Martin Castelino vs Alpha Omega Shipmanagement (P.) Ltd. on 16 May, 2000

Equivalent citations: [2001]104COMPCAS687(CLB)

ORDER

Balasubramanian, Vice-Chairman

1. In this order we are considering two petitions--one filed under section 397/398 (first petition) and another under section 111 (4) (second petition) of the Companies Act, 1956 ('the Act'), in the matter of Alpha Omega Shipmanagement (P.) Ltd. ('the company') as the facts in both the cases are similar.

2. The undisputed facts arc that before the disputes started, the authorised capital of the company was Rs. 40 lakhs and the paid-up capital was Rs. 30 lakhs. Members of three families held shares in the company. The petitioner's family held 1.8 lakh shares (60 per cent), the second respondent's family held 0.9 lakh shares (30 per cent) and the fifth respondent's family 0.3 lakh shares (10 per cent). Both the petitioners along with the second and fifth respondents were directors. Sometime in October 1998, the petitioners desired to sell their entire shareholding in the company for a consideration of US dollars 64,000. The board accorded its approval for the sale subject to obtaining the approval of the Reserve Bank of India. Pursuant to this permission, the petitioners resigned as directors. In the board meeting held on 15-4-1999, the board approved transfer of certain shares held by the second respondent to the seventh and eighth respondents who were not already members of the company. In an extraordinary general body meeting held on 5-6-1999, the authorised capital of the company was increased from Rs. 40 lakhs to Rs. 45 lakhs. Later, 1.5 lakh shares were allotted to the second respondent and his family members. In another extraordinary general body meeting held on 3-8-1999, the fifth respondent was removed as a director. The company had also noted in the register of members in the folio of the petitioners 'shares sold. All rights vested in the buyer pending legal formalities'. The allegations of the petitioners, in the first petition, are that by increasing the share capital and alloting the same to himself and his family members, the second respondent has converted the petitioners from majority into a minority and that by removing the fifth respondent as a director, he has hijacked the company. In the second petition, they have sought for deletion of the remarks noted in the register of members in the folio of the petitioners.

3. Shri Seervai, advocate for the petitioners, argued as follows : the company was being managed by three individuals together with their family members with the understanding that the affairs of the company would be managed in the nature of a quasi-partnership. The petitioners held 60 per cent shares in the company and as such were-in the majority. Even though, they had desired to sell their entire holding, yet, the same could not materialise for want of requisite approval from the Reserve Bank of India, etc., and the petitioners continued to be majority shareholders in the company even though they had resigned as directors: The second respondent, within a view to hijack the company had indulged in oppressive acts, first by increasing the number of members in the company by

transferring shares held by him to his family members and later issuing further shares to his group. While the transfer of shares is in violation of the provisions of the articles, the issue of further shares to his own group to the exclusion of the petitioners lacks in probity and fair play. He also submitted that without complying with the provisions of section 284(1) of the Act, the fifth respondent, one of the original promoters of the company was removed as a director. Thus, he pointed out that the entire company has gone into the hands of the second respondent.

