

(1994) 09 CAL CK 0030
In the Calcutta High Court
Case No : Admiralty Suit No. 2 of 1994

Al-Amin Seatrans Ltd.

APPELLANT

Vs

Owners and Party interested in Vessel M.V. "Loyal Bird"

RESPONDENT

Date of Decision : 07-09-1994

Acts Referred:

Admiralty Jurisdiction (India) Act, 1860 — Section 2
Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1
Companies Act, 1913 — Section 14, 26, 28, 78
Companies Act, 1956 — Section 166, 169, 291

Citation : AIR 1995 Cal 169 : (1995) 1 CALLT 98

Hon'ble Judges : Baboo Lall Jain, J

Bench : Single Bench

Judgement

1. The instant application has been made by M/s. Loyal Shipping Pvt, Ltd., (hereinafter also referred to as "the defendant") a company incorporated under the laws of the republic of Bangladesh, who is the owner of M.V, Loyal Bird, (hereinafter referred to as the "said vessel"). M/s. Al-Amin Seatrans Ltd. which is also a company incorporated under the laws of Bangladesh, instituted the above Admiralty Suit and obtained an order dated 7th July, 1994, for arrest of the said vessel m.v. "Loyal Bird". Pursuant to the said order the said vessel was arrested while lying at the Haldia Docks. The said vessel was thereafter allowed by this Court to be shifted to the Port at Calcutta.

2. One of the salient features of this case is that the Chairman of the Board of Directors of the plaintiff is also the chairman of the Board of Directors of the defendant. The Managing Director of the plaintiff is also the Managing Director of the defendant. The only other two directors of the plaintiff are also, the directors of the defendant. All the directors of the plaintiff including its chairman and managing director are the directors of the defendant. Plaintiffs four directors who are the only directors are the only, four members of the plaintiff and they hold 85% of the share holding of the defendant. The defendant has only one extra fifth share holder, who is also the fifth director of the defendant and the said fifth

shareholder and director of the defendant holds 153 of the shares of the defendant.

3. The prayers in the above Admiralty Suit are as follows:--

"(a) A Declaration that the plaintiff is the absolute beneficial owner of the Vessel M.V, Loyal Bird now lying at the Port of Haldia and is entitled to be registered as the legal owner of the same;

(b) An order that the defendant to execute a bill and/or Memorandum of Sale transferring ownership of the said Vessel M.V. Loyal Bird to the plaintiff;

(c) Alternatively, judgment against the said Vessel M.V. Loyal Bird and each of its tackle apparel and furniture for U.S. Dollars 8,03,534.77 equivalent to Bangladeshi Taka 321,41,340.45 equivalent to Rupees 2,51,50,639.41 mentioned in paragraph 12 hereof;

(d) Judgment against the Vessel M.V. Loyal Bird and each of its tackle apparel and furniture for U.S. Dollars 8,03,534.77 equivalent to Bangladeshi Taka 3, 21, 41, 390.94 equivalent to Rs. 2,51,639.41 mentioned in paragraph 15 hereof;

(e) Arrest of the said vessel M.V. Loyal Bird and an order for appraisal of the same its tackle apparel and furniture;

(f) Sale of the said Vessel M.V. Loyal Bird and payment out of the proceeds thereof to the plaintiff in protanto satisfaction of its claim in the suit;

(g) Interim interest and interest of judgment,

(h) Costs;

(i) Further and other reliefs."

4. In the affidavit of Mohan Sen affirmed by him on the 6th July, 1994 the case made out is inter-alia as follows:--

That an agreement dated 30th, April, 1988 was made between the plaintiff and the defendant owner of the Vessel M.V. Loyal Bird (hereinafter referred to as "the said vessel"), represented by Khondkar Golamuddin Ahmed and Akmal Yusuf Chowdhury the then 100% shareholders of Loyal Shipping Pvt. Ltd.

5. A copy of the agreement is annexed to the said affidavit of Mohan Sen. The said agreement provides that the purchasers have agreed to buy and the sellers have agreed to sell 100% shares of Loyal Shipping Pvt. Ltd. together with Vessel M.V. Loyal Bird on as it is, where it is on a basis for a total sum, of U.S. Dollars 1.2 million dollars for the said ship to Taka 20,000/- as value of the said shares. Clause 7 of the said agreement provides that on payment of only the then mortgaged bank liabilities of U.S. Dollars 3,17,415.39 approximately and Taka 20,000/- for the shares, the sellers shall transfer all shares in the said company in favour of the purchasers and the purchasers shall be the full owner of the said company together with all its assets including the said ship and sellers shall sign

all necessary papers as may be required for the said purpose.

6. From the certified copies, issued by the Registrar of Companies, it appears that the said persons who were parties to the said agreement dated 30th April, 1988 transferred all their shares in the defendant in favour of Al-Amin Seatrans Ltd. the plaintiff and/or its managing director. Khondkar transferred all his shares in the defendant-company on 3rd May, 1988 i.e. 100 shares in favour of Al-Amin Seatrans Ltd. Akmal Yusuf transferred 90 shares in favour of Al-Amin Seatrans Ltd. on 11th April, 1988. He further transferred 10 shares in favour of Capt. Imam Anwar Hossain the managing director of the plaintiff. After the said date 40 shares were transferred by Al-Amin Seatrans Ltd. in favour of Capt. Imam Anwar Hossain. Al-Amin further transferred 50 shares in favour of Al Haj Md. Siraj-ud-dowla on 10th June, 1988. Al-Amin further transferred 50 shares in favour of Mrs. Nasim Anwar Hossain on 7th June, 1988. Al-Amin further transferred 50 shares in favour of the Mrs. Asmat Ara Begum. The present position of the plaintiff company is that there are four shareholders in all holding 50 shares each. So far as the original parties to the agreement dated 30th April, 1988 are concerned the plaintiff duly obtained transfer of all shares of the defendant. The four members of the plaintiff-company got the 200 shares of the defendant in their favour in the same proportion as per their share holdings in the plaintiff. There is no dispute that at the time of such transfer of shares by the shareholders of the defendant, the defendant was and still continues to be the owner of the said vessel. Thereafter there has been increase-in-capital of the defendant and the plaintiffs shareholders still hold equal shares in the defendant, totalling 85%. There is only one new shareholder has been added to the defendant-company holding 15% of its capital and he has since been appointed as the 5th director of defendant. All the four directors of the Plaintiff are directors of defendant with only one more director in the board of the defendant.

