(2009) 07 MP CK 0007

Madhya Pradesh High Court

Case No: None

Marble City Hospital and Research Centre P. Ltd. and Others	APPELLANT
Vs	
Sarabjeet Singh Mokha	RESPONDENT

Date of Decision: July 17, 2009

Acts Referred:

- Companies Act, 1956 - Section 10F, 283(1)(g)

Citation: (2010) 155 CompCas 13 : (2009) 2 MPLJ 73

Hon'ble Judges: Rajendra Menon, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rajendra Menon, J.

This appeal u/s 10F of the Companies Act, 1956, assails the order dated July 19, 2007, passed by the Company Law Board (Principal Bench, New Delhi) in Company Petition No. 117 of 2005 (Sarabjeet Singh Mokha v. Marble City Hospital and Research Centre P. Ltd. [2008] 142 Comp Cas 757).

M/s. Marble City Hospital and Research Centre P. Ltd., Jabalpur, having its registered office at No. 21, North Civil Lines, Near 2nd Bridge, Jabalpur is a private limited company incorporated under the provisions of the Companies Act, 1956 (hereinafter referred to as "the Act"). The appellants Dr. S. M. Hastak, Dr. Mrs. Shobha Soni and Dr. Sanjay Nagraj along with the respondent Shri Sarabjit Singh Mokha are the subscribers to the memorandum of association of this company, which was incorporated in the year 1997. The company carries on the activities of providing medical and health care facility in the city of Jabalpur and a hospital is established for the said purpose. The company as indicated herein-above was jointly promoted by the three appellants and respondent, who became directors from the date of

incorporation of the company. It is averred that at the time when the dispute in the present case arose, apart from the appellants and the respondent, there were no other directors in the company. The authorised share capital of the company as on March 31, 2005, was Rs. 25 lakhs consisting of 25,000 shares of Rs. 10 each. The issued share capital was Rs. 10 lakhs comprising of 1 lakh shares of Rs. 10 each. All the shareholders, namely, the appellants and the respondent, have subscribed in equal proportions, i.e., 25 per cent. each and the shareholding of the company as on March 31, 2005, was 25,000 shares held by each of them amounting to Rs. 2,50,000, i.e., 25 per cent. Being aggrieved by his deemed cessation as director of the company with effect from January 31, 2005, in terms of Section 283(1)(g) of the Act, the respondent Sarabjit Singh Mokha filed a petition purported to be under Sections 397, 398, 237(b) read with Sections 399, 402 and 403 of the Act before the Company Law Board, Principal Bench, New Delhi. Alleging that his removal with effect from January 31, 2005, communicated to him vide notice dated November 18, 2005, amounts to an act of oppression, a company petition was filed by the respondent for declaring the same to be null and void.

It was further pointed out by the company petitioner/respondent that in the communication that took place between the parties, it has been disclosed that from the existing share capital, further 1,50,000 equity shares have been issued and after allocation of these shares, the share percentage of the company petitioner Shri Sarabjit Singh Mokha is reduced from 25 per cent. to 10 per cent. Challenge to this allocation of shares was also in the company petition. It was the case of the company petitioner that right from inception of the company in the year 1997, he and the appellants had equal percentage of shares, had loaned equal amount to the company and were functioning as directors and were getting equal remuneration. The establishment of the company and the hospital premises was in the leased out building held by the company petitioner and his family, for a consideration of Rs. 1.6 lakhs per month. All the appellants, who were doctors by profession, have given their skill and equipments to the hospital on charge basis and till the date when the dispute arose, they have recovered 90 per cent. of the cost. It was further the case of the company petitioner that he had arranged for loans for the company by giving his personal guarantee, the entire building, fixtures and fittings belonged to him, he was in charge of all legal matters and administration of the company and in particular the hospital, but since September, 2004, his remunerations were stopped and without any communication and intimation to him vide letter dated November 18, 2005, he has been informed that as he has not attended the requisite number of meetings, he ceases to be a director of the company with effect from January 31, 2005. It was the grievance of the company petitioner that the mode, provision of law and the manner in which he ceased to be a director was not communicated to him in this letter dated November 18, 2005. When the company petitioner sought for information and explanation vide his communication dated November 20, 2005, vide letter dated November 28, 2005, he was informed that in spite of serving

notices to him, which were sent by post and information communicated to his residence and office, the petitioner had not attended five board meetings consecutively and, therefore, by operation of law, i.e., Section 283(1)(g) of the Act, he ceased to be a director. According to the company petitioner it was for the first time that vide letter dated November 28, 2005, he was informed about cessation of his directorship, in accordance to the statutory provision, holding of the board meetings and issuance of notice to him. According to the company petitioner, vide notice dated December 1, 2005, when he sought for details of the board meetings, allegedly not attended by him, he was informed about these proceedings on November 28, 2005, after receiving all the particulars, he had filed the petition. Copies of the communications dated November 20, 2005, November 28, 2005 and December 1, 2005, are filed as annexures E, F and G to the company petition and the communication dated November 18, 2005, informing the petitioner about cessation as director with effect from January 31, 2005, is annexure D.

Assailing the action of the respondents/appellants in proceeding to take action against him, as has been unfolded hereinabove, and pointing out various instances of mismanagement and oppression in the company so also contending that the further shares issued were never communicated to the company petitioner and the distribution of these shares have been done detrimental to his interest without informing him, reducing his share holding in the company by 15 per cent. challenge was made to the entire action before the Company Law Board.

On notice being issued, the appellants hereinabove filed a joint reply/ written statement, refuted the contentions of the company petitioner and came out with a case that since May 23, 2004, when a first information report was lodged against the respondent/company petitioner for offences under Sections 395, 397 and 120B, he was absconding, he was not available to the civil society for a long period, it was only on July 1, 2005, that he surrendered and thereafter was released on bail on November 16, 2005, when he surfaced. It was the case of the respondent that due to his implication in the criminal case, for a long period right from August-September, 2004, up to July, 2005 and till his release on bail on November 16, 2005, the respondent was not available to the civil society, he was not discharging any functions in connection with the affairs and activities of the company, he was underground, was trying to get anticipatory bail, in which he did not succeed and, therefore, in spite of sending him notices by post, i.e., under certificate of posting (UPC) and by personal service, when he did not attend five consecutive meetings, by virtue of the statutory provision, i.e., Section 283(1) (g), he ceased to be a director of the company.