4. In regard to the transfer of shares, he referred to articles 6 and 7 of the articles of association of the company, according to which, the existing members have a pre-emptive right to get shares transferred before being transferred to a non-member. However, in spite of these articles, the second respondent, in a board meeting held on 15-4-1999, got the share certificate split into 98 shares and two shares and transferred one share each to the seventh and eighth respondents only with a view to increase the number of members. This was done only with the view to ensure the presence of a quorum in the general meetings to be convened without notice to the members from the petitioners group and the fifth respondent's group. For this board meeting, even though the fifth respondent who was a director then, was given a notice of the board meeting, yet, the agenda for this meeting did not contain any business relating to splitting and transfer of shares, Therefore, according to him, the splitting and transfer of shares was done with the mala fide intention of increasing the number of membership in the company. He pointed out that by using the illegally enhanced number of members, they passed resolutions increasing the authorised capital of the company from Rs. 40 lakhs to Rs. 45 lakhs in the annual general meeting on 5-6-1999, and appointing the second and third respondents as consultants on exorbitant remuneration. He also pointed out that no notice for these meetings was received either by the petitioners or by the fifth respondent. The quorum for these meetings would not have been present in the absence of the petitioners and the fifth respondent but for the induction of the new members by transfer of shares. He also pointed out that after the increase in the authorised capital, without approval from the board, further shares had been issued to members of the respondents' group. Referring to the averment of the respondents that additional shares were issued on 18-6-1999, he submitted that there was no board meeting on that day to allot the shares. Therefore, he contended that shares had been issued behind the back of the petitioners only with a view to convert their majority into a minority. He further contended that the respondents have not adduced any justifiable reason for increasing the capital of the company. According to him, at the same extraordinary general body meeting on 5-6-1999, approval of the shareholders was obtained to authorise the payment of exorbitant remuneration to the second and third respondents and this additional remuneration had been utilised towards acquisition of further shares. He also doubted whether any money came into the company for the shares allotted especially in the absence of any application from the allottees for shares and in the absence of any proof about remittance of money by the allottees. If they had remitted the money, he contended that it should be out of the exorbitant amount of remuneration approved in the extraordinary general body meeting on 5-6-1999. He also questioned the rationale of increasing the capital of the company and at the same time approving a disproportionately high amount of remuneration.

5. After taking over the control of the company by issue of further shares, the respondents also arranged to have the fifth respondent removed as a director at an extraordinary general body

meeting held on 3-8-1999. The petitioners did not receive notices for this meeting. The petitioners came to know of this meeting only from the fifth respondent who had faxed a copy of this meeting. On coming to know of this meeting, the petitioners appointed a constituted attorney to represent them at that meeting. No notice in terms of section 284 of the Act was given to the fifth respondent. Only during the arguments before the Bench, it came to light that the meeting held on 3-8-1999, was a requisitioned meeting. Even assuming that it is so, the notice of the requisition should have been served on all the members, which was not done. At this meeting by virtue of the shareholding strength obtained by issue of additional shares, the respondents ensured the removal of the fifth respondent as a director. The removal of the fifth respondent as a director would result in the company having to pay over Rs. 50 lakhs as compensation to him. The respondents, unmindful of this huge claim by the fifth respondent which would be completely against the interest of the company, removed him only with a view to gain complete control of the company.

6. Summing up his arguments, Shri Seervai pointed out that the respondents had not annexed any documents in their reply to the first petition and were only producing the documents during the arguments and as such no cognizance of these documents should be taken. To make up this deficiency, they have annexed all the documents only along with their reply to the second petition. The act of clandestine splitting and transfer of shares and conversion of majority into minority and holding of meetings without due notice to all the members are all grave acts of oppression in a company in the nature of a quasi-partnership and as such the relief sought for in both the petitions should be granted.

7. He cited the following case law in support of his submissions :

> Howard Smith Ltd. v. Ampol Petroleum Ltd. [1974] AC 821: Issue of further shares with a view to converting a majority into minority would be wrong exercise of fiduciary powers of directors.
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> Piercy v. S. Mills & Co. Ltd [1920] 1 Ch. D. 77 : The power to issue shares is a fiduciary power to be exercised for raising capital for the purposes of the company and not with a view to maintain one's own control of the company or for defeating the wishes of existing majority shareholders.
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> Gluco Series (P.) Ltd, In re [1987] 61 Comp. Cas. 227 (Cal.) : If additional issue of shares results in the existing majority being disturbed, then, it is a case of oppression and mismanagement and such an issue would be illegal and void.
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> Nanalal Zaver v. Bombay Life Assurance Co. Ltd [1950] 20 Cornp. Cas. 179 (SC): While issuing further shares, the directors should act bona fide and in the interest of the company and not simply and solely for their personal aggrandisement.
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> Mutual Life Insurance Co. of New York v. Rank Organisation Ltd. [1985] BCLC 11 (Ch. D.) : The power to issue shares should be exercised by the directors in good faith and in the interest of the company and it should be exercised fairly as between

different shareholders.

