of claim to the shares in the capacity of a working spouse/widow of late Dr. Vijay Kumar Datla.

20 As the flow of the developments thereafter would demonstrate, the respondent No. 1 withdrew the Company Petition No. 1 of 2013 in July, 2014 with a liberty to approach the appropriate forum for appropriate reliefs in a manner known to law. The Company Petition No.1 of 2013, was, accordingly closed.

21 The respondent No. 1, in her renewed pursuit for redressal of her grievances as perceived by her, next instituted another petition before the CLB, which was registered as Company Petition No. 36 of 2014 under Sections 111A, 237, 397,398,402,403,404,406 of the Act, 1956 and Sections 58 and 59 of the Companies Act, 2013. As the pleaded assertions made therein would attest, those were in substantial reiteration of the facts narrated hereinabove, with the added imputation that the respondents therein were contemplating to transfer and consign the undertakings of the company to other companies incorporated and managed by the appellant herein and other Directors so as to enable them, to dispose of the said assets through their companies and appropriate the proceeds to their benefits to the irreparable loss and detriment to the company i.e. Biological E. Limited and its genuine shareholders. She, however admitted, that the concerned Directors in the meanwhile, had filed a scheme of arrangement under Sections 391 to 394 of the Act before the High Court of Andhra Pradesh for demerger of the undertakings of the company as listed out in the said petition. A copy of the scheme of arrangement was also appended to the petition alleging over all mis-management and oppression by the Directors therein in particular, consciously driving the company and its shareholders to a state of ruination chiefly through the process of demerger. The respondent No.1 prayed for a declaration of the acts of the said Directors to be oppressive and prejudicial to the interest of the company and to appoint an administrator and/or Special Officer to manage the affairs thereof by superseding the existing Board of Directors. In the alternative, she also prayed for constitution of a committee comprising of her representative to function as the administrator and/or Special Officer for the management and control of its affairs. She reiterated her prayer for (i) declaring the Board meetings held on 9.4.2013, 10.4.2013 and 11.4.2013 as void ab-initio, (ii) removal of the appellant herein and the other Directors from the office of the Directors of the company and (iii) adjudging the transmission of 400951 equity shares held by Dr. Vijay Kumar Datla (since deceased) to the appellant (Ms. Mahima Datla) as illegal, null and void. A declaration to adjudge the resolutions passed in the Board meetings held on or after 20.03.2013 and also the Annual General Meeting held on 18.12.2013 as non est was also sought for. By way of interim relief, she prayed for supersession of the Board of Directors and appointment of interim administrator and/or Special Officer to assume the charge of the affairs of the company and in the alternative, prayed for constitution of a committee comprising of her representative to discharge the said role.

22 The petition was taken up on 6.8.2014, on being mentioned. In course of the arguments, though the contesting respondents could not file their pleadings, understandably it being the date of first hearing, the primary facts, as adverted to hereinabove, having a bearing on the dissensions were addressed and the CLB, after taking note of the fact that the meeting of the company for considering the scheme of demerger was scheduled to be held on 7.8.2014, as directed by the High Court, construed it to be inexpedient to intervene in that regard. It observed as well, that meanwhile a suit had been filed by the respondent No.1 on the basis of a will said to have been executed in her favour and that the same was pending adjudication and concluded that it would not be appropriate to restrain the appellant (Ms. Mahima Datla) from exercising her voting right in respect of 400961 equity shares. Noticeably, in course of the submissions, it was pleaded on behalf of the respondent No. 1 that the suit would be withdrawn. Qua the alienation of immovable properties of the company, the CLB recorded the submission on behalf of the respondents therein that there was no intention to do so vis-a-vis the movable and immovable properties of the company except that may arise under the scheme of demerger. In response to the submissions made on behalf of the respondent No. 1 that

she ought not to be removed from the post of Executive Director, it was submitted on behalf of the respondents therein that no step would be taken to dislodge her without the leave of the CLB. Taking note of these submissions/undertakings, the CLB ruled that the respondent No. 1 had not been able to make out any case for grant of interim relief "at the time of mentioning of the Company Petition" and permitted the respondents therein to file their counter within a period of six weeks and fixed 9.10.2014 to be the next date.