As far as distribution of further shares and non-grant of the same to the company petitioner is concerned, it was pointed out that offer in this regard was made to the petitioner vide UPC letter dated April 30, 2005 (annexure R19), he did not respond to the same and, therefore, vide resolution passed by the board on July 5, 2005, the

further share capital was distributed amongst the three appellants reducing the share capital of the respondent by 15 per cent. By pointing out that the company petitioner did not attend meetings continuously in spite of service, his claim put forth before the Company Law Board was resisted by the appellants. Records indicate that certain documents were filed, which included the notice sent for the board meeting and the under certificate of postings. However, no resolution of the board of directors were filed before the Company Law Board, affidavits of certain persons were filed by the company petitioner to show that the notices were never served on him, counter affidavits were filed by the appellants in rebuttal and on the basis of the evidence and material that came on record, by the impugned order dated July 19, 2007, the learned Company Law Board came to the conclusion that the board meetings, five in number in which the respondent/company petitioner is alleged to have been absent, were held without proper notice to him, sending of notice by UPC is not properly proved and, therefore, treating the company petitioner to be absent, even when notice was not issued, was not proper and the provisions of Section 283(1)(g) of the Act could not be applied. Further, holding that the allocation of further shares made is without proper notice to the respondent/company petitioner, the allocations were made in a board meeting that was held on July 5, 2005, when the company petitioner was already in jail with effect from July 1, 2005, notice of the meeting in which the allocation took place was not properly served, the allocation has been interfered with and each of the member directed to surrender such number of shares so as to restore the original holding of the company petitioner to 25 per cent. However, finding allegations of financial mismanagement not proved, the company petition is decided and the direction is to restore the company petitioner to his original position as director in the company.
Being aggrieved by the aforesaid order of the Company Law Board, this petition u/s 10F of the Act is filed by the three appellants.

Shri P. R. Bhave, learned senior advocate, assisted by Shri R. K. Sanghi and Shri S. A. Khan, advocates, took me through various documents that have been filed, which included the notices sent by UPC for the board meetings, the proceedings of the board meetings, the affidavits filed, the correspondence between the parties and emphasised that the findings recorded by the Company Law Board in its order dated July 19, 2007, is a perverse finding, contrary to the evidence and material that came on record and, therefore, the appeal u/s 10F was maintainable. It was pointed out by Shri Bhave, learned senior advocate, that meetings of the board were held on September 1, 2004, two meetings at 11.00 a.m. and 4.00 p.m., respectively; September 14, 2004, December 31, 2004 and January 31, 2005. For all these five meetings, requisite notices under certificate of posting (UPC) were sent to the respondent, but in spite of service by post, the company petitioner/respondent did not attend any of the meetings.

For the convenience of hearing, two paper books have been filed by the parties. One is a red paper-book, consisting of the company petition, rejoinder and the affidavits; and, the other is a black paper-book, consisting of the reply, written synopsis, reply to the rejoinder and affidavits. The red paper-book is marked as paper book No. 1 and the black paper-book is marked as paper book No. 2.

Shri Bhave, learned senior advocate, elaborately dealt with each and 1 every document available in the paper book, took me through the FIR filed against the company petitioner on May 23, 2004, offences registered against him, the orders of bail, the communications made between the parties vide letters dated October 2, 2004, October 28, 2004, the notice of cessation-annexure D dated November 18, 2005, the certificate of posting (UPC), the provisions of Section 283, the provisions of Section 53, the affidavits filed particularly that of one Shri Rajesh Tadas and emphasised that notices sent by postal certificates are deemed to be served on the company petitioner, in spite of the same he did not appear in five consecutive board meetings, even personal service effected by Shri Tadas were not responded to and there is nothing to indicate that since April, 2004, the company petitioner was working for the company and has done any work. It was emphasised by him that in fact he was not available to the civil society and when he did not attend five consecutive meetings, by operation of law his directorship came to an end. Contending that the Company Law Board approached the entire matter in a very peculiar fashion, adopted a policy of pick and choose in appreciating the documents and evidence, and recorded a perverse finding against the appellants. It was pointed out by Shri Bhave, learned senior advocate, that the respondent was not available for doing any work to the company between May, 2004 to November, 2005, he was absconding and when by filing adequate evidence in the form of postal certificates and affidavit of Shri Tadas, appellants have proved that respondent/company petitioner failed to attend five consecutive meetings in spite of intimation, a perverse finding is recorded by the Company Law Board holding the notice to be not served. This according to Shri Bhave is a perverse and improper finding, contrary to material available on record, devoid of any merits and, therefore, gives rise to an important question of law, which can be interfered with exercising jurisdiction u/s 10F of the Act.

Shri P. R. Bhave, learned senior advocate, further argued that the company petitioner in his petition had only come out with a case that no notice with regard to the holding of the meetings were served on him. It was never his case that the board meetings on the five dates, as alleged, were never held. As no allegation with regard to not holding of the meetings were pleaded or canvassed, the appellants herein did not produce the minutes of the board meetings held on the five dates, however, in a very peculiar manner, it was emphasised by Shri Bhave that the Company Law Board has drawn an adverse inference and has held that even holding of the five board meetings are not proved. Shri Bhave pointed out that when it was never the case of the respondent/company petitioner that the meetings

were not held, a finding recorded in this regard is wholly unwarranted and perverse. Referring to the affidavits of Shri Tadas and two other persons, i.e., Elvin Thomas and Shri Satyendra Thakur, available on record, Shri Bhave tried to build up an argument to canvass his point that a perverse finding is recorded and the Company Law Board has decided the matter in a cryptic manner, on presumptions and assumptions. Shri Bhave, learned senior advocate, emphasised that the entire burden of proving the issuance of notice and holding of meetings is shifted from the respondent/ company petitioner to the appellants which is not proper.