7. It cannot be disputed that by 3rd May, 1988 the total control of the company namely, Loyal Shipping Pvt. Ltd. along with the said vessel as property of the defendant-company came under the control of the plaintiff-company and/or its shareholders and directors. So far as the obligations of Khondkar Giasuddin Ahmed and Akmal Yusuf Chowdhury as per the terms of agreement dated 30th April, 1988 are concerned, they discharged the same by transferring all their shares and giving control of the company to the plaintiff who alone was a party to the agreement with the said persons.

8. The plaintiff-company has four shareholders and all of them are the Directors of the plaintiff-company. The names of the shareholders and the Directors, of the plaintiff are as follows:--

1. Al-haj Md. Serajud-Dowla,

Chairman

2. Capt. Imam Anwar Hossain,

Managing Director

3. Dr. Mrs. Hashmat Ara Begum

4. Mrs. Nasim Anwar Hossain

9. Each of the said four shareholders hold 50 shares of the plaintiff-company. Al-haj-Md. Seraj-ud-dowla and his wife Dr. Mrs. Hashmat Ara Begum hold 50% of the equity shares of the plaintiff, namely, 100 shares and Capt. Imam Anwar Hossain and Mrs. Nasim Anwar Hossain hold another 50% of the shares namely, 100 shares between both of them.

10. All the four shareholders, are the Directors of the plaintiff-company Various documents and papers have been produced by both the parties. Rule 57 of the Admiralty Rules provides as follows:--

"57. Evidence -- The Judge shall be at liberty to receive, call for and act upon, such evidence, documentary or otherwise, whether legally admissible or not, as he may think fit."

11. The Court has received and/or called for several documents in view of the discretion given to the Court as mentioned above.

12. Some of the other relevant provisions of the Articles of Association which may be relevant for consideration are as follows:

"57. The business of the company shall be managed by the Managing Directing with the approval of the Board of Directors who may pay all expenses incurred in getting up and registered the company and may exercise all such power of the company as are not, by the Companies Act, 1913 or any statutory modification thereof for the time being in force or by these articles, required to be exercised or done by the company in general meeting, subject to nevertheless any regulation of these articles to the provisions of the said Act, and to such regulations or provisions, as may be prescribed by the company, in general meeting, but no regulations made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

58. The directors may meet together for the dispatch of business adjourn or otherwise regulate their meetings and proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of equality of votes, Chairman of the meeting shall have a second or a casting vote.

59. The quorum necessary for the transaction of business of directors may be fixed by the directors and unless so fixed, shall be three.

60. The Chairman shall ordinarily, preside over all the meetings of the Board of Directors but if at any meeting the Chairman is not present at the time appointed for holding the same then the directors present shall chose one of them to be the Chairman of the meeting.

61. Al-haj Md. Seraj-ud-dowla shall be first Chairman of the Board of Directors. The Chairman shall preside over all meetings of the Board of Director as well as general meetings or extraordinary general meetings.

62. Subject to control and Supervision of the Board of Directors the business and all other affairs of the company shall be managed by the Managing Director in consultation with Chairman.

63. Capt. Imam Anwar Hossain shall be the first Managing Director of the company and shall hold office from the date of incorporation of the company until he voluntarily resigns or become disqualified on die.

64. Without prejudice to the general power and other powers conferred by these presents, it is hereby expressly declared that the Managing Director shall have the following powers that is to say:

(i) To generally manage all concern and affairs of the company and to appoint, employ, workman, day labours, agents, servants and other for the purpose of the company and to remove or dismiss them and appoint others in their places and to pay and allow the persons to be employed as aforesaid such salary, commissions, wages other remuneration as may be deemed fit and prove and in particular to sanction and spend the preliminary and other legal expenses of the company that may be necessary from time to time.

(ii) To borrow or raise any sums of the company by loan or otherwise on mortgage or hypothecation on such securities and on such terms as he may deem fit and execute, sign, seal or deliver all necessary documents, or do any or other acts on that behalf with the prior approval of Board of Directors.

(iii) To purchase or otherwise acquire for the company any property rights or privileges such as the company is authorized to acquire at such price and generally on such terms and conditions as he think fit.

(iv) To sign cheques, draft, bond and other documents on behalf of the company.

(v) To execute and sign in the name of the company all such deeds and things as are necessary for the welfare of the company.

(vi) To purchase, exchange or otherwise dispose of absolutely or conditionally any property for the purpose of the company."

13. Loyal Shipping Private Limited which is the owner of the said vessel at present has five shareholders in all. The four members of the plaintiff-company are members of he said Loyal Shipping Private Limited holding 85% of the shares in equal proportion. The Chairman of the plaintiff-company is also the Chairman of Loyal Shipping Private Limited. The Managing Director of the plaintiff-company is also the Managing Director of Loyal Shipping Private Limited. There is one more shareholder of loyal Shipping Private Limited who is common between the two companies and the name of the said share-holders is Md. Anwar Hossain who holds 15% of the share capital of the company. It is apparent that the

plaintiff as per the said agreement acquired the entire control over the shareholding of Loyal Shipping Private Limited the defendant and got it transferred between its four members equally. That was the position up to June 1988. However, it is also apparent that the structure of shareholding of Loyal Shipping Private Limited has since changed and the share capital has been increased from Taka 20,000 - to Taka 50 Lakhs and one more shareholder other than the four shareholders of plaintiff has been taken in as a shareholder as also a director.