23. The respondent No. 1 herein, being aggrieved, preferred an appeal being Company Appeal No. 17 of 2014 which has since been allowed by the judgment and order dated 15.4.2015 impugned in the instant batch of appeals.

24 The High Court, as the decision assailed would reveal, traversed the entire gamut of the facts involved as available from the company petition and the documents appended thereto and recorded its findings on all the aspects of the discord and eventually granted the following reliefs.

"1. An ad hoc Board of Directors constituted with appellant No. 1 as the Executive Director and respondent Nos. 2 to 4 as the Directors of respondent No. 1-company. Appellant No. 1 shall discharge the functions of the Managing Director of the company.

The ad hoc Board is responsible for the day-to-day functioning of the company and shall carry out the statutory obligations under the Act.

All the decisions shall be taken by the Board based on unanimity and consensus. If consensus on any aspect relating to the day-to-day affairs of the company is eluded among the Board members, appellant No. 1, as the Managing Director, shall approach the Company Law Board for appropriate directions.

The Board shall not transfer or deal with 81% shares held by late Dr. Vijay Kumar Datla in any manner till the dispute on the issue of succession is adjudicated in O.S. No. 184 of 2014.

The Board shall not take any major policy decisions unless there is unanimity among all its members and without the prior approval of the Company Law Board.

The ad hoc Board shall continue to function till O.S. No. 184 of 2014 is disposed of and appropriate orders in C.P. No. 36 of 2014 are passed thereafter.

The Company Law Board shall keep C.P. No. 36 of 2014 pending till O.S. No. 184 of 2014 is finally disposed of." 25 The appeal was allowed and the accompanying applications were disposed of as infructuous. In arriving at its penultimate conclusions, leading to the arrangement configured by the operative directions, as extracted hereinabove, the High Court elaborately delved into the factual details bearing on all facets of the surging disputes between the parties, tracing from the issue of validity or otherwise of the continuance of Mr. G.V. Rao as the Director of the company, to the imputation of mis- management and oppression, allegedly indulged in by the appellants and other Directors including the perceived imminent possibility of slicing off the assets of the establishment

through a process of demerger. 26 En route to the final deductions, the High Court did dwell upon the validity of the Board meetings held on 9.4.2013, 10.4.2013 and 11.4.2013 in particular and also of the Annual General Meeting conducted on 18.12.2013, the claim made by the respondent No. 1 in her suit based on a will claimed to be executed in her favour by Dr. Vijay Kumar Datla (since deceased), the letter dated 15.4.2013 written by the respondent No. 1 as well as the accusation of manipulation of the transfer of the majority of the shares of the company in favour of Ms. Mahima Datla (appellant). It held in no uncertain terms, that in fact there was no Board of Directors legally in existence, thus necessitating a workable arrangement for regulating the conduct of the affairs of the company. Having regard to the contesting claims to the shares on the basis of two wills and the pendency of the suit instituted by the respondent No. 1, the High Court construed it to be appropriate to proceed on the premise that the appellant, her sisters and the respondent No. 1 had more or less equal shares. In the backdrop of this determination, the High Court, being of the view, that it would be preferable to make an interim arrangement to conduct the administration of the company, without the induction of an outsider as an administrator/receiver, issued the above-mentioned directions to ensure the same.

27 As would be evident from the steps enumerated in the impugned judgment and order in this regard, an ad hoc Board of Directors was directed to be constituted with respondent No. 1 as the Executive Director and her three daughters as the Directors with the rider that the respondent No. 1 would discharge the functions of the Managing Director of the company. Thereby, the ad hoc Board was allowed to continue to function till the suit i.e. O.S. No. 284 of 2014 was disposed of and appropriate orders in the pending Company Petition No. 36 of 2014 were passed. It was ordered that the CLB would keep the Company Petition No. 36 of 2014 pending till the suit was finally disposed of. 28 To put it differently, by the impugned verdict, the existing Board of Directors was substituted by an ad hoc body adverted to hereinabove and the respondent No. 1 was entrusted with the charge of office of the Managing Director of the company. Further the arrangement, as directed, was to continue till the disposal of the suit. The restraint on the CLB from proceeding with Company Petition No. 36 of 2014 till the suit was decided, understandably was to postpone the adjudication therein, till after the final determination of the issues in the suit. For all essential purposes, therefore, the adjudication of Company Petition No. 36 of 2014 was made conditional on the disposal of the suit.