Sindhri Iron Foundry (P.) Ltd., In re [1964] 34 Comp. Cas. 510 (Cal.) : Section 397 neither contemplates nor requires a continuous course of oppressive wrongful conduct over a period of time.

Akbarali A. Kalvert v. Konkan Chemicals (P.) Ltd [1997] 88 Comp. Cas. 245 (CLB) : Meetings held without notice to the members have to be declared as invalid as also the decisions taken in such meetings.

Cal. Kuldip Singh Dhillon v. Paragaon Utility Financiers (P.) Ltd [1988] 64 Comp. Cas. 19 (Punj. & Har.) : A resolution passed by the board of directors even if legal, could be oppressive to the minority and can be struck down 21 days notice to all the members for a general body meeting is mandatory and if such notices are not so issued, the resolution passed at the meeting could be invalid.

8. Shri Ajay Kumar, appearing for the respondents raised a preliminary objection on the maintainability of the petition on the ground that the petitioners have suppressed very vital and important documents/information relating to the sale agreement that they had entered into for sale of their shares. He produced copies of the stock purchase agreement entered into by the petitioners with one Sterling Starr Inc. for sale 60 per cent sharers held by the petitioners for a consideration of US dollars 1.16 lakhs and also non-negotiable promissory notes executed in connection with the sale as also the agreement of assignment. Non-disclosure of these documents, Shri Ajay Kumar contended, would be fatal to the petition. He also pointed out that the petitioners sought for permission from the company for sale of these shares in terms of the articles and accordingly at a board meting held on 11-12-1998, the permission was accorded. Thereafter, they resigned from the board. Producing a copy of a letter from Sterling Starr Inc. dated 14-6-1999, he pointed out that the purchaser of the shares has advised the company not to allow the petitioners to exercise their rights as members in view of the sale of their shares. Therefore, the petitioners having decided to part ways with the company are now agitating before the CLB only on account of the removal of the fifth respondent as a director and as such the petition itself is a motivated one and not with a view to exercising their statutory rights as members of the company. He pointed out that it is the petitioners and the fifth respondent who have acted against the interest of the company. At a board meeting held on 30-12-1997, which was not attended by the second respondent, the board approved a proposal of giving a loan of Rs. 40 lakhs to the fifth respondent. It was more than the then paid-up capital of the company. In the same meeting, the board also approved payment of compensation of three times the annual salary in case of termination of the fifth respondent as a director.

9. Dealing with the merits of the case, he submitted that the transfer of shares by the second respondent was in accordance with article 13 of the articles of association of the company which permits transfer of shares by a member to his close relations. When a member has exercised his rights under the provisions of the articles, other members cannot challenge the same. In regard to the extraordinary general body meeting held on 5-6-1999, in which the authorised capital was increased, he submitted that notice for this meeting was given to the fifth respondent but he chose

