

Shri Navin R. Shah, Smt. Chandri N. Shah ... vs Simshah Estates And Trading Co. Pvt. ... on 25 October, 2004

Equivalent citations: [2005]128COMPCAS55(CLB), [2005]59SCL282(CLB)

ORDER

K.C. Ganjwal, Member

1. This petition has been filed by Navin R. Shah, son of Ramji Shah of Murabai and Ors against M/s Simshah Estates and Trading Co. Pvt. Ltd. and Ors. The respondent No. 1 company M/s Simshah Estates and Trading Co. Pvt. Ltd was incorporated on 29.10.84. The authorized capital of respondent company is Rs. 10 lakh consisting of 8000 equity shares of Rs. 100/- each and 1000/- 1% redeemable preference shares of Rs. 100 each and 1000/- 2% redeemable preference shares of Rs. 100 each, together aggregating to Rs. 2 lakhs. The paid up capital of the company is Rs. 8 lakhs consisting go of Rs. 8 lakhs fully paid. The main business of respondent No. 1 company is to purchase, acquired, sell, dispose of and deal movable and immovable of all kinds etc.

2. The Learned Counsel for the petitioner submitted that the petitioners are shareholders of the respondent No. 1 company holding together a total of 4123 shares constituting 51.53% of the fully paid up capital of the respondent company and are entitled to file this petition under Section 397/398 of the Companies Act, 1956. The petitioner No. 1 is one of the directors of the respondent No. 1 company holding 251 shares, the petitioner No. 2 holds 655 shares and petitioner No. 3 holds 3250 shares. The respondent No. 1 company is having its Regd. Office at Mumbai and the respondent No. 2 is the cousin brother of petitioner No. 1. The respondent No. 3 is the wife of respondent No. 2. The respondent No. 6 is the brother of petitioner No. 1. The respondent No. 4 is the son of respondent No. 6. The respondent No. 5 is a company owned and managed by respondent No. 6. The respondent No. 7 is the petitioner's uncle (father's brother). The respondent No. 9 is the son of respondent No. 7. The respondent No. 8 is a trust under the management and control of respondent No. 7. All the respondents holds shares in the respondent company. The respondent No. 7 is the Chairman of the company. As such all these shareholders of the company are related to each other and the respondent No. 1 is closely held family company.

3. The Learned Counsel for petitioner submitted that upto the year 8.9.98, there was no dispute brought from the second quarter of the year 1998. The petitioner No. 1, who is the director of the respondent No. 1 company, noticed that no information regarding accounts and finance was being given to him. No notice of Board Meeting was received by him from the company being a director and shareholder of the respondent No. 1 company. The petitioner No. 1 therefore, in his usual family manner, informed respondent No. 7, the Chairman about the same but no information was received for about a year. This conduct of the respondents raised suspicion in the mind of the petitioner No. 1 and he served a notice of inspection of documents and took inspection of selected documents on 21st and 22nd December, 1998. Annual General Meeting purportedly was held on 30th Sept. 1998 and a special resolution was supposedly passed under Section 192 of the Companies Act, 1956 that

preference share capital of the company consisting of 1000 1% redeemable preference shares of Rs. 100/- each be reclassified as 2000 equity shares of Rs. 100/- each. This resolution also altered the clause 5 of the Memorandum of Association and Article 6 of the Articles of Association of the company. The petitioners submitted that no notice of the aforesaid meeting was issued nor any such meeting was convened or any resolution reclassifying the shares was passed by the company. The respondents illegally and unlawfully fabricated the records of the company and filed form No.23, form No. 5 and form No. 2 all dated 2.12.98 on 18.12.98 with the ROC, Maharashtra.. The respondents also allotted 1500 shares to M/s Complex Trading Co. Ltd., controlled by respondents. Thus, the respondents by illegal and unlawful means created new capital/shares by reclassification and allotted further shares of 1500 in collusion with one another and deliberately did not gave, notice of the meeting of the Board of Directors as well as shareholders to the petitioners. The Learned Counsel for petitioner submitted that such an allotment is null and void in the circumstances explained and needs to be set aside by this Board being bad, illegal and unlawful as no notice of any Board Meeting approving reclassification of preference shares (equity shares was received by the petitioners who were majority shareholders.) The inspection taken on 21.12.98 of the respondent No. 1 company revealed that after 10.3.98, no Board Meeting was held. Similarly, no notice of alleged Annual General Meeting purported to be held on 30.9.98 was received by petitioners and unlawful allotment of 1,500 shares and reclassification unused 2000 shares was approved in this meeting. No special resolution amending the Memorandum and Articles of Association would have been passed without the consult of petitioner who hold 53.53% of the paid up share capital of the respondent No. 1 company. Even ordinary resolution for reclassification of capital under Section 106 of the Companies Act, 1956 cannot be passed without the consent of the petitioners who are the majority shareholders. No annual general meetings were held and only certified copy of the resolution attached to Form No. 23 was available and no minutes of the meeting allegedly held on 30.9.98 were available when the inspection was undertaken on 21.12.98.