Placing reliance on the following judgments; Bilasrai Joharmal and Others Vs. Akola Electric Supply Co. Private Ltd., ; Budhulal Kasturchand Vs. Chhotelal and Others, ; Parmanand Choudhary and Others Vs. Smt. Shukla Devi Mishra and Others, ; J.P. Srivastava and Sons Pvt. Ltd. and Others Vs. Gwalior Sugar Co. Ltd. and Others, and Kamal Kumar Dutta v. Ruby General Hospital Ltd. [2006] 134 Comp Cas 678; [2006] 7 SCC 613, Shri Bhave, learned senior advocate, emphasised that the finding was perverse in nature and inconsistent to the material available on record, is recorded by the Company Law Board and, therefore, interference in the matter is sought for. In sum and substance, the submissions of Shri Bhave can be categorised in the following manner:

(a) Findings of the Company Law Board are perverse and contrary to the evidence and material available on record ;

(b) The burden of proof is shifted from the company petitioner to the appellants and based on surmises and conjectures, findings are recorded to the effect that the notice of the meetings are not served and the meetings are not at all held ;

(c) Even though it was never the case of the company petitioner that the board meetings on the five dates were not held, adverse inference is drawn for not producing the documents pertaining to the meetings held and the finding recorded is that the meetings were not held or that holding of the meetings are not proved. This according to Shri Bhave is a perverse finding and not at all warranted ;

(d) It was further submitted by Shri Bhave that for non-production of accounts showing payment of postage stamps, adverse inference is drawn, which is improper when the under certificate of posting were available on record ;

(e) Accordingly, on the basis of the aforesaid that the final submission by Shri Bhave was that the appellants herein are doctors by profession; the respondent was not available to the company for discharging his functions, his whereabouts were not known; adopting a prudent man''s conduct the appellants have acted against the respondent, who is involved in various criminal activities and is a mischievous person and by assuming certain things, the Company Law Board has recorded a finding, which is impermissible ;

(f) It was thus argued by Shri Bhave, learned senior advocate, that an approach with regard to the conduct of a prudent man in the facts and circumstances should have been adopted for seeing as to whether sending of the notice under certificate of posting was a correct step or not;

(g) Referring to Section 400 of the Act, and contending that notice to the Central Government is necessary, this statutory provision is violated and placing reliance on a judgment of the Bombay High Court in the case of Bilasrai Joharmal and Others Vs. Akola Electric Supply Co. Private Ltd., , it was argued that the mandatory provisions having been violated, the company petition was liable to be dismissed.

Accordingly Shri Bhave, learned senior advocate, summed up his argument by contending that in the totality of the facts and circumstances, a perverse finding is recorded by the Company Law Board against the appellants, which cannot be sustained.

Shri Ajay Mishra, learned senior advocate, assisted by Shri Pankaj Dubey and Mrs. Dubey, advocates, referred to the provisions of Sections 53, 193(1), 194, 195, 283(1)(g) and Section 400 refuted the aforesaid contentions and emphasised that the requirement of Section 53 is that the notice with regard to the board meeting should be sent by post, it can be sent under certificate of posting or registered post only if instruction is given by the member concerned and the amount for the same deposited. Contending that service of notice by post is not proved in the present case and the finding recorded by the Company Law Board is proper, Shri Mishra emphasised that u/s 193, records pertaining to the meeting are to be maintained in accordance with the statutory provisions contemplated under this section. u/s 194, a presumption can be drawn only if the provisions in the statute are complied with and in the present case as the minutes of the board meetings held are not produced and proved to have been maintained in accordance to the requirement of law, the presumption drawn is correct. Taking me through the certificate of posting, discrepancies in the same, pointing out defects in the seal and contending that the under certificate of posting are fabricated documents, created subsequently only to defend the present proceedings, learned senior advocate argued that the holding of the meeting is not proved, service of the notice is also not established and under the provisions of law particularly Section 53 and Section 283(1)(g), it was for the appellants to establish that they had sent the notice as per requirement of law, it was received by the respondent/company petitioner and in spite thereof, he has not attended and, therefore, by operation of the provisions of Section 283(1)(g), he ceased to be a member of the company. Taking me through the notices that are available on record, the agendas for the meeting, the postal certificates and pointing out discrepancies in the agendas, so also the infirmities in the statement of Shri Rajesh Tadas, as indicated in his affidavit available at page 196 of the paper book No. 2, Shri Ajay Mishra, learned senior advocate, argued that service of notice by both personal service and by postal service are not proved, records of postal

expenses incurred, dispatch register are not produced, even the address on which Shri Tadas went to serve notices personally and the person on whom he tried to serve the notice are not clear from the affidavit. Contending that the learned Company Law Board has proceeded in the matter in accordance with law and has recorded an appropriate finding cased on due appreciation of the evidence and the material that came on record Shri Ajay Mishra, learned senior advocate, refuted each and every contention put forth by Shri Bhave. It was further argued by learned senior advocate that the share allocation made reducing the share capital of the company petitioner was also effected without proper notice and, therefore, the Company Law Board has not committed any error in interfering with the matter.

As far as non-compliance of Section 400 is concerned, it was argued by learned senior advocate that the compliance has to be made by the Company Law Board, which is not made a party in these proceedings and, therefore, the said ground cannot be raised at this stage. That apart, if the Company Law Board has committed any breach, the company petitioner/ respondent herein cannot suffer for the same. Accordingly, placing reliance on the following judgments : Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, ; J. P. Srivastava and Sons (Rampur) P. Ltd. v. Gwalior Sugar Co. Ltd. [2001] 4 MPLJ 92; Commissioner of Customs, Bombay Vs. Virgo Steels, Bombay and Another, and Kamal Kumar Dutta v. Ruby General Hospital Ltd. [2006] 134 Comp Cas 678 : [2006] 7 SCC 613, Shri Ajay Mishra, learned senior advocate, emphasised that this is a case where the finding recorded by the Company Law Board is a proper finding based on due appreciation of the evidence that came on record and the same does not warrant any interference.

I have heard learned Counsel for the parties at length and have perused the records.

Even though during the course of hearing of this company petition on various dates Shri P. R. Bhave, learned senior advocate, and Shri Ajay Mishra, learned senior advocate, had referred to various documents and had tried to point out that the finding of the Company Law Board with regard to a particular question is a perverse finding or is a proper finding. I do not think it is necessary to refer to each and every factual aspect of the matter in a detailed manner, as I am of the considered view that the same may not be necessary.