not to attend this meeting. The increase in the authorised capital was with a view to mobilise additional funds for the requirement of the company and not with a view to convert the majority into a minority. Producing copies of the certificates of posting for the extraordinary general body meeting on 5-6-1999, he submitted that the notices of this meeting were posted on 15-5-1999, to all the shareholders and the petitioners and the fifth respondent did not attend this meeting. At this meeting, the authorised capital was increased to Rs. 45 lakhs. As far as allotment of shares is concerned, he pointed out that at the board meeting held on 15-4-1999, various decisions were taken including that of increase in the authorised capital subject to approval of the general body. At the same meeting, it was also decided to offer 1.5 lakh shares to the second respondent and his family members and second directors were authorised to issue appropriate letters of offer to the second respondent/family members and allot the shares applied for. Accordingly, offer letters were issued to the second respondent and his family members and on receipt of applications together with cheques towards consideration, the shares were allotted on 18-6-1999, by these two directors after the general body approved the increase in the authorised capital at the extraordinary general body meeting held on 5-6-1999. He pointed out that when the committee or directors had been authorised to allot shares, there is no need that the board should allot the shares. He also pointed out that the company is a private company and, therefore, the provisions of section 81A of the Act do not apply and as per article 4, the board is empowered to allot the shares at their discretion. Since the shares were issued by the authority of the articles for valuable consideration and for the benefit of the company, the decision cannot be challenged especially in view of the fact that the petitioners had decided to part ways with the company. He further submitted that even though no formal letters of offers were sent to all the members, yet, informal discussions took place and other than the second respondent, no other member expressed any desire for further shares. He also pointed out that the money received consequent to allotment of further shares has already been utilised by the company and as such cancellation of the allotment would amount to reduction of share capital which is beyond the powers of the CLB as only the High Court has powers to do in terms of section 100 of the Act. In this connection, he referred to Bhupinder Rai v. S.M. Kannappa Automobiles (P.) Ltd. [1996] 86 Comp. Cas. 18 (CLB) wherein the CLB had observed that it has now powers to order reduction of share capital in a petition for rectification.

10. In regard to the extraordinary general body meeting held on 3-8-1999, he submitted that due notices of this meeting were sent to all the shareholders as is evident from the copies of the certificates of posting dated 14-7-1999. This meeting was held pursuant to a meeting requisitioned by the second respondent on 9-7-1999, under section 169 of the Act for removal of the fifth respondent as a director. The fifth respondent was served a copy of the notice along with special notice under section 284. Since it was a requisitioned meeting, no statement of reasons for his removal requires to be given to him as held in Life Insurance Corpn. of India v. Escorts Ltd. [1986] 59 Comp. Cas. 548 (SC). This meeting was attended by the constituted attorney of the petitioners and also all other members. On demand made by the constituted attorney, poll was taken and 2.1 lakh votes were cast against the resolution while 2.4 lakh votes were cast for the resolution. Accordingly, the general body removed the fifth respondent as a director. Removal of a director by the general body cannot be considered to be an act of oppression. The fifth respondent was guilty of the financial mismanagement of the company and a criminal complaint has been filed against him in the Metropolitan Magistrate at Mumbai on 2-11-1999, by the company. Further, the petitioners

and the fifth respondent clandestinely passed a resolution in a board meeting which was not attended by the second respondent on 30-12-1997, provid-

ing for payment of three times the annual salary in case of removal as a director and now on the basis of this resolution, the fifth respondent is claiming a compensation of Rs. 54 lakhs. The purpose of passing the resolution was to ensure that the fifth respondent continued as a director even though such a resolution is against the provisions of section 318 of the Act. This itself would show that there is nexus between the petitioners and the fifth respondent and the petition is a motivated one to ensure continuation of the fifth respondent as a director.

11. In regard to the second petition, he submitted that in terms of section 111, the relief sought by the petitioners in this petition seeking for deletion of the words 'shares sold all rights vested in the buyer pending legal formalities' cannot be granted. He submitted that this noting was made in the register of members only to keep the register up to dale and not with a view to deny membership of the petitioners. He pointed out that not only notices of the shareholders' meeting were given to the petitioners but the constituted attorney was also allowed to participate at the general body meetings.

12. Summing up his arguments, Shri Kumar contended that the petitioners have no real interest in the company as they had already sold their shares and they had voluntarily resigned from the board. Therefore, they can have no concern with the affairs of the company and all the complaints of the petitioners have to be viewed in this context. The petitioners arc actually acting for the fifth respondent who is not a shareholder of the company. Accordingly, he prayed for dismissal of both the petitions.