4. The Learned Counsel for petitioner also submitted that allotment of 1500 shares to Complex Trading Pvt. Ltd. owned and controlled by respondent group out of the newly classified capital is not valid as no notice of any meeting was received by the petitioner and no such resolution allotting the share was passed and no minutes were not available. There is also no justification for further equity of these shares, the Board of Directors cannot act in a manner to benefit themselves at the cost of minority shareholders. Such action to benefit only themselves for allotment of shares is in violation of their fiduciary duties and in violation of Section 81 of the Companies Act, 1956 as this is a family partnership company and the petitioners hold minority shares and are reduced into minority by such illegal action. It was also submitted that re-classification of shares from persons to equity shares is in violation of Article 9 of the Articles of Association of the Company, which requires the allotment of shares to the existing members of the company. In this case, the shares were allotted to M/s Complex Trading Pvt. Ltd. which is a non member and as such allotment is against law and liable to be set aside. No reason for classification of shares from preference to equity was given and it was also not disclosed as to why the shares were allotted only to Complex Trading Co. Ltd and not to any existing shareholder. The contention of the respondents that the petitioner No. 1 company was party to the increase of the capital in the past when increase in the capital from Rs. 2 to Rs. 10 lakhs on 8.1.85 was undertaken. Again on 25.8.86 capital was reclassified wherein petitioners were party to it. Therefore, the petitioners in the year 1998 cannot object to reclassification. This

argument is not tenable as in 1985 and 1986, the reclassification was done with the consent of all the parties whereas in 1998, the re-classification was done without the consent of majority shareholders with sole purpose to convert them to majority into minority without their knowledge.

5. The Learned Counsel for petitioner also submitted that there are no documents to explain the alleged allotment of shares. No notice any Board Meeting/Minutes for reclassification of shares has been produced. The respondents have not given any evidence of having given notice of Board Meetings to the petitioner including that of AGM of 30.9.1998 and the Board Meeting held on 20.11.1998. No proof of services has been given. The forms filed before ROC are dated 2.12.1998 whereas they were filed on 18.12.98. Similarly, no settlement agreement relating to the respondent had been placed on record by the respondent. Accordingly the meetings held without notices are bad in law and void Under Sections 285, 286 and 287 of the Companies Act, 1956. An allotment of shares at a meeting on which, notice was not given to all the directors, which had the effect of converting the majority shareholder into minority is null and void. The Learned Counsel relied on the following judgement to press above points;

a. Parameshwari Prasad Gupta v. Union of India (1974 (44) CC1), wherein it is held that the meetings of the Board of Directors, of which notice had not been given to one of the director and at which the directors was not present, that meeting of the Board of Directors was held invalid.

b. Kuldeep Singh Dhillon v. Paragaon Utility Financiers Pvt. Ltd. (1988(64) CC 19 (Petition & Hon'ble Supreme Court), wherein it is held that the resolution passed by Board of Directors may be legal and yet oppressive to minority and such resolution can be struck out as also the notice of the meeting of Board of Directors must be sent to all directors otherwise resolution invalid.

c. Puchpa Prabhudas Vora v. Voras Exclusive Tools Pvt. Ltd.