29. Sustainability of the extent, propriety and correctness of the scrutiny undertaken by the High Court on the aspects of the lis between the parties pending the examination thereof by the statutorily prescribed forum of original jurisdiction i.e. the CLB in an appeal under Section 10F of the Act and the decisive bearing thereof, is the focal point of impeachment in the instant proceedings.

30. Learned senior counsel for the appellants in all the appeals have, at the threshold, urged that as the order dated 6.8.2014 of the CLB did not generate any question of law, as enjoined by Section 10F of the Act, the High Court ought to have summarily dismissed the appeal. According to the learned senior counsel, none of the issues involved had been considered and decided by the CLB and rightly, in absence of the pleadings of the appellants and, thus, no appeal under Section 10F of the Act was contemplated. The CLB vide its order dated 6.8.2014, having plainly deferred the scrutiny of the

issues, taking note of the undertaking offered on behalf of the appellants regarding the alienation of the properties of the company and the assurance of the office of the Executive Director of the respondent No. 1, there was no finding based on any adjudication and thus no question of law did emanate to permit an appeal therefrom under Section 10F of the Act.

31. Without prejudice to these demur, the learned senior counsel for the appellants emphatically argued that not only in the attendant facts and circumstances, Mr. G.V. Rao did lawfully continue as the Director of the company, he having withdrawn his resignation prior to the date of the meeting on 9.4.2013, they urged as well that all the meetings of the Board held on or from 9.4.2013 including the Annual General Meeting were to the full knowledge of respondent No. 1 and the contentions to the contrary, are factually untenable. Referring to the letter dated 15.4.2013 of the respondent No. 1, whereby she acknowledged the induction of the Mahima Datla (appellant) as the Managing Director of the company and her two other daughters as the Directors of the company, wishing them success on the new venture, they maintained that her complaint qua this letter, after a lapse of one year, being an after thought, was thus of no relevance or significance. According to the learned senior counsel, even assuming without admitting that the meetings of the Board of Directors held on 9.4.2013, 10.4.2013 and 11.4.2013 and thereafter were invalid as imputed by respondent No. 1, the same got sanctified in the Annual General Meeting held on 18.12.2013, in which she participated without any cavil. The learned senior counsel urged, that having regard to the situation eventuated by the sudden demise of Dr. Vijay Kumar Datla and the urgent need to attend to the day-to-day affairs of the company, a duly constituted Board of Directors, was an imperative necessity, and thus the steps taken by Mr. G.V. Rao to convene the meetings dated 9.4.2013,10.4.2013 and 11.4.2013, to that effect is even otherwise saved by the doctrine of necessity. Further the issues raised by her in Company Petition No. 36 of 2014 being substantially the same in Company Petition No. 1 of 2014, in which the CLB declined to grant injunction to the conduct of the annual General Meeting which was to be held on 18.12.2013, the High Court ought not to have on an extensive evaluation of the same facts afresh, overhauled the set-up of the company in the manner done at the preliminary stage and that too in absence of any tangible and legally cognizable evidence of oppression and/or mis-management of the affairs thereof. They argued as well, that as the suit filed by the respondent No. 1 was pending adjudication and the scheme of demerger involving the company was also subjudice before the High Court in a separate proceeding being Petition Nos. 721-722 of 2014, the apprehension expressed on behalf of the respondent No. 1 of imminent alienation of the properties of the company at their whims to irreparably wreck the existence thereof, was grossly belied, and thus, could not have been a consideration for superseding the existing Board of Directors and replacing it by an ad hoc body with the respondent No. 1 as the Managing Director. They urged that the interim arrangement modelled by the High Court making it co-terminus with the suit tantamounts to grant of reliefs claimed in the Company Petition No. 36 of 2014 finally, pending disposal of the proceeding before the Board and on this count alone, the impugned decision is liable to be interfered with.