This is a case where the respondent/company petitioner is proceeded against and by operation of law, i.e., Section 283(1) (g), it is alleged that he is deemed to have vacated the office. This Court while exercising jurisdiction in an appeal u/s 10F of the Act does not deal with questions of fact. It only deals with questions of law involved in an appeal. A question of fact may give rise to a question of law, if the factual assertions made by the parties culminate in a finding of fact, which is perverse or contrary to the material available on record. At the same time if the finding recorded by the competent authority is based on some evidence available on record and is a possible finding that can be arrived at in the given set of circumstances, then the

same need not and will not give rise to a question of law. That being so, it is not necessary for the present to refer to each and every factual aspect canvassed at the time of hearing, instead it is more appropriate to deal with the matter by taking note of the statutory provisions, the question with regard to service of notice, for holding of the board meetings and the findings recorded in this regard by the learned Company Law Board, after evaluating the legal principles applicable.

The scope and power of this Court while exercising appellate jurisdiction in a proceeding u/s 10F of the Act, is, as indicated in the preceding paragraph. Section 10F contemplates that "any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order on any question of law arising out of such an order". It is, therefore, clear that an appeal contemplated u/s 10F is not an appeal on fact. The appeal is only on a "question of law" and, therefore, it can be safely construed that a finding of fact recorded by the Company Law Board is final and against such a finding no appeal lies. Under law the jurisdiction of this Court in an appeal u/s 10F is confined only to determination of any substantial question of law and, therefore, a finding of fact arrived at cannot be reversed by this Court until and unless it is apparent from the face of the record that the finding, even on factual aspects, is erroneous or perverse to such an extent that the same could not be arrived at in the given set of circumstances. It is keeping in view the aforesaid limited jurisdiction conferred to this Court that the matter has to be proceed with and considered.

It would be appropriate now to refer to the statutory provisions which are applicable in the present case. The first provision, which has to be taken note of, is Section 53 pertaining to service of document on members by a company. As one of the moot questions, which requires consideration in this appeal is with regard to service of notice for the five board meetings held, in which respondent is said to be absent, so also for the meeting held in which the allocation of shares were made, the statutory procedure contemplated under the Act for service of notice is to be taken note of and the same is provided for in Section 53. Sub-sections (1) and (2), which are relevant in this regard, are reproduced hereinunder:

53. Service of documents on members by company.-(1) A document may be served by a company on any member thereof either personally, or by sending it by post to him to his registered address, or if he has no registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him.

(2) Where a document is sent by post:

(a) service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, provided that where a member has intimated to the company in advance that documents should be sent to him under a

certificate of posting or by registered post with or without acknowledgment due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member; and ...

(emphasis supplied)

The next provisions to be taken note of are Sections 193, 194 and 195. Section 193 provides as to how the minutes of the proceedings of general meeting and the meeting of the board of directors are to be recorded and the period after conclusion of the meeting within which the minutes are to be recorded, the manner of recording them in the minutes book and entries being made in the same. Section 194 contemplates that the minutes of the meeting kept in accordance with the provisions of Section 193 shall be evidence of the proceedings recorded therein. It is, therefore, clear that, if minutes of any board meeting held, is recorded in accordance to the provisions of Section 193, then a presumption can be drawn u/s 194 that the proceedings as indicated in the minutes were held. Section 195 contemplates that where the proceedings of any general meeting of the company or of any meeting of its board of directors or committees of the board have been kept in accordance with Section 193 then until and unless the contrary is proved, the meeting shall be deemed to have been called and held and all proceedings to have been duly taken place in the manner as indicated and valid.

Section 283 contemplates a provision pertaining to vacation of office by a director. This section indicates various eventualities, which would result in vacation of office by a director and as far as the present case is concerned Sub-section (1)(g), which is relevant, reads as under:

283. Vacation of office by directors.-(1) The office of a director shall become vacant if:. . .

(g) he absents himself from three consecutive meetings of the board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

According to the aforesaid provision, if a director absents himself for three consecutive meetings of the board of directors or from all the meetings of the board for a continuous period of three months without obtaining leave, he is deemed to have vacated his office.

Finally, Section 400 of the Act contemplates that if applications are filed before the Company Law Board under Sections 397 and 398, the Board shall give notice of every application made to it u/s 397 or 398 to the Central Government and thereafter if any representation is made by the Central Government, the same shall be taken into consideration before passing a final order in the proceedings under Sections 397 and 398. Section 397 provides for application to the Company Law

Board for relief in case of oppression and Section 398 deals with application to the Board for relief in case of mismanagement. There is no dispute that cessation of director u/s 283(1) (g) can be agitated in a proceeding under these sections.

The main question which requires consideration in this appeal is as to whether notice for the meetings held were properly served on the respondent and in spite of service, he remained absent for five consecutive meetings. This would be the moot question on which the entire decision of this appeal would depend ?

Apart from the aforesaid question, the question of adverse inference being drawn for not producing the minutes of the meetings has to be taken note of, so also the conduct of the parties and a prudent man''s approach to be adopted keeping in view the bona fides of the appellants in proceeding in the matter, as canvassed by Shri P. R. Bhave, learned senior advocate, further effect of not sending notice to the Central Government is also to be considered.

Section 286 of the Act contemplates that "notice of every meeting of the board of directors of the company shall be given in writing to every director" and the method of service of this notice is contemplated u/s 53. Section 53(1) of the Act contemplates that the "documents may be served by a company on any of its member either personally or by sending by post to him in his registered address". Sub-section (2), of Section 53 pertains to "drawing of a presumption". It contemplates that where the document is sent by post, service thereof shall be deemed to be effected by properly addressing, prepaying and posting the letter containing the document. In the present case, it is the contention of the appellant that the five notices for attending the meetings were sent under certificate of posting (UPC) to the respondent/company petitioner. The five meetings in which the respondent was absent are alleged to have been held on September 1, 2004 (two meetings); September 14, 2004, December 31, 2004 and January 31, 2005. The first notice for the meeting, which was to be held on September 1, 2004, at 11.00 a.m., is dated August 25, 2004 and is at page 187 of paper book No. 2. The agenda for the meeting is also indicated therein and the under certificate of posting for the same is at page 186. Similarly, the notice for the second meeting to be held on September 1, 2004, at 4.00 p.m., is at page 188 and the under certificate of posting is at page 189. At page 190 is the notice for the meeting to be held on September 14, 2009 and the under certificate of posting is at page 191. Similarly, at pages 192 and 194 are the notices for the meetings to be held on December 31, 2004 and January 31, 2005 and the under certificate of posting are at pages 191 and 193, respectively.
During the course of hearing, on behalf of the respondent certain discrepancies were tried to be pointed out in the posting certificates at page 189 and the difference in the agendas and mistakes committed in the agendas to contend that these would indicate that the documents are fabricated. For the present, this Court does not deem it proper to enter into the aforesaid factual enquiry. For the present, it would be appropriate to consider as to whether service of notice for the five

meetings, under certificate of posting, is a proof of service of notice on the company petitioner.