d. Puneet Goel v. Kehlgaon Resorts Ltd. (2000(38) CLA 259(CLB), wherein it is held that allotment of shares made in a meeting without notice to. all the directors and without proper forum resulting in the conversion of the shareholders in majority into a minority has to be declared null and void. The directors, who have not received the notice of a meeting, will not also cease to be directors by oppression of law under clause,(g) of Section 283(1).

e. Sikkim Bank v. R.S. Chowdhury (2000(102)CC 387 Cal.), wherein it is held that Board Meeting held without notice to Director is invalid and decisions taken in invalid meeting and deliberations not binding.

f. Ujjwal Sarin v. Om Prakash Baldev Krishan Builders and Contractors P. Ltd. in CP No. 68/2002, wherein it is held that by applying the principle of quasi-partnership in the company the shares of the rights issue should have been given to the rightful beneficiaries and non allotment is illegal.

6. The Learned Counsel for petitioner submitted that the Board Meetings have been deliberately kept in Bhillai whereas the Regd. Office of the company is in Mumbai, to keep the petitioner away from the affairs of the company. The minutes book and other documents shown during the

inspection prior to 1998, there is not a single document shown from 1998 to 2002. It was submitted that the restructuring and consolidation of the group had taken place amongst the various companies and the process stood concluded. The transfer of shares of many companies and interests in forms were transferred to restructure and consolidate the business in one place and in the process, business of Simplex Metal logical P. Ltd was consolidated in the hands of the petitioner and his family members. The respondents are taking advantage of certain matters of restructuring and consolidation of business between some companies and firms which are completely different than the companies in question. It is denied that any family settlement relating to companies namely, Simplex Engg. and Foundry Works P. Ltd and Simshah Estates and Trading Co. P. Ltd. was ever arrived between the parties which are in dispute in CP No. 21/02 and CP No. 11/03 before mis Board. The dispute in the present petition arose from the illegal, unlawful and oppressive action of the respondents. The Learned Counsel for petitioner denied that the petitioner has ever agreed that the control of respondent No. 1 company would remain with respondent No. 7 and its group are that the reclassification of shares was done as alleged by the respondents. The petitioners have also denied that there was an agreement that the petitioner will give and transfer shares of Simplex Engg. and Foundry Works P. Ltd to the group of respondent No. 7. The settlement of other companies of the group has no connection whatsoever with the present position and is totally irrelevant and there was no oral or written agreement in regard to these companies. The respondent No. 2 to 7 are guilty of conspiring with each other and deliberately failed and neglected to give notices of Board Meetings, AGM and EGM etc to the petitioner. These acts and omissions of the respondents and particularly of respondent No. 7 constitute an act of oppression and mismanagement of the company. There learned counsel for petitioner also submitted that there is no connection between the Board Meetings of 25.8.86 and 30.9.98 The respondents have tried to connect the two issues with a motive of increasing minority into majority. The meeting of 1986 was genuine, honest and done with the unanimous consent and in accordance with law whereas the classification of capital and allotment of shares done in 1998 is dishonest, malafide and illegal and unlawful act done at the back of the petitioner.

7. The learned counsel for petitioner also submitted that there is no delay on the part of the petitioner in filing the petition as the domestic forum was being utilized for resolving the issues. The domestic forum could not decided the failures of negotiation. Some of the factors for failure of negotiation are set backs in the Shaw family business between the years 1991, 1992-1995 and on account of various lab our problems as well as the demise of senior members of the family namely, Shri Shantilal Shah Uncle and Shri Ramji Shah, father in 2001. The petitioners having failed in sincere efforts to resolve the issues at the domestic forum, approach this Board as a last resort. The affidavit of Shri Mahesh Shah, the brother of petitioner No. 1 who is a neutral person and was involved in the negotiations has filed an affidavit which has been placed on record.