32. To endorse the above pleas, the following decisions were pressed into service:

> V. S. Krishnan and Others etc. vs. Westfort Hi-tech Hospital Ltd. and Others etc. (2008)3 SCC 363 Wander Ltd. and Another vs. Antox India P. Ltd. 1990 (suppl.) SCC

727, Election Commission of India and Another vs. Dr. Subramaniam Swamy and Another (1996) 4 SCC 104 The Commissioner of Income Tax, Bombay vs. The Scindia Steam Navigation Co. Ltd. 1962(1) SCR 788 Lalit Kumr Modi vs. Board of Control For Cricket in India and others (2011)10 SCC 106 Banku Chandra Bose and another vs. Marium Begam and another AIR 1917 Cal Gokaraju Rangaraju Vs. State of A.P. (1981)3SCC 132 State of Punjab and others vs. Krishan Niwas (1997) 9 SCC 31.

A.R. Antulay vs. R.S. Nayak & Another (1988) Suppl. 1 SCR1

33. In emphatic repudiation, the learned senior counsel for Mrs. Renuka Datla (respondent No. 1) assiduously insisted in favour of the maintainability of the appeal before the High Court under Section 10F of the Act. They urged, that the denial of interim relief by the CLB in the attendant factual conspectus, was not only in disregard to the relevant provisions of the Act and the Articles of Association of the Company but also did adversely impact upon the legal right of the respondent No. 1 justifying the intervention of the High Court under Section 10F of the Act. While questioning the locus and competence of Mr. G.V. Rao as the Director of the company, consequent upon his resignation and reiterating the invalidity of the meetings of 9.4.2013, 10.4.2013 and 11.4.2013, they urged that not only the respondent No. 1 was unaware thereof, but also there was no such pressing urgency to rush through such steps for her exclusion and that too while she was in the state of mourning, having lost her husband. They repudiated as well, the validity of the said meetings for want of quorum and due notice and assailed also the Annual General Meeting to be a nullity as the same could not have been convened by or on behalf of the Board of Directors which was non est in law for all intents and purposes. According to the learned senior counsel, in any view of the matter, if such meetings were in fact necessitated by the prevailing exigencies, resort ought to have been taken of the relevant provisions of the Act as well as Articles of Association. In this context, they assertively dismissed the plea based on the doctrine of necessity. They maintained that these meetings, having regard to the manner in which the same were convened and conducted, smacked of the intention to deprive the respondent No. 1 of her legitimate dues. They assertively pleaded that the letter dated 15.4.2013 of the respondent No. 1, purportedly accepting the induction of her daughters in the Board of Directors, was not issued on her volition, and thus was wholly inconsequential. As the progression of events from 9.4.2013 did irrefutably demonstrate, the endeavours of the appellant and the other Directors of the Board to cast aside the respondent No. 1 and assume the absolute charge of the company to its detriment and prejudice of its constituents, resulting in oppression and mis-management of its affairs, the High Court was eminently justified for its remedial intervention in the overall well-being of the company, they pleaded. The learned senior counsel argued that the rejection by the CLB of the interim reliefs sought for by the respondent No. 1 did give rise to a question of law, and thus the appeal under Section 10F of the Act was unquestionably maintainable. According to the learned senior counsel, the contemplation of the demerger of the company did signal imminent cleavage of its vital assets to reduce it to a carcass for the unlawful gain of a selected few though unauthorisedly at the helm of affairs, warranting the substitution of Board of Directors by the ad hoc body as effected by the impugned order. The following decisions were cited in buttressal:

> Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement and Another (2010)4SCC 772, Waman Shriniwas Kini vs. Ratilal Bhagwandas & Co. (1959) Suppl. 2 SCR 217. V. S. Krishnan and Others etc. vs. Westfort Hi-tech Hospital Ltd. and Others etc. (2008)3 SCC 363 Dale & Carrington Invt. (P) Ltd. and Another vs. P.K. Prathapan and Others (2005) 1 SCC 212.

Pankaj Bhargava and Another Vs. Mohinder Nath and Another (1991) 1 SCC 556.

34. In their short reply, the learned senior counsel for the appellants maintained that not only the issue of demerger is subjudice in a different proceeding before the High Court under the Act, and thus could not have been taken note of qua the allegation of oppression and mis- management, there being neither any prayer for cancellation of the appointment of Mr. G.V. Rao nor any necessity for the replacement of the Board of Directors, the impugned judgment warrants interference, pending disposal of the proceeding before the CLB on merits. The learned senior counsel for the respondent No. 1 has not controverted the pendeny of the demerger proceeding independently before the High Court.