14. From the affidavits filed on behalf of the parties including the plaintiff and the submissions made on behalf of the parties including the plaintiff, it is apparent that the Board of directors and the members of the plaintiff are divided into two groups having equal members on each side and or equal shareholding by each group. One group is of the Chairman and his wife and the other is of the Managing Director and his wife. Since the Chairman has a casting vote in the meeting of the Board as well as in the general meeting, it is not possible to get any resolution passed either in the Board meeting or in any general meeting unless the Chairman is the consenting party. It is also absolutely clear that there are serious disputes as between the two groups. Since quite some time past.

15. My attention has been drawn to an agreement between the Chairman of the plaintiff-company and the Managing Director of the plaintiff-company dated 12th Sept. 1990, a Xerox copy whereof has been filed in this Court. The learned counsel for the plaintiff did not dispute the factum and or the signature thereto. The said agreement inter alia provides as follows:--

"THE AGREEMENT IS MADE THIS THE 12TH DAY OF THE MONTH OF SEPTEMBER NINETEEN HUNDRED NINETY ONE OF THE CHRISTIAN ERA.

BETWEEN AL HAJ MD. SERAJ-UD-DOWLA CHAIRMAN AL AMIN SEATRANS LTD.
93, MOTIJHEEL C/A DHAKA 1000. FIRST PARTY

AND

CAPT. IMAM ANWAR HOSSAI MANAGING DIRECTOR AL AMIN SEATRANS LTD.
93, MOTIJHEEL C/A. DHAKA-1000 SECOND PARTY

WHERE AS the first party is the Chairman of Al-Amin Seatrans Limited and the second party is the Managing Director of the same company.

AND

WHERE AS mistrust and misunderstanding crop up between the parties hereto and situation turned so worst that the parties are now litigating in different Courts of the country in respect of the management of Loyal Shipping Pvt. Ltd. Another company of whose Chairman is the first party herein and the Managing Director is the second party herein.

AND

WHERE AS the well wishers and friends of both the parties took initiative to resolve the crisis arisen in between the parties and in pursuant to solicitation of the aforesaid well wishers the parties hereto bind themselves under the following terms and conditions.

1. Chairman, Al-Haj, Seraj-ud-Dowla takes a loan of Taka 60 lacs (sixty lacs) by cheque from the company, the first party hereby acknowledges receipt thereof. Be it noted here that Managing Director Capt. Imam Anwar Hossain, the second party herein had received loans of Taka 60 Lacs (sixty lacs) approximately on different occasions from the company. So the first party is also paid accordingly by above loan. It is further stipulated that the first party would make payment of the aforesaid amount to Mohammadi Welfare Trust and now both Mohammadi Welfare Trust and Al-Amin Seatrans would start a separate joint business by investing Taka 60 Lacs (sixty lacs) under a deed of agreement to, be arrived at by the aforesaid Mohammadi Welfare Trust and Al-Amin Seatrans, and profit and loss would be divided equally. A cheque No. 693783 of Banque Indosuez for Taka 60 Lacs (sixty lacs) only dated 12-9-1991 has been issued in favour of the first party for this purpose.

2. It is agreed upon that money given as loan by Managing Director of Al-Amin Seatrans Ltd. to other companies except Loyal Shipping Pvt. Ltd. would be recovered within 3 (three) months" time irrespective of profit and loss by Managing Director and deposited to Al-Amin Seatrans Ltd. account."

16. That document at least shows that it was agreed upon between the Chairman and the Managing Director that money given as loan by the Managing Director of the plaintiff to other companies except Loyal Shipping Private Limited, would be recovered within three months" time irrespective of profit and loss, by the Managing Director and deposited to Al-Amin Seatrans Limited"s account.

17. Both the parties have argued on the basis that there are serious disputes and differences as between the directors of the plaintiff. Two of the directors belonging to the side of the Chairman i.e. the Chairman and his wife and the other two directors belong to the side of the Managing Director i.e. the Managing Director and his wife. It was also submitted on behalf of the parties that both the groups can block a meeting of the Board of Directors of the plaintiff because if two members of either group keep off from attending the meeting of the board then the quorum of three will not be reached. The same holds true with regard to general meeting. However, it is apparent that since the Chairman"s group has control over the casting vote, the said group is in a position to get any resolution passed or brought down and as such the Chairman"s group will not be interested in blocking any meeting.

18. Since the Chairman has a casting vote in the meeting of the Board of Directors as also in general meeting it is not practicable for the Managing Director to get any resolution passed either in the meeting of the Board of Directors or in the general meeting.

19. One of the points urged by Mr. Gopal Mukherjee appearing on behalf of Loyal Shipping Private Limited is that there was no authority for institution of the suit by the Board of Directors. The powers given to the Managing Director in terms of the Articles of Association are subject to control and supervision the Board of Directors and can only be exercised in consultation with the Chairman. It is nowhere alleged that any authority to institute the suit was obtained or was sought to be obtained from the Board of Directors of the company specifically or at all. Even if the power of Attorney executed by the Managing Director in favour of Mr. Mohan Sen he has not alleged that he has obtained any authority or power to institute the suit from the Board of Directors or from the general meeting. The Power of Attorney was executed on 2nd June, 1994 and the purported adjourned general meeting of the company was purported to be held on 8th June, 1994. The Power of Attorney in favour of Mr. Sen is dated 2nd June, 1994. In the Power of Attorney there is no mention as to the source of authority of the Managing Director.

20. It has been argued on behalf of the plaintiff that the Managing Director by virtue of his office and provisions of articles was authorised by his own power to institute suit or to appoint a Constituted Attorney for the company. There is no dispute that no Board Meeting had been held or even called to authorise the institution of the suit or to appoint any constituted attorney for the purpose. The learned counsel for Loyal Shipping Private Limited relied on the judgment reported in Nibro Ltd. Vs. National Insurance Co. Ltd., in support of the argument that a suit on behalf of the company can be filed by a director specifically empowered by the Board to file such a suit.