13. We have considered the pleadings and arguments of the counsel. At the outset it is necessary to record that the first petition was filed on 6-10-1999, and later the second petition was filed. The arguments on the first petition were concluded before the pleadings in the second petition were completed. As rightly pointed out by the learned counsel for the petitioners, the respondents had not annexed any of the documents along with their reply to the first petition and all the documents were produced during the hearing to which exception was taken by the learned counsel for the petitioners with a request that these documents should not be taken cognizance of. The respondents filed their reply to the second petition only after the conclusion of the hearing of the first petition and in the reply to the second petition, they had annexed supporting documents including those which were produced in the hearing of the first petition. The petitioners contended that the documents so produced along with the reply to the second petition should not be considered in the order on the first petition. While as a general proposition of law, the documents available with the parties should be produced at the earliest opportunity, yet, since we are considering both the petitions together in this order, we have taken note of these documents. Further, the Calcutta High Court in Ramashankar Prosad v. Sindri Iron Foundry (P.) Ltd. AIR 1966 Cal. 512, has held that all pleadings even if filed belatedly should be taken into consideration in a section 397/398 petition. However, such late filing of documents would definitely raise doubts about their authenticity.

14. First we shall deal with the preliminary objection raised by Shri Ajay Kumar that non-disclosure of vital documents by the petitioners is fatal to the petition. He was referring to the sale agreement

and other connected documents. We find that at para VI(n) of the petition, the petitioners had disclosed the facts about their (sic) to sell their shares and about their resignation as directors. No doubt there is no disclosure about the sale agreement but the fact seems to be that the agreement was subject to various approvals and in fact no one including the respondents has taken a stand that the petitioners had executed transfer instruments. A transfer of shares would become complete between the transferee and the transferor only when the instruments of transfer are signed and the share certificates handed over and a company could take cognizance of the same only when transfer instruments along with the share scrips are lodged with the company. Mere entering into an agreement to sell docs not deprive a member from exercising his rights as a member. Therefore, the non-disclosure of the fact of sale agreement cannot be fatal to the petition.

Most of the complaints in the petition arise out of the decisions taken at the board meeting held on 15-4-1999. The agenda sent along with the notice for this meeting did not contain all the items transacted at that meeting. The agenda is at page 158 of the petition. At that board meeting, in addition to the agenda items, decisions were taken to appoint respondent Nos. 2 and 4 as consultants, to increase the authorised capital, to allot 1.5 lakh shares to the second respondent and his family members, to split and transfer certain shares held by the second respondent, to recover the loans given to the fifth respondent and to open a new bank account. In regard to increase in the authorised capital and appointment of consultants, it was decided to seek the shareholders' approval. Increase in the authorised capital would require amendment to the memorandum of the company and as such it is an important item which should be transacted only as an agenda item and cannot normally be transacted as 'other business'. The non-inclusion of this item in the agenda would only indicate that this was decided after the issue of notice or to ensure the directors do not come prepared to oppose the same. Anyway, the reason for increasing the authorised capital, as seen from the minutes is "the board discussed the matter of current liquidity crunch, slow down in he business activities delays in recoveries and the need to strengthen the capital base of the company". Simultaneously, the board also passed a resolution "resolved further that after the increase in the authorised capital, 1.5 lakh equity shares of Rs. 10 each be issued and offered by the company for cash at par to Mr. Clement Rebello and/or any of his family (the offerees)". It is to be noted that when this resolution was passed, none from the petitioners' side was on the board and the fifth respondent representing the only other shareholder, namely, his wife was not present at that meeting. In other words only one group of shareholders was represented at that meeting and it was resolved to offer shares only to that group. Thus, it appears to us that the purpose of increasing the authorised capital was only for the allotment of shares to the second respondent and not for the benefit of the company. If the company was short of funds, as contended by the respondents, we find no logic in proposing to appoint the second and the fourth respondents as consultants at exorbitant remuneration. The learned counsel for the petitioners cited a number of judgments to the effect that the directors of a company, while allotting further shares, should act in the interest of the company and not for upsetting the existing shareholding pattern. The Board has also, in a number of cases, held that conversion of the majority into a minority is a grave act of oppression.