35. We have extended our anxious consideration to the weighty and dialectical assertions exhaustively touching upon the aspects of the debate, both legal and factual. Understandably, as the impugned judgment stems from an appeal under Section 10F of the Act, great emphasis has been laid, both in favour and against the maintainability thereof as well as the manner and extent of scrutiny of the materials available on record, judged from the point of view of the nascent stage of the proceedings before the CLB, at which the appeal had been carried to the High Court. Admittedly, the appeal preferred by the respondent No. 1 under Section 10F of the Act has been against an order dated 6.8.2014 of the CLB, declining to grant the interim relief in entirety while securing the office of the respondent No. 1 as the Executive Director of the company and noting the pendency of the demerger proceeding as well as the undertaking on behalf of the contesting Board of Directors that the properties of the company except as would be required by way of demerger, would not be alienated. To reiterate, by order dated 6.8.2014, the CLB deferred the consideration of the prayer for further interim relief and granted time to the contesting respondents therein to file their pleadings. It is a matter of record that till the stage of filing of the appeal under Section 10F of the Act before the High Court, the contesting Board of Directors in the proceeding before the CLB had not filed their pleadings.

36. In the above prefatory, yet presiding backdrop and having regard to the decisive bearing of a finding on the maintainability or otherwise of the appeal before the High Court or the permissibility of the ambit of scrutiny undertaken by it, expedient it would be to assay at the threshold, these cardinal aspects in the proper legal perspective.

37. Section 10F of the Act, which provides for appeal against the order of the Company Law Board, for ready reference is extracted hereunder:

> "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."

38. As the quoted provision would reveal, a person aggrieved by a decision or order of the CLB, may file an appeal before the High Court within 60 days from the date of communication of the decision or order to him on any question of law arising out of such order. The period of limitation prescribed, however, is extendable by the High Court by another 60 days on its satisfaction that the appellant had been prevented by sufficient cause in doing so.

39. The expression "decision or order" and "any question of law arising out of such order" persuasively command for an inquest, to appropriately address the issue in hand. The right to appeal under Section 10F of the Act unambiguously being one conferred by a statute, the aspect of circumscription, if any, of the contours of the enquiry by the appellate forum, would be of formidable significance. The precedential guidelines available offer the direction.

40. In Scindia Steam Navigation Co. Ltd. (supra), a Constitution Bench of this Court while dilating on the contingencies on 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 had ruled that when a question of law is neither raised nor considered by it, it would not be a question arising out of its order notwithstanding that it may arise on the findings given by it. It was propounded that it was only a question that had been raised before or decided by the Tribunal that could be held to arise out of its order.

41. In Dale & Carrington Invt. (P) Ltd. (supra), this Court had an occasion to dwell upon the scope of Section 10F of the Act qua an appeal preferred against the decision of the Company Law Board after a full- fledged adjudication before the High Court. While negating the argument, that the High Court could not have disturbed the findings arrived at by the Company Law Board and record its own findings on certain issues which it could not go into, this Court held that if a finding of fact is perverse and is based on no evidence, it can be set-aside in an appeal even though the appeal is permissible only on the question of law. It was clarified that, perversity of a finding itself, becomes a question of law. Reverting to the facts of that case, this Court observed that the CLB had rendered its decision in a very cursory and cavalier manner without going into the real issues which were germane for the determination of the controversy involved, and thus approved the exercise of the High Court in elaborately dealing with the matter.

42. While reiterating in V.S. Krishnan and others (supra), that the CLB is the final authority on facts and that no question of law arises unless its findings are perverse, based on no evidence or are otherwise arbitrary, this Court reiterated that in an appeal under Section 10F "on a question of law", the jurisdiction of the appellate court is restricted to the question as to whether on the facts as

noticed by the Company Law Board and as placed before it, its conclusion was against law or was founded on a consideration of irrelevant material or was as a result of omission to consider the relevant material.