21. On the analysis of the judgment, it is clear that Order 29, Rule 1 of the CPC does not authorise persons mentioned therein to institute suits on behalf of the Corporation. It only authorises them to sign and verify the pleadings on behalf of the corporation.

22. In my view, the provisions of Companies Act, 1956 and particularly Ss. 14, 26, 28, Schedule I Table A and Section 291 are very clear.

23. It is well-settled that u/s 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting in all other cases the Board of Directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. It, is true that ordinarily the Court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has, far-reaching effects. It often affects policy and finances of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute, a suit on behalf of the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard.

24. Chapter IV of the Delhi High Court (Original Side) Rules deals with the question of presentation of suits. Under this Rule, suit can be presented by a duly authorised agent or by an advocate duly appointed by him for the purpose. Thus authorisation, in my view, in the case of a company can be given only after a decision to institute a suit is taken by the Board of Directors of the Company. The Board of Directors may in turn authorise a particular directors, principal officer or the secretary to institute a suit.

25. The Articles of Association of the company clearly provides that the powers of the Managing Directors are subject to the control and supervision of the Board of Directors and that the same are to be exercised in consultation with the Chairman.

26. From the facts of this case it is quite apparent that there were serious disputes and differences between the two groups each of which held 50% share of the plaintiff-company and equal number of directors. The Managing Director knew that he could not get any resolution to be passed in the meeting of the Board of Directors unless the Chairman supported the same. It was also known to the Managing Director that the Chairman was against institution of such suit.

27. My attention was drawn to various provisions of Article 65 of the Articles of Association. The very opening word of the said article shows that it was without prejudice to the: general power and the other power conferred by the articles. The said Article 65 cannot and does not make the other Articles i.e. Articles 57 and 62 as nugatory.

28. The plaintiff also relied on the fact that a notice informing a general meeting of the shareholders was issued on 15th May, 1994. The said notice reads as hereunder:--

"An ordinary General Meeting of the Shareholder of the Company will be held at 1100 Hrs. on 1st June, 1994 at Company premises i.e. Motijheel C/A (3rd floor), Dhaka. The agenda will be as follows:

1. To appoint auditor of the company for the year 1994.
2. To discuss how to realise outstanding dues and advances given to M.V. Loyal Bird of Loyal Shipping Pvt. Ltd. To take all actions necessary in this respect and to arrest M.V. Loyal Bird to realize all outstanding.
3. To give authority to the Managing Director to arrest the Vessel M.V. Loyal Bird and to appoint Lawyers, Attorneys, in this respect which he deems fit.
4. Miscellaneous.

All shareholders are requested to kindly attend the meeting.

29. Reliance was placed on behalf of the defendant-petitioner on the judgment reported in 80 Comp Cases 558 (K.N. Sandaranarayan v. Shree Consultations and Service Pvt. Ltd.), as also the judgment reported in 53 Company Cases 46

(Mohanlal Mittal v. Universal Wires) in support of the propositions that a specific authority of the Board of Directors is necessary in order to enable the authorized person to institute any suit or proceeding by or in the name of the company.

30. The learned Advocate appearing on behalf of the plaintiff-respondent relied on the judgment reported in AIR 1938 Mad 962 H.M. Ebrahim Sait v. South India Industrial Ltd. It was submitted that in the said judgment the Division Bench of Madras High Court held that managing the business of the company would include institution of the suit, as well, when it becomes necessary in the course of management to recover moneys due to the company. It was held in the said case that the said case was one of that kind. In the said case, however, the Articles of Association gave power to the directors of the company to institute and conduct legal proceedings. Furthermore, the Articles of Association also provided that the directors could from time to time entrust and confer upon a Managing Director for the time being such of the powers exercisable under the Articles of Association of the Company by the directors as they may think fit. The directors by their resolution entrusted the powers to the Managing Director to be exercised either jointly or severally. The appellant himself in the said case was a party to the said resolution by which the Board of Directors conferred the right of the management upon the Managing Director. The Division Bench held in the said case that there has been no doubt that the resolution mentioned aforesaid read with clauses 69(k) and 69(d) of the Articles of Association enabled the respondent to institute suits validly on behalf of the company.

31. In the instant case, however, the facts are quite different. No authority has been given in the Article of Association to the directors to delegate the power as was the case in the Articles of Association in Ebrahim Sait's case (supra). Furthermore, in fact, there is no resolution of the Board of Directors to give any specific rights to the Managing Director. So far as the Article 62, is concerned, the powers given to the Managing Director with regard to management were subject to control and supervision of the Board of Directors and the management by the managing Director had to be carried on in consultation with the Chairman. Article 57 also provided that the management by the Managing Director was to be done with the approval of the Board of Directors. Article 65 is also without prejudice to the other article. In my opinion, whatever powers have been conferred on the Managing Director by the Articles of Association are subject to the control and supervision of the Board of Directors and he is under an obligation to manage in consultation with the Chairman. In the instant case, it is submitted on behalf of the plaintiff-respondent that the Managing Director had authority to institute the suit by himself irrespective of the pleasure or control or supervision of the Board of Directors and without consulting with the Chairman. It was also submitted that the power of the Managing Director also extended to appoint a constituted Attorney for the company, i.e. the plaintiff.

32. Reliance was also placed in Clause 65(1) where it is, inter alia, provided that the Managing Director will manage the affairs of the company and to appoint

employee workmen, day labourers, agents and servants and others for the purpose of the company.