15. The decision to allot shares was taken even before the general body approved the alteration to the memorandum. Neither in the notice of the extraordinary general body meeting convened on 5-6-1999, nor at the meeting as seen from the minutes, was it disclosed that the board had already

decided about the allotment of further shares. In a closed company like this, probity and fair play require such a disclosure. While, mere increase in the authorised capital cannot be considered to be an act of oppression, yet, if the same results in allotment of further shares by which the majority is converted into a minority, then such increase can be challenged. The petitioners have also complained that they did not receive notice of this meeting while the respondents rely on the certificate of posting. The certificate of posting was not disclosed in the reply to the petition but was produced during the hearing. The authenticity of the certificate is doubtful for the reason that when the petitioners demanded inspection of the documents of the company vide their letter dated 30-7-1999, the second respondent replied, vide letter dated 2-8-1999, that the petitioners having sold their shares, had no right of inspection (Annexures 16 and 17). In the same way, we find from the minutes of the extraordinary general body meeting on 3-8-1999, that the second respondent had objected to the presence of the constituted attorney of the petitioners on the ground that they had sold their shares. If the contention of the second respondent was that the petitioners had ceased to members, it is inconceivable that notices could have been sent to the petitioners for this meeting. Therefore, we find substance in the claim of the petitioners that the certificate of posting produced by the respondents is a fabricated one. It is the right of a shareholder to receive notices of general body meetings and if a company deliberately does not send notices, the shareholders can complain of oppression/mismanagement. In this case, the complaint of non-receipt of notice is not by a member holding a few odd shares but by members holding 60 per cent shares in the company and who can, with such a shareholding, decide the outcome of the proposals in the meeting. Therefore, the meeting held without notice to the petitioners has to be declared as invalid as also the resolutions passed thereat. There is no other evidence to show that the other shareholder, viz., the wife of the fifth respondent was given a notice. Of the four then existing members, three members holding 70 per cent shares were not given notices of this meeting and, normally, there would not have been a quorum at that meeting but for the induction of new members by transfer of shares in the board meeting held on 15-4-1999, as pointed out by the learned counsel for the petitioners. At that meeting the board approved the splitting of the share certificate No. 8 comprising 9,998 shares jointly held in the names of the second and the sixth respondents were split into two certificates of 9,900 and 98.98 shares were transferred from joint names to the individual name of the sixth respondent. Two share certificates each comprising one share in the same joint names were also transferred to the seventh and eighth respondents, being the family of the second respondent. While we do agree with the respondents that article 13 permits inter se transfers among family members and that shareholders right to transfer cannot be challenged, yet, in the present case, the subsequent events reveal that the petitioners are right in contending that the transfers were made only with an oblique motive of ensuring presence of a quorum in general body meetings.

16. The petitioners have questioned the allotment of shares on various grounds that there is no proof of offer of shares and receipt of consideration and also that there are no board minutes allotting shares. The respondents have annexed with the reply to the second petition, copies of letters of offer, application for shares and also certificates from the bank about remittance of consideration by cheques by the allottees. We do not propose to examine these allegations in view of our decision later.

17. In regard to the extraordinary general body meeting on 3-8-1999, in which the fifth respondent was removed as a director, the complaint of the petitioners is that they did not receive the notices for this meeting and that the requirements of section 284 had not been complied with. We do not propose to deal with the same for the reasons that the petitioners having come to know of this meeting exercised their votes through their constituted attorney and the fifth respondent was personally present in that meeting. However, we note that the meeting does not seem to have been validly convened. It is the contention of the respondents that the extraordinary general body meeting was a requisitioned one in terms of section 169 of the Act. As per this section, on receipt of the requisition, the board should proceed within 21 days and convene a meeting within 45 days. In the present case, we find from the requisition notice, that the requisitionist himself had sought for convening the meeting on a particular date, time and venue. He himself has signed the notice for the meeting as the chairman of the board. There is nothing on record to show that this requisition was considered by the board before issue of notice. This we are recording only to highlight that it is the second respondent who seems to be taking all decisions. The certificate of posting in regard to sending of notices for this meeting does not contain the names of the petitioners, indicating that the petitioners were not given this notice.