43. Adverting to the right of appeal, as a creature of statute, as provided by Section 35 of the Foreign Exchange Management Act, 1999, this Court in Raj Kumar Shivhare (supra) held that the expression "any decision or order" did mean "all decision or order". While extending this interpretation to the expression "any decision or order" applied in Section 35 as above, to dismiss the plea that such an appeal is contemplated only from a final order, this Court distinguished a right of appeal as a creature of statute from an inherent right of filing a suit, unless barred by law. It was underlined that while conferring such a right of appeal, a statute may impose restriction or condition in law, limiting the area of appeal, to question of law or sometime to a substantial question of law and ruled that whenever such limitations are imposed, those are to be strictly adhered to.

44. This Court in Wander Ltd. (supra), while dealing with appeals against orders granting or refusing a prayer for interlocutory injunction, did reiterate that the same, being in exercise of judicial discretion, the appellate court ought not interfere therewith and substitute its own discretion except where such discretion is shown to have been exercised arbitrarily or capriciously or perversely or where the Court whose order has been appealed from, had ignored the settled principles of law, regulating grant or refusal of interlocutory injunctions. It was enunciated, that appeal against exercise of discretion is an appeal on principle and the appellate court would not reassess the materials and seek to reach a conclusion different from the one reached by the court below, if it was reasonably possible on the materials available. It was held as well, that the appellate Court in such a situation would normally not be justified in interfering with the exercise of discretion of the Court below, if made reasonably and in a judicial manner, solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. It was proclaimed that an interlocutory remedy is intended to preserve in status quo, the rights of the parties which may appear on a prima facie examination of a case. It was held that the prayer for grant of interlocutory injunction, being at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence, it is required to act on certain well-settled principles of administration of such interlocutory remedy which is both temporary and discretionary. Referring to the fundamental object of interlocutory injunction, this Court noted with approval that the need for such protection of the plaintiff against injury by violation of his rights must be weighed against the corresponding need of the defendant to be protected against any injury resulting from the restraint on the exercise of his rights, as sought for, which he could not be adequately compensated. The need of one, thus was required to be compared against the other, to determine the balance of convenience to ensure an appropriate exercise of discretion for an interim remedy as suited to a particular fact situation.

45. The unequivocal legal propositions as judicially ordained, to ascertain the emergence and existence of a question of law, the scope of examination thereof by a court of appellate jurisdiction and the balancing of the competing factors in the grant of interlocutory remedy, hallowed by time, indeed are well settled. A question of law, as is comprehended in Section 10F of the Act, would arise

indubitably, if a decision which is the foundation thereof, suffers from perversity, following a patent error on a fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or non-germane determinants. A decision however, on the issues raised, is a sine qua non for a question of law to exist. A decision logically per-supposes an adjudication on the facets of the controversy involved and mere deferment thereof to a future point of time till the completion of the essential legal formalities would not ipso facto fructify into a verdict to generate a question of law to be appealed from. However, an omission to record a finding even on a conscious scrutiny of the materials bearing on the issues involved in a given case, may be termed to be one. Be that as it may, in any view of the matter, the appellate forum though exercising a jurisdiction which otherwise may be co- ordinate with that of the lower forum, ought to confine its judicial audit within the layout of the adjudgment undertaken by the forum of lower tier. This is imperative, more particularly in the exercise of the appellate jurisdiction qua a decision on discretion rendered at an introductory stage of any proceeding, otherwise awaiting final adjudication on merits following a full contest. It is settled that no adjudication at the preliminary stage of a proceeding in a court of law ought to have the attributes of a final verdict so as to prejudge the issues at that stage, thereby rendering the principal determination otiose or redundant. This is more so, if the pleadings of the parties are incomplete at the threshold stage and the lower forum concerned seeks only to ensure a working arrangement vis-a-vis the dissension and postpone fuller and consummate appreciation of the rival assertions and the recorded facts and the documents at a later stage.