8. The respondents have mismanaged the affairs of the respondent company by forging, fabricating and manipulating the records and unlawfully and illegally reclassifying the shares as well as further allotment of the shares to the company owned and controlled by the respondent, which is a clear act of oppression on the petitioners. Accordingly, the Learned Counsel prayed that the alleged 14th Annual General Meeting held on 30.9.98 and the resolution passed therein reclassifying preference shares into equity capital and amending the articles and memorandum of association be declared as

illegal and unlawful. The petitioner had filed an affidavit that he had been shown present for AGM held on 30.9.98, 30.9.99 and 30.9.2000 and EGM held on 15.3.2001 whereas the petitioner was traveling out of India from 11.8.98 to 4.9.98. The petitioner had submitted relevant pages of passport showing that he was traveling from Los Angeles to Seol on the said date i.e. 1.9.98. Again the petitioner submitted that in the Board Meeting held on 10.3.98 at Bombay where he was shown present but he was in Bhilai. Rest of the Board Meetings AGM/EGM were not attended by the petitioner as he has not served nor received any notice for the same. It was also submitted by the Learned Counsel for the petitioner that Minute book of the Board Meeting had been fabricated and additions in the Minutes have been done which is quite clear from the perusal of the relevant pages of the paper book filed on 9.2.2004 at the time of arguments. It was also mentioned that the attendance register was not produced at the time of inspection by the petitioner. The respondents be restrained from acting as directors of the company. The allotment of 1500 equity shares of Rs. 100 to M/s Complex Trading Ltd be declared as null and void. The delinquent be put to terms of damages for their illegal and unlawful indulgence in the affairs of the company. Relying on the judgement of the Hon'ble Supreme Court in the matter Bennet Paulman v. Union of India (1977) (47) CC 92 MUMBAI and powers conferred under Section 402 of the Companies Act, 1956 and in the interest of justice it was prayed that till the final order if not in the favour of the petitioner, the status-quo with regard to properties movable and immovable be maintained as granted by this Board vide order dated 2.9.2002 until the implementation of the order finally passed by this Board. The Learned Counsel for petitioner submitted this Board in past has also been taken similar view and has been granting status-quo order till the implementation of the final order as in CP No. 49/2001 in the case of Ashok Kumar Oswal and An v. M/s Panchsheel Textiles Manufacturing & Trading Co. (Petition) Ltd and Ors.

9. The Learned Counsel for respondent in reply submitted that some family disputes had arisen between petitioner No. 1 and other members of Shah family who were doing various businesses together. The same were amicably settled between the members of the Shah family by the process of giving and taking away control of the companies, as per the family settlement. Pursuant to the family settlement, the shares held by respondent in one company known as M/s Simplex Metal logical P. Ltd. were gifted to the group of petitioners, at the same time, the shares of Simplex Plastic Ltd. which were in the name of the group belonging to the petitioners were gifted to Shall family members who are the respondents in the present petition. It was further submitted that petitioner No. 1 was never a majority shareholder but as a result of this settlement, the petitioner No. 1 assumed the full control of M/s Simplex Metal logical Pvt. Ltd. which was a profit making cash rich company. It was agreed that control of respondent company would remain with the respondent No. 7 and his group and, therefore, the reclassification of shares was done. This also included the allotment of shares to Complex Trading Company. Though the petitioner agreed but did not gift and transfer the shares of Simplex Engg. and foundry Works P. Ltd. to the groups of respondent No. 7. The mechanism of share transfer as enumerated above was derived to change the control of the companies between the group of petitioners and the respondent No. 7. The respondents having done the same in favour of petitioners and others, the petitioner has now gone back without fulfilling his obligations. Since all the statutory and non statutory records of some of these companies including the respondent No. 1 company were controlled by the petitioner No. 1, he manipulated the records of respondent No. 1 company to suit his able intentions