18. The contention of the respondents is that the fifth respondent was guilty of financial mismanagement of the company as such the members were justified in removing him. In Atmaram Modi v. ECL Agrotech Ltd. [1999] 98 Comp. Cas. 463 this Board refused to entertain the complaint of a shareholder director that his removal was an act of oppression, since his removal was due to his prejudicial acts against the interests of the company, by majority of the shareholders. In the present case, the votes polled against the resolution for removal were 2.1 lakhs while the votes polled in favour were 2.4 lakhs. The 2.4 lakhs include 1.5 lakh shares allotted consequent to the increase in the authorised capital, which allotment, we have held as invalid. Therefore, the votes polled in favour could not have been more than 0.9 lakh and as such the resolution should be deemed to have been defeated.

19. The respondents have complained that the petitioners and the fifth respondent have acted against the interest of the company by approving for terminal benefits of three times the annual salary to the fifth respondent and also sanctioned a loan of Rs. 40 lakhs to him at the board meeting held on 30-12-1997. We find from the minutes of that meeting that similar terminal benefits had been approved for the second respondent also. Further, the loan amount of Rs. 40 lakhs had been drawn by the fifth respondent over a period of time in instalments. Since the respondents constituted at majority on the board after the petitioners had resigned, they could have taken corrective action much earlier. Therefore, these allegations appear to be an afterthought.

20. Thus, we find that the main allegations of the petitioners are found to have been established, i.e., that the extraordinary general body meeting held on 5-6-1999, is invalid on account of non-issue of notices to majority shareholders and, consequently, the decision to increase the authorised capital is also invalid. Once the increase in the authorised capital is invalid then the consequent allotment is also invalid. Even otherwise, it has been established that the allotment of further shares was only with the view to convert the majority into minority and to create a new majority. Therefore, the allotment of further shares has to be declared to be null and void and, consequently, the register of

members has to be rectified by cancelling these shares. Shri Ajay Kumar contended that such a cancellation would amount to reduction in the share capital of the company and as such, the CLB has no powers to direct cancellation. In this connection he relied on Bhupinder Rai's case (supra). The observation in that case, that the CLB has no powers to order reduction of share capital was in connection with a section 111 petition. But in the present case, we are directing the cancellation of shares and consequent reduction of share capital in terms of the powers conferred under section 402 of the Act which is consequent to our finding that the respondents were guilty of oppressive acts. Further, Supreme Court has answered a similar objection in Cosmosteels (P.) Ltd. v. Jairam Das Gupta [l978] 48 Comp. Cas. 312, by stating that there is no need to follow the provisions of sections 100 to 104 of the Act in a proceeding under section 397/398. Accordingly, noting that all the allottees are parties to the present proceedings, we direct the company to cancel the 1.5 lakhs shares issued on 18-6-1999, within 15 days of receipt of this order and refund the consideration received in respect of these shares. Consequently, the authorised capital and the paid-up capital of the company will get reduced to Rs. 40 lakhs and Rs. 30 lakhs, respectively. In view of our finding that the fifth respondent could not have been removed as a director, we also declare that he will continue as a director. We also direct the company to delete the remarks in the folios of the petitioners in the register of members, since mere entering into a sale agreement cannot vest the rights of a member to the buyer.

21. In view of our directions above the in respect of the first petition, nothing survives in the second petition and as such the same is dismissed.