33. In the instant case it is quite clear that there were talks and consultations between the Managing Director and the Chairman which are reflected, inter alia, by the agreement between the Managing Director and the Chairman dated 12-9-91. The said agreement provided that money given as loan by the Managing Director of the plaintiff to any companies except Loyal Shipping Pvt. Ltd. would be recovered by Managing Director within 3 months time. So there was not only consultation between them, but there was an agreement that money due from Loyal Shipping Pvt. Ltd. would not be recovered. It has not also not been alleged anywhere that there was any further or other consultation. The Managing Director knew sufficiently well that he could not get any resolution passed by the Board of Directors giving him power to institute a suit against the Loyal Shipping Pvt. Ltd. After all the Managing Director as also the Chairman of the two companies are common. It is also quite clear that no attempt was made by the Managing Director to get any specific authority to institute the suit by or in the name of the plaintiff company against Loyal Shipping Pvt. Ltd. or its vessel. The Managing Director also knew very well that he could not even get a resolution or authority in his favour even in a general meeting because he could not get any resolution passed due to the equal division in two groups and the casting vote which the Chairman could exercise. In my opinion, the right of management of the company's affairs was vested in the Board of Directors and the Managing Director could only act subject to the control and supervision of the Board of Directors. There was no specific authority granted to the Managing Director either to institute any suit or to appoint any Constituted Attorney of the plaintiff company. In my opinion, the Managing Director did not have any power or authority in the facts and circumstances of this case to institute any suit on behalf of the plaintiff or to appoint any Constituted Attorney of the Company without prior approval of the Board of Directors.

34. In my opinion, whatever powers were given under the Articles of Association to the Managing Director were subject to the control and supervision of the Board of Directors and could be exercised in consultation with the Chairman. Furthermore Art. 66 provides that even the bank account of the company was to be operated under the joint signature of the Managing Director and Chairman and in the absence of the Chairman any other Director nominated by the Board of Directors from time to time. This shows that the Managing Director would not exercise any singular control over the banking account of the company and could not even operate the same alone. Either the Chairman, or any other Director authorised by the Board of Directors had to be a joint signatory.

35. The next submission that was made on behalf of the respondent/plaintiff was that in any event a general meeting of the members of the company was called and held and the same was and had to be adjourned on 1st June, 1994 due to lack of quorum till 8th June, 1994. Another notice was given to the members

with regard to the adjourned general meeting and that the adjourned general meeting also did not have sufficient quorum. Only the Managing Director and his wife were present and the Chairman and his wife were not present. On 8th June, 1994 resolutions were passed by the adjourned general meeting as per Cl. 44 of the Articles of Association of the company and the adjourned general meeting was entitled to and did proceed with the business even without the quorum which was not reached within half an hour after the time appointed for the meeting. It has been submitted that in the adjourned general meeting only the Managing Director and his wife were present and they passed the resolutions, authorising institution of the suit.

36. The Chairman and his wife are denying that any notice was served on them of the meeting or the adjourned meeting or that they had any knowledge of the meeting. They have also made and clear that they were opposed to the resolutions. I have already discussed above that no resolution was attempted to nor could be passed either at the meeting of the Board of Directors or at the general meeting in case the Chairman and his wife were opposed to the same that is because the Chairman had a casting vote both in the meeting of the Board of Directors as also in the general meeting.

37. The learned counsel on behalf of the defendant/petitioner also submitted that under the Articles of Association a Secretary had no power to issue any notice calling a general meeting. In the instant case, a notice had, in fact, been issued by Secretary. The Secretary had nowhere even alleged in the notice that he was acting pursuant to the authority granted by the Board of Directors or by the Managing Director.

38. Articles 41 and 44 of the Articles of Association provides as hereunder:--

"41. The Directors jointly or the Managing Director may at any time call an extraordinary General Meeting and an Extra-Ordinary General Meeting may also be called by the members on requisition in accordance with the provisions of S. 78 of the Companies Act.

44. No business shall be transacted at any general meeting if a quorum of members is not present, the meeting if called on the requisition of members shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at any such adjourned meeting a quorum of members, is not present within half an hour after the time appointed for the meeting, then any number of members, not being less than two, including the Managing Director shall be Quorum".

39. Learned counsel for the petitioner relied on the Division Bench judgment of this Court reported in Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd. and Others, In the said judgment the Division Bench held as follows;

Still more difficult it is to appreciate why the petitioners should fail to attend en bloc both at the Board meeting on January 22, 1963, March 4, 1963 and March,

1963 or the extraordinary general meeting on February 21, 1963. I find myself unable to believe that if notice of the Board meeting on January 22, 1963 had been duly issued they could have failed to reach all the petitioners in time or that the later would all have deliberately stayed away from meeting. It is quite clear from the affidavits that towards the end of December, 1962 if not before the parties had become openly hostile to each other and it does not stand to reason that one group should absent itself en bloc from a Board meeting so as to let the other carry the day as regards the affairs of the company. More so, if there was any agenda for the meeting --which is not disclosed -- which would have shown what the respondents were after. The petitioners commanded a majority in the Board of Directors and were in a position to rout the respondents if any attempt was made to impair their supremacy. It is unimaginable that the petitioners, would have allowed an extraordinary general meeting to be held in their absence when the object of the meeting was to increase the number of Directors from 5 to 7 and to alter the articles of association so as to allow such increase to be affected. If notices of the extraordinary general meeting were suppressed the resolution to increase the authorised capital of the company from Rs. 10 lacs to 15 lacs and to repay the alleged loans of several creditors by the issue of new shares in the company is to say the least a fraud of the worst character. The prior Board meeting of the company were pressing for payment or that there had been any discussion about the payment of the loans by the issue of shares or that the creditors had expressed their willingness to take such shares. No agenda of the extraordinary general meeting alleged to have been held on February 21, 1963 has been disclosed and I can see no reason why if they had been served with notices of these meetings the petitioners and their associates should again absuain from attending the same in the body. Such conduct is tantamount to committing hara kiri. Is it to be believed that the petitioners who held the majority of shares in a company would sit quietly and allow the respondents to effect alteration in the articles of association by increasing the number of Directors and the creation of new shares to suit their purpose so as to reduce the majority into a helpless minority on the Board and at general meetings of the company. The answer can only be in the negative. It was argued before us that as the matter had not been thrashed out on evidence no conclusion ought to be drawn as to whether the petitioners had received notice of this extraordinary general meeting or not. It was further argued that as the Companies Act allows service of documents by putting them in the post. Production of certificate of posting was enough to prove service and that the reason why a member or a group of members failed to attend a meeting was immaterial. If the matter was tried on evidence other than affidavit evidence, no better result would have followed, for the petitioners would have had to make up its mind as to whether the petitioners had received the notices but deliberately refrained from attending the meeting. In my opinion, such an argument is worthy of no consideration at all.