The presumption to be drawn u/s 53(2)(a) of the Act contemplates fulfilment of certain conditions, they are properly addressing the documents, prepaying and posting the letter. The learned Company Law Board has refused to accept the posting certificates as proof of service of notice mainly on the ground that the under certificate of posting alone cannot be enough for drawing the presumption, in the absence of collateral evidence like dispatch register, register showing payment of postage stamps, account books being adduced. Even though by relying upon a judgment of this Court in the case of Parmanand Choudhary [1990] 67 Comp Cas 45, Shri Bhave tried to emphasise that if a notice is sent under certificate of posting, service of notice is deemed to be effected, it would be appropriate and profitable at this stage to refer to a judgment of the Supreme Court on the question. In the case of M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, , the matter has been dealt with. In the said case also notice to a director was sent under certificate of posting and apart from producing the postal certificates, a delivery book was adduced as evidence to contend that the notice was served on the personal assistant of the director. Both these pieces of evidence adduced, i.e., under certificate of posting and delivery book along with affidavit of the personal assistant Mohan Raj was discarded by the Supreme Court and the matter has been dealt with in paragraphs 115 onwards in the following manner (page 55 of 117 Comp Cas):
115. As far as the certificate of posting is concerned, it is not explained why it does not record the dispatch of notices to any other shareholder. When the relationship between the parties was already so embittered, proof of service of notice by certificate of posting must be viewed with suspicion. Judicial notice has been taken that certificates of posting are notoriously ''easily'' available. What was seen as a possible but rare occurrence in 1981 (Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, is now seen as common. Thus in Shiv Kumar and Others Vs. State of Haryana and Others, , this Court said:

We have not felt safe to decide the controversy at hand on the basis of the certificates produced before us, as it is not difficult to get such postal seals at any point of time.

Despite this ground reality and on a misinterpretation of the provisions of Section 53, the appellate court came to the indefensible conclusion that ''evidence regarding dispatch of a communication under certificate of posting attracts the irrebuttable statutory presumption u/s 53(2)(b) that the notice had been duly served'', that ''it is not open now to project a plea of absence of service of notice and a substantiation thereof by evidence'' and that even if it were proved that the notice did not reach the addressee, the evidence could not be ''formally accepted and formally acted upon by the court'' such contrary evidence ''being necked (sic) out at the threshold.

This Court in Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, said that a certificate of posting might lead to a presumption if the letter was addressed and was posted, that it, and in due course, reached the addressee. ''But, that is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act, compels the court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of case, the court may refuse to draw the presumption. On the other hand the presumption may be drawn initially but on a consideration of the evidence the court may hold a presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever dispatched as claimed''.

This general rule regarding certificate of posting has not been changed u/s 53 of the Companies Act, although it does provide that if a document is sent by post in the manner specified, ''service thereof shall be deemed to be effected''. The word ''deemed'' literally means ''thought of or, in legal parlance ''presumed''.

There is a distinction between ''presumption'' and ''proof. A presumption has been defined as ''an inference, affirmative or disaffirmative of the truth or falsehood of a doubtful fact or proposition drawn by a process of probable reasoning from something proved or taken for granted'' (Izhar Ahmad Khan Vs. Union of India (UOI), . They are rules of evidence which attempt to assist the judicial mind in the matter of weighing the probative or persuasive force of certain facts proved in relation to other facts presumed or inferred (ibid). Sometimes a discretion is left with the court either to raise a presumption or not as in Section 114 of the Evidence Act. On other occasions, no such discretion is given to the court so that when a certain set of facts are proved, the court is bound to raise the prescribed presumption. But that is all. The presumption may be rebutted.

While construing Section 28B of the U. P. Sales Tax Act which, inter alia, provides that if a transit-pass is not produced at the check post on entry and at the point of exit, ''it shall be presumed that the goods carried thereby have been sold within the State'', the contention that the phrase ''it shall be presumed that'' meant that ''it shall be conclusively held'' was negatived. After referring to Section 7 of the Evidence Act it was held by this Court in Sodhi Transport Co. and others Vs. State of U.P. and others, :

The words "shall presume" require the court to draw a presumption accordingly, unless the fact is disproved. They contain a rule of rebuttable presumption. These words, i.e., "shall presume" are being used in the Indian judicial lore for over a century to convey that they lay down a rebuttable presumption in respect of matters with reference to which they are used and we should expect that the U. P. Legislature also has used them in the same sense in which Indian courts have understood them over a long period and not as laying down a rule of conclusive proof. In fact these presumptions are not peculiar to the Evidence Act. They are generally used wherever facts are to be ascertained by the judicial process.

It was accordingly held that the words ''shall presume'' contained in Section 28B of the U. P Sales Tax Act only require the authorities concerned to raise a rebuttable presumption that the goods must have been sold in the State if the transit pass is not handed over at the check post at point of exit and that it was open to the transporter to still prove that the goods had been disposed of in a different way (see also Syad Akbar Vs. State of Karnataka, ; The State of Madras Vs. A. Vaidyanatha Iyer, .

Raising of a presumption, therefore, does not by itself amount to proof. The result of a mandatory requirement for raising a presumption cast on court, as there is u/s 53(2) of the Companies Act, is that the burden of proof is placed on the person against whom the presumption operates for disproving it. It is only if such person is unable to discharge the burden, that the court will act on the presumed fact (see Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat,). A presumption however is of course not always rebuttable. But the mere use of the word ''shall'' before the word ''presume'' or other like word does not mean that the presumption is irrebuttable or conclusive. An irrebuttable presumption is couched in different language, normally indicating that proof of one set of facts shall be ''conclusive proof of a second set. An example of this is rule 3 of the Rules framed in 1956 u/s 18 of the Citizenship Act, 1955, which was the subject-matter of challenge in Izhar Ahmad Khan Vs. Union of India (UOI), . Section 53(2) contains no such language.