46. 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. While the language applied therein evinces that all orders, whether final or interlocutory, can be the subject-matter of appeal, if it occasions a question of law, in our comprehension, the Section per se defines the perimeters of inquisition by the appellate forum conditioned by the type of the order under scrutiny. The nature and purport of the order i.e., interlocutory or final, would thus logically present varying canvases to traverse and analyse. These too would define the limits of adjudication qua the appellate forum. Whereas in an appeal under Section 10F from an order granting or refusing interim relief, being essentially in the exercise of judicial discretion and based on equity is an appeal on principle and no interference is merited unless the same suffers from the vice of perversity and arbitrariness, such constrictions may not necessarily regulate and/or restrict the domain of examination in a regular appeal on facts and law. Section 10F, thus, statutorily demarcates the contours of the jurisdictional exercise by an appellate forum depending on the nature of the order impugned i.e. interlocutory or final and both cannot be equated, lest the pending proceeding before the lower forum, if the order impugned is purely of interlocutory nature, and does not decide any issue on a consideration of the rival assertions on merits, stands aborted and is rendered superfluous for all intents and purposes.

47. Reverting to the present facts, noticeably the parties are contentiously locked on several issues, legal and factual, a brief outline whereof has been set-out hereinabove. While seeking the intervention of the CLB on the key accusation of oppression and mis-management as conceptualised in Sections 397 and 399 of the Act, the respondent No. 1 had retraced the march of events from 9.4.2013, the date on which, according to her, when the meeting of the Board of Directors, invalid in law, was convened and conducted by Mr. G.V. Rao , who allegedly had no authority to do so, he

having resigned from the company. She had asserted her express and implicit reservation in this regard and her disapproval not only of the constitution of the Board of Directors since then but also of the decisions taken from time to time. Without recapitulating the stream of developments that had occurred, suffice it to mention, that after a series of intervening legal proceedings, she finally did submit a petition before the CLB amongst other under Sections 397, 398,402/403/404 and 406 of the Act alleging oppression and mis-management and highlighting in that regard, the imminent possibility of alienation of the vital assets of the company through a purported scheme of demerger to the undue benefit of other Directors of the Board of the company. In contradiction, the appellants and the contesting Directors have not only endorsed the validity of the meetings on or from 9.4.2013 contending that respondent No. 1 though intimated thereof, had opted out therefrom and on the basis of the record, have sought to demonstrate her participation in the meetings, amongst others on 24.5.2013, 22.8.2013 and the Annual General Meeting held on 18.12.2013 as permitted by the CLB, they have also emphatically adverted to the letter dated 15.4.2013 addressed by the respondent No. 1 seemingly acknowledging the lawful induction of the appellant (Ms. Mahima Datla) as the Managing Director and her two sisters as the Directors in the Board. The appellants and other contesting respondents have also endeavoured to underline that the respondent No. 1 has accepted the distribution of the shares held by Dr. Vijay Kumar Datla in the HUF as decided in the meeting dated 24.5.2013 and also the enhancement in her remuneration as the Executive Director as minuted in the Annual General Meeting dated 18.12.2013. There is no denial by her as well as of the pendency of the demerger proceeding before the High Court.

48. In the above overwhelming factual premise, the High Court, as the impugned decision would demonstrate, being fully conscious that the proceeding before the CLB was pending for final adjudication, proceeded to undertake an in-depth exercise to fathom and analyse the facts and the law involved and has recorded its decision on merits in total substitution of the order of the CLB. This to reiterate, is in absence of any pleadings by the appellants, the contesting Directors before the CLB. This assumes importance as the High Court did resort to a full-fledged scrutiny of the factual and legal aspects, to test the legality and/or validity of the order dated 6.8.2014 of the CLB at the stage of mentioning. Having regard to the fact that the appeal before the High Court under Section 10F of the Act was one from an interim order passed in exercise of judicial discretion at the stage of mentioning, in our view, bearing in mind the permissible parameters of exercise of appellate jurisdiction in such matters, the elaborate pursuit so undertaken by it, is neither contemplated nor permissible. The High Court, in any view of the matter, was not dealing with a regular appeal under Section 10F of the Act on a question of law from a decision rendered by the CLB on merits, after a complete adjudication. The appeal before it, being one on principle and from an order rendered by the CLB in the exercise of its discretion at the preliminary stage awaiting the pleadings of the respondents therein, we are of unhesitant opinion that the scrutiny in the appeal ought to have been essentially confined to the aspects of which the CLB had taken cognizance, to pass its order at that stage, and not beyond.