10. The Learned Counsel for respondent further submitted that it will be observed that the petition and all the interim applications are frivolous and nothing but an attempt to extract some additional benefits to which the petitioners are not entitled. The petitioners are wrongfully objecting to reclassification and subsequent allotment of shares which the petitioner No. 1 himself had done earlier. As far as back on 20.10.84 the respondent No. 1 company was incorporated with an authorized share capital of Rs. 2 lakhs and the promoters and shareholders of respondent No. 1 company were Heralal B. Shall, Arvind K. Shah, Moolchand R. Shah and Naveen R. Shah at the time of incorporation of the company, the issued and paid up share capital was four shares of Rs. 100/- each allotted to these four promoters. The day to day affairs of respondent No. 1 company including the legal matters and various aspects relating to statutory compliance of the respondent company were being handled and attended to substantially by petitioner No. 1 who has shifted his residence to Mumbai in 1993. The other three directors of respondent No. 1 company were residing in Bhillai now the State of Chattisgarh. The petitioner No. 1 was aware of all records and details pertaining to the affairs and business of respondent No. 1 company as they were under his care and custody, The petitioner is also using one of his flat belonging to respondent No. 1 company which is a valuable asset of the company The Learned Counsel for respondent also submitted that petitioner No. 1 who reclassified the shares of the respondent company and such reclassification and after such reclassification, he allotted the same to himself. This aspect has been intentionally suppressed by the petitioner from this Court In January 1985, a special resolution was passed by respondent No. 1 company wherein the authorized share capital of respondent company was increased from Rs. 2 lakhs to Rs. 10 lakhs divided into 400, 2% redeemable preferential shares of face value of Rs. 100 each and 1000 equity shares of the face value of Rs. 100 each. These shares were subsequently allotted to various persons and the ratio of allotment of shares to the four directors of their groups was to the extent of 20% each and this ratio was always maintained to 25% till such time that on 7.10.1995, the petitioner No. 1 allotted to his own HUF, 3250 shares thus fraudulently changing the proportional ratio of allotment of shares. It is the petitioner No. 1 who wrongfully and in breach of confidence deposited in him allotted shares to him the petitioner cannot quibble about the same. The petitioner No. 1 himself furnished to the Registrar of Companies under his own signature the requisite form stating that the nominal share capita of the company of Rs. 10 lakh stood divided 1000 equity shares of face of Rs. 100 each, 4000 2% redeemable preference shares of face value of Rs. 100 each and 5000 1% redeemable preference of face value of Rs. 100 each- Pursuant to the aforesaid events, there was further reclassification of the authorized share capita of the respondent company at the behest of petitioner No. 1 in the EGM called on 25.8.1986 at which time, the share capita of the respondent company under the instructions of the petitioner stood the classified as 1000 2% redeemable preference shares of face value of Rs. 100 each, 1000 1% redeemable preference shares of face value of Rs. 100 each and 8000 equity shares of face value of Rs. 100 each. Pursuant to the increase in the share capital of the respondent company by the classification of the shares, a majority of the increased share capital was allotted to Navin Shah (HUF) of which the petitioner No. 1 is the Karta and Manager. It was thus be observed that in fact the petitioner No. 1 who himself was major beneficiary of the aforesaid decisions. The petitioner No. 1 has manipulated their affairs to give upper quod majority in the shareholdings to his group by allotting 3250 shares on 7.10.95 to petitioner No.3 being the HUF of petitioner No. 1. The petitioner No. 1 thereafter transfer the said 3250 shares from the name of petitioner No. 3 to the name of petitioner No. 2 thereby giving the petitioner No. 1 and 2 together a consolidated shareholding of 55.9% in the total

authorized share capital of the company.

11. The counsel for respondent also submitted that pursuant to the decision dated 30.9.1998 of the General Body Meeting and in the normal course of its business, the respondent company filed the necessary prescribed forms with the Registrar of Companies alongwith necessary late filing fee. The petitioner No. 1 had been regularly attending the office of the respondent company and involving himself in the affairs and business of the company and had free access to all records. He was the only director continuously residing in Mumbai and inspite of the same, the petitioner did not object at that time. The petitioner cannot object to anything now.