Consequently, the words ''shall presume'' in Section 53 Sub-section (2) means a rebuttable presumption which the court must raise provided the basic facts, namely, the due posting of the document is proved the onus being on the addressee to show that the document referred to in the certificate of posting was not received by him.

In the present case, the certificate of posting is suspect. Assuming that such suspicion is unfounded, it does not in any event amount to conclusive proof of service of the notice on Madhusoodhanan or on any of the other addressees mentioned in the certificate as held by the Division Bench. Except for producing the dispatch register and the certificate of posting, no one on behalf of the respondents came forward to vouch that they had personally sent the notice through the post to Madhusoodhanan and his group. Madhusoodhanan had written two letters contemporaneously dated August 4, 1986 and August 8, 1986 (exhibit P24 and exhibit P35), to Srinivasan, the general manager of Kerala Kaumudi and to Madhavi complaining that he was not receiving any mail at all. These letters were admittedly received but not replied to by the respondents. It is also apparent from a perusal of those letters that Madhusoodhanan had no knowledge whatsoever of the notice for application for allotment of additional shares. Had there been such notice it is improbable that Madhusoodhanan who was fighting for retaining his control over Kerala Kaumudi, would have risked losing such control by abstaining from applying for the additional shares.

(emphasis supplied)

A perusal of the aforesaid principle laid down by the Supreme Court clearly indicates that raising of a presumption contemplated u/s 53 (2) does not by itself amounts to conclusive proof. If the facts of the present case are analysed in the backdrop of the aforesaid legal principle, it would be seen that in the present case except for filing the postal certificates and the letters, the only piece of evidence with regard to service of notice is an affidavit of one Shri Rajesh Tadas, who is said to have personally gone to the residence of the company petitioner for serving the notice. The said aspect of the matter with regard to personal service shall be dealt with separately.

For the present, the question of service under certificate of posting is being considered. For service of notice under certificate of posting the only evidence adduced is the postal certificates. Other supporting documents/ evidences like the dispatch register, the proof with regard to postage stamp affixed or the affidavit of the person concerned, who had actually gone to the post office and dispatched the notices are not available on record. Merely the postal certificates are filed and it is prayed that a presumption be drawn that the notices are served. If the principle governing drawal of such a presumption in the light of the law laid by the Supreme Court, in the case of M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, , is taken note of, then 1 am afraid the presumption to the extent of proving the service of notice cannot be drawn. In the case of M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, , before the Supreme Court, apart from producing the postal certificates, the local delivery book of the company and affidavit of one Mohan Raj were filed. The Supreme Court discarded these evidences and refused to accept it in the absence of dispatch register, amount spent for stamp, etc., being proved. When the Supreme Court has laid down the principle that judicial notice has to be taken to the effect that certificate of posting are "notoriously easily available", then in a case like the one in hand, the burden lay heavily on the appellants herein to prove by adducing adequate cogent evidence the fact with regard to dispatch of notice to the respondent for the meetings to be held. The question as to whether presumption of dispatch or receipt of a letter sent under certificate of posting could be drawn or not would depend upon the facts and circumstances of each case. The presumption can be drawn and the same can be held as proof of dispatch of notice if it could be seen that the notice was sent after prepaying, the postage stamps, the person who has effected the dispatch should come forth and say that he has dispatched the notices by going to the post office and had paid for the requisite stamps. The presumption has to be drawn based on the evidence that comes on record. When the principal evidence regarding posting of the notice, i.e., the dispatch register of the company, the books of account showing expenses incurred for posting of the letter, the person who has posted the letter are not filed nor any affidavit of the person dispatching the notice filed, then the presumption u/s 53(2) cannot be drawn. Until and unless the primary evidence

in the nature of dispatch register, accounts book, affidavit of the person who dispatched the notices are not tendered, the secondary question of drawing presumption would not arise. It is only if the document is sent by post after fulfilling the requisite formalities as detailed hereinabove that a presumption u/s 53 can be drawn. In the present case, there is no evidence regarding posting of the letter or documenting its posting or affixing adequate stamps. In the absence of the aforesaid facts being established, this Court does not deem it appropriate to draw the presumption and hold the postal certificates to be proof of sending the notice to the respondent.

Even though by placing reliance on the judgment of Parmanand Choudhary and Others Vs. Smt. Shukla Devi Mishra and Others, , Shri Bhave, learned senior advocate, had tried to emphasise that the notices have been dispatched, but keeping in view the law laid down by the Supreme Court in the case of M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, , this Court cannot record a finding to the effect that notices in question were dispatched to the company petitioner. In this regard, the principles laid down by the Madras High Court in the case of Microparticle Engineers P. Ltd. v. Mrs. Senthamarai Munusamy [2003] 116 Comp Cas 465, by the Punjab and Haryana High Court in the case of Bhankerpur Simbhaoli Beverages P. Ltd. v. Sarabhjit Singh [1996] 86 Comp Cas 842, may be taken note of. All these cases pertain to issuance of notice with regard to meetings of a company and dispatch of the same under postal certificates, the consistent view in all the cases are that in the absence of corroborative evidence being produced, showing actual dispatch of the notice and its stamping, service or dispatch of notice cannot be presumed. Reference may also be made in this regard to another judgment of the Punjab and Haryana High Court, in the case of Col. Kuldip Singh Dhillon v. Paragaon Utility Financiers P. Ltd. [1986] 60 Comp Cas 1075.

On a complete scanning of the documents and evidence that has come on record, this Court is of the considered view that the onus of proving dispatch of notices for the meetings in question, i.e., five in number, rested with the appellants'' sender, who had to establish it by sufficient corroborative evidence that the notices were sent. Mere production of the certificate of posting issued by the postal authority is not and cannot be a conclusive proof of having served the notice upon the addressee as indicated in the under certificate of posting. Under law, the onus of proving the fact that the notice was sent was on the company, consequently, the appellants herein, and in the facts and circumstances of the case, the company have failed to discharge this onus by adducing cogent, legal and admissible evidence. Accordingly, a finding has to be recorded to the effect that sending of the notice for the five board meetings and its service on the respondent is not proved.