If the case was such that it could be suggested that the petitioners had some

motive in abstaining from attending the extraordinary general meeting one might have hesitated to come to a definite conclusion that the petitioner had not been served with notice of the meeting. A man may no doubt behave strangely on a particular occasion, but it is impossible to believe that a number of hard -- boiled business people will keep themselves away from meetings where their doom may be effectually sealed in their absence and where they have only to attend win the day by their superiority in number and voting strength. The fact that no reference has been made in the petition either to the Board meeting of January 22, 1963 is only consistent with the conclusion that the petitioners had no knowledge of them on March 14, 15, 1963 when they moved this Court. The happenings at the extraordinary general meeting could have been made capital of by the petitioners as regards their case of oppression. If it had been the case of a particular shareholders of Director not receiving the notice sent through the Post, one might possibly take the view that it had gone astray, but it is impossible to believe that all the notices of the Board meetings as also those of the extraordinary general meeting should have failed to reach all the addressees. Leaving aside the shares which were alleged to have been issued after the extraordinary general meeting of February 21, 1963 the company had 16 shareholders those in the respondents group being a while the number of members in the petitioners group was 12. If any person in the petitioners camp had received the notice, he or she would undoubtedly have made it known to the others, and although letters are known to lose their way in the post. I find myself unable to believe that the notices had never been put in the post, although certificates of posting purport to have been obtained in respect thereof. It is only too well known that certificates of posting can be got hold of without actually putting letters in the post and the respondents must have adopted that course so far as the Board meeting of January 22, 1963 or the extraordinary general meeting of February 21, 1963 was concerned.

In my opinion the course of events clearly establish that the respondents were determined to overthrow the supremacy of the petitioners both in the Board and at general meetings of the company and to this end they held a Board meeting on January 22, 1963 and extraordinary general meeting on February 21, 1963 in the absence of the petitioners. Such absence was not through any deliberation of the latter but the mechanisation of their rivals. The resolutions passed at the Directors' meetings on February 22, 1963 were clearly aimed at tightening the grip of the petitioners on the management of the company in a manner not resorted to before. This was obviously not to the liking of the respondents who in order to counter the effect of the said resolutions sought to get a whiphand on the company by increasing the number of members and the number of Directors to suit their own ends. According to the minute book produced by the petitioners the Directors held a meeting on January 21, 1963 at 52/1, Doctor Abani Dutt Road, Howrah at 3 p.m. which was attended by Murali Dhar Jhunjunwala Ramshankar Prosad Champalalsarogi Radhakrishna Prosad and Mahendra Prosad. This meeting merely confirm the transactions which had taken place at the

meeting held on October 25, 1962 and discussed the affairs of the company in general. According to the minute book produced by the respondents there was a board meeting on the same date at the same place at 12.20 in the afternoon and the only two persons present were Ramashankar Prosad and Radha Krishna Prosad. The minute of the last mentioned meeting go to show that the Chairman waited for half an hour to enable the other Directors to come but had to proceed in their absence ultimately. Further the minutes show that the three absent directors who were entrusted with their entire management of Dhanbad Works were committing various irregularity for which they were censured. This meeting also decided to start a new minute book and call an extraordinary general meeting of the company to be held on Feb, 21, 1963 for increasing the number of directors altering the articles of association in this behalf, increasing the authorised capital of the company and issuing new shares to nine creditors who had been pressing for payment of their dues. It is surprising that such devastating changes would be resolved at by two directors who represented only a minority of the shareholders whose object was clearly to put the majority in the shade. If the petitioner attended the board meeting at 3 p.m. there is no reason by they should not have attended a similar meeting fixed at 12.30 p.m. on the same day. There was no resolution of any importance passed at the meeting held at 3 p.m. which appears to have been attended by one of the respondent. If the petitioners were aware of the meeting held at 12.30 p.m. they could surely have passed resolutions at the meeting at 3 p.m. to nullify the effect of the earlier resolutions. The board meeting at 12.30 p.m. on January 22, 1963 was followed up by the holding of an alleged extraordinary general meeting in the absence of the petitioners and their associates and holding a board meeting on March 4, 1963 whereby the directors present took complete charge of the affairs of the company and delegated all their powers to Kedar Nath Bhagat, The allegation that the factory had been leased out and the story of the lessees surrendering the lease only demonstrate to what extent the respondent were prepared to go to set at nought the supremacy of the petitioners in the company and even to forestall any act on their part by trying to obtain relief from court.

It is no doubt true that this picture can only be pieced out after taking into consideration all the affidavits which are on record and the minutes of the meeting of the Board of Directors and the share-holders of the company. What was lacking in the petition has been filled up by the subsequeunt affidavit and the court must guide itself by all the evidence before it. It must be said that the petitioner had not made a strong case of oppression for mismanagement in the petition. The only material averment of oppression alleged therein was the overthrow of the majority by forcible possession of the factory taken by Kedar Nath Bhagat and others on 13-3-1963 but the evidence now available shows that the respondents had started their campaign sometime before that and that their plan was to dethrone the petitioners from the position held by them. If the board meeting of 21-1-1963 relied on by the respondents as also the extraordinary general meeting of 21-1-1963 was motivated by the desire to exclude the

petitioners, clearly there was an oppression which would not be neutralised by the petitioner short of coming to court and praying for necessary relief. The oppression was not of long duration when the petitioners came to court but it was of such a nature that its effect would have persisted indefinitely and kept the petitioner under the complete mercy of the respondents."