12. The Learned Counsel for respondent also submitted that the petitioner addressed a letter dated 21.12.98 to the respondent company which is purportedly acknowledged by Mr. Gautam Shah and Mr. H C. Shah who are actually the employees of some other group companies and were reporting to petitioner No. 1. The petitioner No. 1 alongwith one Shri T.P. Giani who was in the employment of some other company of which the petitioner No. 1 was the director enacted a show as if an inspection of documents from respondent company was carried out and took Xerox copies of respondent company including the minute of the meeting held on 30.9.1998 and copies of pages of other minute books. The petitioner No. 1 has signed papers and documents on behalf of respondent company for the period 18.11.98 to 2.5.2002 which clearly establishes beyond doubt that petitioner No. 1 was continuously involved in the affairs of respondent company. After a lapse of several years, the petitioners are questioning the classification and allotment of shares done in 1995 because the petitioners are trying to take over the entire control of the respondent company. The present petition is grossly time barred as the petitioner was aware of the meeting held on 30.9.98 as well as 20.11.98, this is evident by the letter 23.12.98 addressed by the petitioner to the respondent company. After these meetings, the petitioner No. 1 has been actively associating himself with day to day affairs of the respondent company and had not objected to the decisions of additional shares as allotted in the said meetings. There is no justifiable reason whatsoever, after a lapse of more than 4 years to file the present petition which is nothing a malafide attempt on the part of petitioners to upturn the decisions taken by the respondent company. It is submitted that the petitioner No. 1 holds only one single share, petitioner No. 2 is holding 4155 shares whereas petitioner No. 3 is not holding any share at all. The petitioner No. 3 is not the shareholder of the respondent company. It is in fact the petitioner No. 1 who himself had transferred the shares that were initially standing in the name of the petitioner No. 3 to the name of petitioner No. 2 being the wife of petitioner No. 1. The allotted by petitioner No. 1 to petitioner No. 3 were in a manner i.e. identical to the decision taken by the respondent company on 20.11.98. The petitioner has not brought out these facts in a family run concern. It is denied that the total shareholding of the petitioner in the respondent No. 1 company allegedly constitutes 51.53% of the total fully paid up share capital of respondent No. 1 company and the petitioners have committed forgery on oath. Respondent No. 1 company is a family run concern and at all times has been functioning as such and that the petitioner No. 1, being a family member is also actively involved in the day to day affairs of the respondent company. On account of internal family disputes that had been raised by the petitioners with rest of the family members who are shareholders in the respondent company, the petitioners are now seeking to cook up a false and untrue story by invoking and challenging the decision taken as far as back in 1998 which was in the presence and with full knowledge and consent of the petitioners for the past several

years. In order to settle this course in the family disputes and to put pressure on the family members, the petitioners are now seeking to make false allegations.

13. The Learned Counsel for respondent further submitted that it is denied that the petitioners are the directors of the respondent company. In fact, it is only the petitioner No. 1 who is the director of the respondent company. This limited aspect by itself clearly establishes that petitioners are continuously making reckless allegations besides committing various acts of forgery by making attempting to question the said Annual General Meeting of the respondent company held on 30.9.99 is entirely without merit on substance. The petitioner No. 1 was present at the AGM held 30.9.98 and in fact, had himself tabled a motion for the for the change of auditors of the respondent company. The petitioner No. 1 was in fact also a party to the decision of reclassification of the preferential share capital of the respondent company to equity shares. The decision taken the sadi annual general meeting was not even opposed by the petitioner No. 1. The question of petitioner No. 1 not being aware of the basis of the logic of petitioner No. 1 the decision taken by the respondent company on 30.9.98 and 20.11.98 are liable to be set aside, by the same logic of the petitioner No. 1. The decisions taken in favour of petitioner No. 1 and his immediate family members on 7.10.95, also deserves to be set-aside. The resolution of allotting the shares in the name of M/s Complex Trading Co. Ltd was taken in accodance with the provisions of law and in fact to the knowledge of the petitioners. The allotment 1500 equity shares of Rs. 100 each to Complex Trading Co. Ltd was in the best interest of the respondent company and has in effect reduce the percentage shareholding of all the respondents as well. The shareholding pattern of petitioner No. 1, 2 and 3 was as follows:-

DATE	SHARES HELD	%
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29/10/86	1	25%
3/8/85	1	0.13%
12/8/85	251	25%
16/9/86	256	25.12%
11/7/87	256	25%
21/9/87	906	25%
7/1/95	4156	51.95%
20/11/98	4156	43.57%
22.3/99	4156	43.57%

14. Accordingly as per above tabulation the petitioners was never at a majority at any given point of time except on 7.10.95 when the petitioner with malafide intentions allotted substantial share to his HUF.