49. As it is, though a colossus of facts with the accompanying contentious issues are involved, having regard to the stage at which the order of the CLB had been passed, no exhaustive examination of the factual and legal aspects ought to have been undertaken by the High Court to record its conclusive deductions on the basis thereof. Keeping in view the stage wise delineation of the jurisdictional

frontiers of the forums in the institutional hierarchy as codified by law, the High Court's quest to unravel the entire gamut of law and facts involved at the preliminary stage of the proceeding before the CLB and to record its findings on all issues involved on merits did amount to prejudging those, thereby rendering the petition before the CLB redundant for all intents and purposes.

50. In the instant case, though the CLB, as a matter of fact, did not record any view on the merits of the case while deferring the consideration of the interim relief , being satisfied with the undertakings offered on behalf of the appellants and other contesting Directors, the High Court has, by the impugned decision, decisively furnished its views and conclusions on all vital issues, as a consequence, leaving little or none for the CLB to decide. This is not the role of the appellate forum as is contemplated under Section 10F of the Act qua the stage from which the appeal had been preferred from the order of the CLB.

51. Noticeably in the face of the undertaking given by the appellants and the pendency of the demerger proceeding separately before the High Court, in our view, there did not exist any searing urgency to substitute the existing Board of Directors as done and to continue with it till the disposal of the suit and at the same time to keep the proceeding of the CLB pending till then. This is more so, as can be culled from the order dated 6.8.2014 of the CLB, the status of the respondent No.1 as Executive Director of the Company has been secured and further alienation of the assets of the company, otherwise has been restrained. Assuredly, these are based on undertakings before the CLB as given by the appellants, the contesting Directors and the CLB having taken note thereof, the same are as good as binding directions on the parties. The aspect of demerger as adverted to hereinabove, is the subject matter of adjudication in a separate proceeding on which, at this stage, no observation is called for. Suffice it to state however, that the aspect of demerger for the present cannot ipso facto be an impelling factor to conclude in favour of allegation of oppression and mis-management as made by the respondent No.

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52. In the wake up of above, we feel persuaded to interfere with the impugned decision of the High Court, without observing any final opinion on the merit of the contrasting assertions. In our comprehension, having regard to the relief provided by the CLB by its order dated 6.8.2014 to the parties, it ought to be left to decide the petition on merits after affording them a reasonable opportunity of furnishing their pleadings. As in the course of hearing, some grievance was expressed on behalf of respondent No. 1 that her status as the Executive Director of the company, stands undermined due to uncalled for surveillance imposed at the instance of the existing Board of Directors, we make it clear, as has been assured before us, that she ought to be allowed to function in the aforesaid capacity being provided with all facilities and privileges attached to the office as permissible in law, so much so that she does not have any occasion to complain in this regard. This indeed ought to be in accord with the letter and spirit of the undertaking offered by the Board of Directors to the CLB. The respondent No. 1 too would cooperate in the day to day management of the affairs of the company in her said capacity. The existing Board of Directors would also abide by the undertaking as recorded in the order dated 6.8.2014 of the CLB qua the alienation of the assets of the company. The set-up of the Board of Directors and the arrangement vis-a-vis the

administration of the affairs of the company, as was existing on the date on which the order dated 6.8.2014 was passed by the CLB, would continue until further orders by it. The CLB is, however, directed to dispose of the proceeding before it as expeditiously as possible. As the suit filed by the respondent No. 1, as noted hereinabove, is also pending, we hereby direct the Civil Court before which it is pending, to deal with the same with expedition as well, so as to provide a quietus to the lingering family discord in the overall well- being of the company and its constituents.

53. Before parting, we need to take note of the submission of Mr. P.P. Rao, learned senior counsel appearing for Mr. G.V. Rao that the averments made in sub-paragraph 2 of the counter-affidavit filed by the respondent No. 1 at page 720 thereof besides being utterly incorrect and defamatory are liable to be effaced from the records. We are of the considered view that this assertion needs to be sustained. We thus, expunge these averments being wholly inessential for deciding the issues involved.

54. The appeals are, thus, allowed in the above terms. The CLB and the Civil Court would decide the proceedings before them on their own merits, without being in any way influenced by any observation made herein. No costs.

.....J. (V. GOPALA GOWDA) .....J. (AMITAVA ROY) NEW DELHI;

OCTOBER 6, 2015.