40. In the instant case, taking into consideration the totality of the facts and circumstances of this case, it is quite clear that there were serious disputes as between the Managing Director and the Chairman of the plaintiff. The Managing Director knew very well that he could not get any resolution passed either by Board of Directors or in a general meeting, where the Chairman and his wife had notice of the meeting and/or were present. The views of the Chairman were known so far as Loyal Shipping Pvt. Ltd., or dealings with that company are concerned and there was an agreement between the managing director and the Chairman in that regard. I cannot see any reason for the Chairman and his wife to be absent from any meeting of Board of Directors and/or the general meeting, if any resolution was sought to be passed there at against their wishes or in spite of their opposition. I am also of the view that the Secretary of the company by himself had no power to issue notice calling any general meeting or extraordinary general meeting and the Articles of Association did not give him any power to do so. The notice itself was void and of no effect. The notice for calling the meeting and/or extraordinary general meeting dated 15th May, 1994 and 1st June, 1994 were null and void and of no effect and any meeting held pursuant thereto is also null and void. Furthermore there is no evidence whatsoever that any notice was actually sent for the general meeting to the plaintiff's Chairman and/or his wife. I am also of the view that the meeting allegedly held pursuant to the notice issued by the Secretary dated 15th May, 1994 and 1st June, 1994 and the meetings held pursuant thereto were also void and of no legal effect and the purported resolutions passed thereat were also of no legal effect. I am also not satisfied that any alleged notices were in fact issued to or served on the Chairman or his wife and as such the alleged meetings if any were held without due or proper notice to them and were null and void on that ground also.

41. The learned Counsel on behalf of the defendant/petitioner relied on the judgment reported in (1901) 2 Ch D 431, *In re : State of Wyoming Syndicate*. He also relied on the case reported in 80 Company Cases 558 (*supra*).

42. In the facts and circumstances of this case, I am of the view that the purported notice calling the general meeting purported to be issued by the Secretary was null and void and the purported meetings were not properly held and the resolutions passed thereat were null and void and were of no effect. I am also not satisfied that any notice was served upon the Chairman of the plaintiff and/or his wife. It appears that the purported resolution was purported to be passed at the adjourned general meeting purported to be held on 8th June, 1994, whereas the power of attorney was executed by the Managing Director on

2nd June, 1994.

43. The next ground of attack by the defendant/petitioner is that the plaintiff/respondent suppressed material facts and made deliberate false statements in the petition and obtained the interim order dated 7th July, 1994 on the basis of suppression of material facts and/or by making deliberate false statement.

44. It was, *inter alia*, stated in the petitions that the shares of the defendant were still held in the name of Ahmed and Chowdhury who were parties to the agreement dated 8th April, 1988. The impression was sought to be given to the Court that Ahmad and Chowdhury did not give effect to the agreement which is apparently false and there was suppression of all the events that took place after the 30th April, 1988, which I have already referred to above. It had also been suppressed that the entire control of Loyal Shipping Pvt. Ltd. pursuant to the agreement dated 30th April, 1988 had come in the hands of the plaintiff. It had also been suppressed that the time when the control of Loyal Shipping Pvt. Ltd., came in the hands of the plaintiff the said vessel was owned by the said Loyal Shipping Pvt. Ltd. If the plaintiff wanted the said vessel to be transferred after having obtained the control of Loyal Shipping Pvt. Ltd., the plaintiff could do so. The plaintiff has sought to give an impression to the court as if the said agreement dated 30th April, 1988 was binding on the said vessel and/or on Loyal Shipping Pvt. Ltd. The said Loyal Shipping was not a party to the agreement dated 30th April, 1988, the consideration was payable to Ahmad and Chowdhury who were the parties thereto. The value of 1.2 million dollars for the said vessel was payable to Ahmad and Chowdhury and not to Loyal Shipping Pvt. Ltd. The said agreement provided that the entire share holding of the company which were held by Ahmad and Chowdhury was to be transferred to the plaintiff and the shares of Loyal Shipping Pvt. Ltd., were to be transferred in favour of the plaintiff and the plaintiff will be fully owner of the said company along with all its assets including the said ship and the seller shall sign all necessary papers as may be required for the said purpose. The said agreement had fully been given effect and complied with by the sellers Ahmad and Chowdhury and all their shares were duly transferred in favour of the plaintiff and/or its nominee and the plaintiff became the full owner in control of Loyal Shipping Pvt. Ltd., along with all its assets including the said ship. The Loyal Shipping Pvt. Ltd. was neither a party to the agreement dated 30th April, 1988 nor there was any obligation of Loyal Shipping Pvt. Ltd. by virtue of the said agreement dated 30th April, 1988 to transfer the ship in favour of the plaintiff. The plaintiff/respondent also suppressed that it was the plaintiff who having obtained full control of Loyal Shipping Pvt. caused transfer of shares in favour of the four members of the plaintiff equally.

45. There is no other agreement pleaded in the affidavit and/or the plaint as between the plaintiff and the Loyal Shipping Pvt. Ltd. which affixed Loyal Shipping Pvt. Ltd. with any liability to transfer the said vessel in favour of the plaintiff.

46. The Learned Counsel appearing on behalf of the defendant/petitioner relied on the following judgments:--

(1917) 1 KB 486 (The King v. The General Commissioners for the purpose of the Income Tax Acts for the District of Kensington); Prof. A.K. Sanyal Vs. Dr. Chitta Ranjan Basistha and Others,

47. The said cases were relied on in support of the proposition that it is perfectly well settled that a person who makes an ex parte application to court is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge and if he does not make that fullest possible disclosure then he cannot obtain any advantage which he may have already obtained by means of the order which was thus wrongly obtained by him.