Section 53 of the Act also provides for personal service of the notice. It would, therefore, be appropriate to consider at this stage as to whether the appellants have proved service of notice on the company petitioner by personal service. For the

purpose of establishing personal service, it is the case of the appellants that Shri Rajesh Tadas, an employee of the company had gone to the residence of the company petitioner and he had met some family members, who refused to accept the notice. The affidavit of the said person Shri Rajesh Tadas is available at page 196 of paper book No. 2. The affidavit consists of five paragraphs. It is very small and for the sake of convenience, the entire affidavit is reproduced hereinbelow:

1. That I am an employee of the Marble City Hospital and Research Centre P. Ltd.

That I am in the employment of the company since August, 2003.

That I personally went to the house of Mr. Sarabjeet Singh Mokha, the petitioner in this case on August 25, 2004, September 8, 2004, December 23, 2004 and January 24, 2005, to serve the notice of board meetings.

That the notice of cessation dated February 4, 2005 and share offer letter dated April 30, 2005, was also given to me by the company for personal by hand service on Mr. Sarabjeet Singh Mokha, and I personally went to serve the same on Sarabjeet Singh Mokha.

That each time when I went to serve, the notices/letters, to the house of Mr. Sarabjeet Singh Mokha, he was not available and his family members refused to receive or acknowledge the same. Therefore, personal service could not be effected.

A perusal of the affidavit would indicate that Shri Rajesh Tadas on oath says that he is an employee of the company, he is working since August, 2003 and he personally went to the house of the company petitioner on August 25, 2004, September 8, 2004, December 23, 2004 and January 24, 2005, to serve notice of the board meetings. He also went to serve the notice of cessation dated February 4, 2005 and the letter dated April 30, 2005. Thereafter, he states that each time he went to serve the notices/letters, the company petitioner Shri Sarabjeet Singh Mokha was not available and his family members refused to receive or acknowledge the same. However, along with his affidavit, Shri Rajesh Tadas has not produced the so-called notices, which he carried with him on August 25, 2004, September 8, 2004, December 23, 2004 and January 24, 2005. The dates mentioned in paragraph 3 of his affidavit are the dates on which he went to the house of the company petitioner. He does not say as to what was the date of the notice, which he was required to serve and what was the date indicated in the notice for holding of the board meetings. The affidavit does not indicate as to what action he took after the family members in the house of the company petitioner refused to receive or acknowledge the notice. If the dates indicated by Shri Rajesh Tadas in paragraphs 3 and 4 of his affidavit are taken note of, it would be seen that they are of the same dates on which the notices are issued and they are dispatched as per the under certificate of posting, available at page 186 onwards of the second paper book. However, if the notices were sent under certificate of posting on the dates indicated in the postal certificates, then it is not known as to why Shri Tadas was also sent on the same date for serving the

notice by hand. The same can be explained by contending that it was a precautionary measure adopted by the company, and, therefore, there is nothing wrong if such a procedure was followed, but if Shri Rajesh Tadas had really gone to serve the notice, then his affidavit should have been more specific and certain other particulars were also required to be mentioned therein, which are lacking and due to which, the facts indicated in the affidavit become doubtful. Some of the facts which should have found place in the affidavit and which are not available are as to who instructed Shri Rajesh Tadas to go and serve the notices personally on the company petitioner. Shri Rajesh Tadas does not disclose as to under whose instructions he had gone to serve the notice personally on the company petitioner; he also does not identify or produced the notices, which were carried by him for service on the dates mentioned in paragraphs 3 and 4, of his affidavit. Copies of notices carried by him are not part of his affidavit. He does not say that the notices available at pages 187, 188, 190, 192 and 194 are the notices, which were carried by him for service on the company petitioner. He does not say as to why he did not make any endorsement with regard to the particulars of the family members as to whom he tried to effect the service and who refused or did not acknowledge the same, no other witness is shown in whose presence the service was tried to be effected. That apart, finally Shri Tadas does not say as to what was the action taken by him after the notices remained unserved, to whom he returned the notices, to whom he reported the matter about refusal to accept the notice and how the matter was returned back to the competent authority of the company along with his report. His affidavit is silent on all these vital aspects, is vague and does not disclose the aforesaid factual aspects of the matter. If all these discrepancies are evaluated cumulatively, it can be construed that the appellants herein have failed to prove service of notice on the company petitioner by post or personally through Shri Rajesh Tadas.

Apart from the aforesaid, it is seen from the notices available on record that the notices are addressed to four directors, three of the directors are the appellants herein and the fourth director is the company petitioner, who is removed. All the four are subscribers to the memorandum of association and are the founder directors of the company. Action is taken against the company petitioner, one amongst the four directors, and he is removed from the office on the ground of automatic cessation by operation of law, i.e., Section 283(1)(g). The company petitioner being a director subscribing to the memorandum of association, i.e., a founder director, has certain legal rights, vested in him to continue as a director in the company and if he is to be removed from the directorship held by him, the same has to be done in a manner authorised and provided by law. Removal of the company petitioner from the post of directorship has certain civil consequences and, therefore, before visiting him with such civil consequences having adverse effect on his right of discharging the duties as a director, it was incumbent upon the appellants herein to establish that in spite of knowledge, proper service of notice, he

was absent from five consecutive meetings of the board and, therefore, he ceased to be a director. It is the considered view of this Court that the appellants have failed to discharge this burden, which lay heavily on them under law and, therefore, this Court has no hesitation in holding that the action taken against the company petitioner is without proper notice to him, without informing him as to when the board meetings are to be held and in the absence of notice, his removal on the ground of cessation by operation of law cannot be sustained and in so holding the Company Law Board has not committed any error.

Shri P. R. Bhave, learned senior advocate, during the course of hearing had tried to emphasise that the company petitioner was not available to the civil society for a long period, he was absconding, evading arrest in the criminal case and, therefore, it was tried to be emphasised that the notices were deliberately not received by him or that service of notices should be deemed. To this submission Shri Ajay Mishra, learned senior advocate, referred to various sale deeds said to have been executed by the company petitioner during the same period in connection with his other business activities and tried to submit that the company petitioner was very well available and was discharging his routine business activities. Be it as it may, when the provisions of the Act particularly Section 286 read with Section 53 contemplate service of notice before a board meeting to a member entitled to attend such meeting and when the law contemplates a procedure for service of notice, then without service of notice and intimation of the meeting being proved in accordance to law, no presumption can be drawn merely because the company petitioner was involved in some criminal case or was absconding or on the ground that he was not available to the civil society.