15. The Learned Counsel for respondent also submitted that it is pertinent to note that since the respondent company is a family run concern, the notices of the meetings of the respondent company had been served by hand delivery and had been the practice for the past several decades and which have even followed by the petitioner No. 1 himself. As such, the notice of 14th Annual General Meeting of the respondent company was duly and validly served and the petitioner was present in the said meeting. It is denied that the resolution passed by the respondent company in its 14th

Annual General Meeting held on 30.9.98 are bad in law or that reliance cannot be placed on the same. It was further submitted that there was no malafide intention or illegality in the conversion of the share capital of the respondent company, which was done in accordance with the provisions of law and in the very knowledge of the petitioners. The petitioners never opted for the shares of the respondent company when they were well aware of the decisions taken on 30.9.98 and the petitioners have suddenly woken up after four years and are seeking to challenge and overturn a decision taken with the knowledge of the petitioners as far back as 1998. The relevant forms as required under the provisions of the companies act were filed by respondent company and the late fee for filing was also paid. The petitioner cannot challenge the said meeting simply on account of late filing being paid by the relevant form by the respondent company to the Registrar of Companies. It is denied that there has been any oppression or mismanagement in the affairs of the respondent company. Accordingly, the present petition deserves to be dismissed with costs.

16. The respondent No. 3 has also filed a separate affidavit. He has submitted that with reference to the said meeting of Board of Directors dated 1.9.98, there was no need for other directors to show the petitioner No. 1 present in the said meeting as alleged by the petitioners because any two directors were sufficient to have a quorum of the meeting. There was no such material gained to other directors as alleged by the petitioner. Regarding the meeting of Board of Directors dated 20.11.98, the respondent No.3 submitted that the resolution of allotment of 1500 fictitious shares were made as a result of understanding and agreement between the two directors pursuant to the said family settlement and the same had full concurrence of petitioner No. 1 and the petitioner No. 1 had not raised any objection for a period of more than 4 years. A family settlement was arrived at between the various members of Shah family including the petitioner No. 1 and respondent No. 1 pursuant to which, shares were gifted and cross gifted and which laid to taking over of control of companies by various parties as decided in the settlement. The respondent No. 3 has further mentioned that it is denied that respondents have shown petitioner No. 1 was present in the meetings of the Board of Director of the respondent No. 1 company held on 10.3.98, 15.5.98, 1.9.98, 20.11.98 and 15.12.98 at Mumbai as well as the AGM held on 30.9.98, 30.9.99 and 30.9.2000 regarding the error of the day as Saturday, the respondent No. 3 submits that assuming without admitting the same, the could be due to human error and is curable. The petitioners are restricting themselves to the Board Meeting dated 1.9.98 and AGM dated 30.9.98 and making false allegation that no such meeting took place.

17. The arguments in this case had concluded on 30.7.2004 and parties were given three weeks time to submit written submissions. The respondents filed CA No. 254/04 on 13.9.04 when the judgement was being written. The respondent submitted that the petitioner had filed an affidavit dated 22.7.04 in rejoinder to the counter affidavit filed by respondent No. 7, who is also the Chairman and Director of the respondent company. Since the said affidavit disclosed fresh facts and documents, it so transpired that the petitioner, on their own showing, had been misleading this Board by filing false affidavit on oath and suppressing the material facts. The affidavit under reply has disclosed astonishing facts making it imperative for respondent to file this affidavit. It has been contention of the respondents all along that books both statutory and otherwise of the respondent company were being looked after by petitioner No. 1 and the same were in possession of the petitioner. It is submitted that some statutory documents and records of the company were still with

the petitioner illegally. The fact has now become true from the documents now filed by the petitioners alongwith their affidavit dated 22.7.2004 which includes the share transfer form which shows transfer of 805 shares by Mrs. Chandri and Shah petitioner No. 2 wife of petitioner No. 1 in favour of Mr. Ravi Shah, grandson of respondent No. 7. Disclosure of these documents really demonstrates that the present petition has been filed by the petitioner by concealing material records from this Board and making false and frivolous statements on oath for which petitioners are liable for forgery. The above mentioned share certificate shows that petitioner had by virtue of the said transfer had reduced themselves from a position of majority shareholding to minority shareholding. Assuming "that the said majority had been illegally acquired", by the said transfer, the petitioner on their own showing and admission, have been reduced to 35.28% in respondent company, whereas, the petitioners had claimed themselves to be the owner of the majority shareholding. The above document now filed by the petitioner should have been with the company but the petitioners had illegally kept the same in their illegal possession. Accordingly, there is no question of the petitioners being into minority by the action of the respondent.