Having held so, this company appeal could be very well dismissed on this ground alone, but as serious arguments were advanced during the course of hearing by Shri P. R. Bhave, learned senior advocate, with regard to the fact that adverse inference is drawn on the ground that minutes of the board meetings are not produced. Shri Bhave, learned senior advocate, had argued that the company petitioner never challenged the holding of the meetings nor was it his case that the board meetings were not held and, therefore, it was argued that the findings recorded by the Company Law Board to the effect that the appellants have not proved holding of the meeting is a perverse finding.

In this regard, this Court is of the considered view that when the board meetings are held under the Act, then certain statutory procedures are required to be followed. As already indicated hereinabove, the procedure for holding the general meeting and the meeting of the board of directors is contemplated u/s 193. Sub-section (1) thereof mandates that minutes of all the proceedings of the board of directors shall be kept by recording the minutes within 30 days of conclusion of the meeting and entries thereof are to be made in a book kept for the purpose and in the said book, the pages have to be consecutively numbered. Each page of such book is to be

initialled or signed and the last page of the record of the proceedings of each meeting shall be dated and signed. Section 193 contemplates a detailed procedure for recording the minutes of the board meeting and their maintenance and signature in a particular manner. If the board meetings and its proceedings are recorded in the statutory manner as contemplated u/s 193, then the law presumes u/s 194 that the meetings of the board as recorded u/s 193 are held. The presumption can be drawn under Sections 194 and 195, if the minutes have been maintained in accordance with the requirement of Section 193. In the present case, the appellants were proposing to remove the company petitioner from the post of board director on the ground that he has not attended five consecutive meetings of the board. If the meetings of the board were held and if the company petitioner was absent from these meetings, then even in the absence of allegations being made, it was incumbent upon the appellants herein to produce the minutes of the board meeting maintained in accordance to the statutory requirement and show that the board meetings were held, minutes are drawn and the company petitioner is shown to be not present. The minutes of the board meeting, which are to be kept in accordance to the requirement of Section 193 are statutory documents maintained by the company in the day-to-day discharge of its functions and the same can very well be produced to show that the meetings of the board were held after complying with all legal formalities. The minutes of the board meeting were not produced before the Company Law Board and in this proceedings (appeal) before this Court also what is produced is only a photocopy of the proceedings, they are not in the form or statutory prescriptions made for its maintenance u/s 193. Before this Court also, the proceedings of the board meetings are not produced in its original. What is produced is a certified true copy, which does not bear the signature of any person, but is certified as true by the chairman of the company. The documents are typed copies, containing loose sheets and the same does not indicate that they are maintained in accordance with the requirement of Section 193. When the appellants contend that they were acting bona fide and had no mala fide intentions, it is not known as to why the original records of the board meeting were kept away in these proceedings when they would have thrown much light on the bona fides of the appellants. However, having held that the appellants have miserably failed to establish issuance of proper notice and service of notice with regard to holding of the board meetings, this Court does not deem it necessary now to go into the question of records of the board meeting not being produced in the proceedings before the Company Law Board and in this appeal, but sees no error in the finding recorded by the Company Law Board in this regard.

Finally, during the course of hearing much arguments were advanced by Shri P. R. Bhave, learned senior advocate, to the effect that the requirement of Section 400 is not complied with, this section contemplates that the Company Law Board shall give notice of every application filed under Sections 397 and 398 to the Central Government and on receipt of such notice, if any representation is submitted by the

Central Government, the same has to be considered before passing the final order.

The requirement of Section 400 of the Act is to be complied with by the Company Law Board, the Board is not impleaded as a party and there is nothing to indicate that any such objection was raised during the pendency of the proceedings before the Company Law Board. The question as to whether notice was sent to the Central Government by the Company Law Board is a question of fact and the same cannot be looked into at this stage in an appeal, where fact finding enquiry is not permitted. That apart, except for contending that the notice is not issued to the Central Government, no legal provision or any principle is brought to the notice of this Court on the basis of which it can be held that non-issuance of notice u/s 400 in the present proceedings is fatal to such an extent that the entire proceedings stand vitiated.

Even though by placing reliance on the judgment in the case of Bilasrai Joharmal and Others Vs. Akola Electric Supply Co. Private Ltd., , Shri P. R. Bhave, learned senior advocate, contended that issuance of notice to the Central Government was necessary, but there is nothing in the said judgment to indicate that non-issuance of notice would render the entire proceedings to be null and void. When the provision is to be complied with by the Company Law Board, the company petitioner cannot be made to suffer for non-compliance. In the said judgment, there is nothing to indicate that non-compliance of this provision renders the entire proceeding vitiated. On the contrary, the principles which had weighed with the law-makers for incorporating Section 400 would indicate that the provision was incorporated for protecting the interest of minority shareholders or a class of members in minority, who have interest in a company and to safeguard their rights and interest, the provision for notice to the Central Government is incorporated. Consideration of the representation contemplated is for obtaining the views of the Central Government in order to protect the right of the unrepresented minority shareholders, whose interest is to be seen in a proceedings pertaining to winding up of a company or other matters where public interest is involved. There is nothing under law to indicate that non-compliance with the aforesaid provision renders the proceeding vitiated in all cases, even when no public interest or right of any other member of the company, unrepresented, is involved (Ref.: C. R. Datta on the Company Law, Sixth edition 2008; pages 5700 to 5702).

As the question of allotment of shares is also done without proper notice to the company petitioner, the finding recorded by the learned Company Law Board with regard to allocation of shares also does not warrant any interference. For the purpose of allocation of shares, it is alleged that the offer was made on April 30, 2003 and in this offer it is indicated that the appellants have decided to allocate the share in its meeting held on May 28, 2005. Service of notice with regard to this meeting is also in the same manner as discussed hereinabove and, therefore, it is not established that the notice is served. That apart, it is clear that the decision with

regard to the allocation of shares took place on July 5, 2005. If the decision was taken on July 5, 2005, then the respondent who was arrested on July 1, 2005, should have been informed about the same. This was not done. The learned Company Law Board has dealt with this matter in detail, in paragraphs 14 and 15 of its order, and this Court does not see any perversity or error in the aforesaid finding of the Company Law Board, warranting interference.

Considering the totality of the facts and circumstances, this Court is of the considered view that in passing the impugned order the Company Law Board has not committed any error, which warrants interference now in this appeal.

Accordingly, this appeal u/s 10F of the Act is dismissed without any order so as to costs.