18. The Learned Counsel for petitioners in their reply mentioned that the document in question had been filed to show that there were family negotiations but the compromise failed. This document had been filed only to show that the respondent company Simshah Estates and Trading Co. was also part of settlement which never took place. When the documents of other gifts and cross gifts had been completed the reason of non completion of this document was clear that the same was not part of the family settlement which failed.

19. I have carefully gone through the averments made by both the parties as well as the arguments advanced during the course of hearing and the written submissions submitted by the petitioners. There are only two issues in the petition which needs to be looked into. The other issues are of frivolous nature and need not be gone into:-

i. Whether the resolution passed in the 14th Annual General Meeting to reclassify the preference shares into equity capital and to accordingly amend the articles and memorandum of association of the respondent company is legal or void.

ii. Whether the allotment of 1500 equity shares of Rs. 100 each allotted by the respondent company to M/s Complex Trading Co. Ltd. are legal or void.

20. As regards first issue, the petitioners have argued that the change of classification of the capital and the issue of shares to the company and owned and controlled by them has reduced the petitioners shareholding from majority of 51.53% to minority of 42.75% without giving the notice and agenda to the petitioner of the concerned Board Meeting and the meeting of the shareholders. The petitioners have argued that the inspection taken by them on 21.12.98 revealed that after 10.3.98, no Board Meeting was held by the Board of Directors of the company.

21. It appears that the Board Meetings were held on 01.09.98 and 20.11.98 and a resolution of allotment of 1500 equity shares was made. This resolution of allotment of 1500 equity shares as well as amendment to the memorandum and articles of association was approved in the AGM on

30.09.98 and in the Board Meeting held on 01.09.98 and 20.11.98. The petitioner has filed affidavit with certified true copy of the passport duly notarized and submitted that he was out of India traveling from 11.8.1998 to 4.9.1998 and he could not have attended the Board Meeting held on 1.9.98 when he had been shown present in this meeting in the Minutes. Accordingly, he has been shown present for AGM on 30.9.98, 30.9.99 and 30.9.2000 (it was being Saturday but it was mentioned as Tuesday in the minutes). The respondents have not placed anything on record to show that notice of meetings were sent to the petitioner and he was present in these meetings except that his name is included in the minutes which have been signed by Chairman and there is no attendance register to substantiate these facts. In the absence of any contrary evidence produced by the respondents, I have no doubt that the petitioner was not present in the said 14th AGM held on 30.9.98 and the Board meetings 1.9.98 and 20.11.98 in which the decisions were taken that 1000 1% redeemable preference shares and 1000 2% redeemable preference shares of the company of Rs. 100 each to be reclassified into 2000 equity shares of Rs. 100 each and also to amend Clause 5 of Article 6 of Memorandum and Articles of Association of the company. The respondents have also not placed any records of so called family settlement. Accordingly, I declare that the said 14th AGM as illegal and all decisions taken therein as null and void.

22. As regards second issue of allotment of 1500 equity shares to M/s Complex Trading (I) Pvt. Ltd, the allotment automatically falls as the decision taken, in the 14th AGM has been declared null and void. However, the parties are not in a position to work with each other and in order to put an end to the conflict, I am of the view that either party should be given an option to go out of the company on return of their investment in shares of the Respondent Company. In case, either party is willing to part with their shares, then the Petitioner/respondent should purchase the shares on valuation to be made by an independent valuer. The valuation will be based on the balance sheet as on 31.3.98. In case either party desires to go out of the company, then on an application made by them, a suitable valuer will be appointed by this Board in consultation with both the parties. On equitable grounds, the status quo with regard to properties of movable and immovable be maintained until the implementation of this order.

23. With the above directions, the petition is disposed of. There are no orders as to cost.