48. In my opinion, the plaintiff was also under an obligation to disclose that serious disputes and difference had been going on as between two groups of Directors of the plaintiff company and that it was the Managing Directors group who was not allowing meetings of the board to be held. He also failed to disclose that the Managing Director and Chairman of the plaintiff were also the Managing Director and Chairman of the Loyal Shipping Pvt.Ltd. who was the owner of the ship.

49. The plaintiff also made a false and incorrect statement that by virtue of the said written agreement dated 30th April, 1988 Loyal Shipping Pvt. Ltd. was obliged to transfer the said vessel in favour of the plaintiff. The agreement referred to and annexed to the plaint and the affidavit does not put any obligations on the owners of the said vessel.

50. In my opinion, there are serious disputes and difference as between the Board of Directors of the plaintiff. All the four directors of plaintiff are directors or Loyal Shipping Pvt. Ltd. which has only one more director. The Chairman and the Managing Director of plaintiff and the Loyal Shipping Pvt. Ltd. which has only one more director. The Chairman and the Managing Director of plaintiff and the Loyal Shipping Pvt. Ltd. are same. There was an agreement between the Chairman and the Managing Director plaintiff in 1991 that the dues from Loyal Shipping Pvt. Ltd. were not to be realised. In any event, the disputes have been going on since 1991 and no subsequent accounts have been disclosed since after the accounting year 1991.

51. The said disputes have been going on. The entire claim of the plaintiff as against the ship is unfounded since the agreement relied on does not confer any obligation upon Loyal Shipping Pvt. Ltd. to transfer the ship. The learned Counsel for the plaintiff-respondent relied on alleged admission in the affidavit affirmed on behalf of the plaintiff. However, from the agreement as pleaded and as relied on and as annexed to the petition it is quite clear that the said agreement does not cast any obligation upon the owner of the vessel to transfer the vessel. There is no other agreement pleaded on behalf of the plaintiff either in the plaint or the affidavit-of-arrest. The entire disputes as between the parties are governed by

the municipal laws of Bangladesh. The entire cause of action and the transaction took place in Bangladesh, and relates to monetary dealings and transactions and the position with regard to such account since 1991 year ending remains undisclosed.

52. The plaintiff-respondent has even gone to the extent of alleging that the said vessel has not visited Bangladesh whereas from the copies of the log-book papers produced before me it is quite clear that the said vessel before coming to India was for several months in the port of Chittagang in the dry dock and was under repair for several months. I think that in the facts and circumstances of this case this Court should not exercise its admiralty jurisdiction and should leave the parties to pursue their own remedies in the appropriate courts having municipal jurisdiction in the matter. This is because the entire alleged cause of action, if any, of the plaintiff arose totally in Bangladesh and the municipal laws applicable are laws of Bangladesh.

53. I, therefore, hold that the suit has been instituted at the instance of the Managing Director alone without any specific power or authority in him to institute the suit and the Managing Director had no power either to institute the suit by himself or through his agent or to appoint any Constituted Attorney for the said purpose. The suit has been instituted without due and proper authority and the suit is, therefore, liable to be dismissed on that ground alone and all interim orders are liable to be vacated. I also hold that in any event the order dated 7th July, 1994 for arrest of the said vessel, namely Loyal Bird was obtained by suppression of material facts and/or by making false and incorrect allegations as to the material facts and the said order dated 7th July, 1994 is in any event liable to be vacated. The petitioner, in my opinion, is entitled to an order for release of the said vessel without security.

54. At the time when the application of the petitioner was being heard as a new motion the plaintiff/respondent furnished security to the extent of Rs. 3 lakhs which had been deposited by the plaintiff-respondent as per orders of this Court. The said security was furnished to indemnify the petitioner as against the losses, if any, as may have been or are likely to be suffered by the petitioner. The vessel has been detained for about more than 50 days by virtue of the ex parte order obtained by the plaintiff-respondent. Since I am of the view that the ex parte order is liable to be vacated as mentioned herein, the petitioner is in my opinion entitled to recover the damages and expenses from the plaintiff as also the said agents who have purported to act in the name of the plaintiff in instituting this suit and in obtaining the ex parte order dated 7th July, 1994. I propose to appoint the official referee of this Court as the Special referee to determine the quantum of losses and damages suffered by the petitioner.

55. The suit is therefore dismissed with costs and the interim order dated 7th July, 1994 is hereby vacated on the grounds as mentioned in this judgment. There will also be an order for release of the said vessel "M. V. Loyal Bird". The marshal of this court is directed to forthwith release the said vessel and take all

appropriate steps for the release thereof forthwith so as enable the said vessel to be free from arrest and detention thereof which was made pursuant to the said order dated 7th July, 1994. This decree or order is not intended to affect the rights of the port authorities or any other orders made by any other court which may be still operative. There will be a decree in favour of the petitioner and against the plaintiff/respondent and its purported agents to institute this suit, namely captain Imam Anwar Hossian and the constituted attorney appointed by him as constituted attorney of the plaintiff Company, who has executed the warrant of attorney and has signed and verified the plaint on behalf of the plaintiff and has affirmed the affidavit-of-arrest for arrest of the said vessel, for the amount of the losses and damages suffered by the petitioner as a consequence of the interim order dated 7th July, 1994, until the actual release of the said vessel by the marshal of this Court. The official referee of this court is appointed as the special referee to determine the quantum of the losses and damages suffered by the petitioner, in a reference to be held by him. Such reference is to be commenced within a week from the date of service of the operative portion of this Judgment, decree and order. The Special Referee will submit his report within a period of four months from the date of the service of the signed copy of the operative portion of this judgment and decree. The amount deposited by the plaintiff in court will remain so deposited until the final determination of the losses and damages suffered by the petitioner and will be utilised first towards the protant to satisfaction of decretai dues after determination of the quantum of losses and damages.

56. If the vessel has not already been shifted to Calcutta from Haldia Dock, the same will be released from the place where it is at present lying.

57. The petitioner will pay in the first instance all costs charges and expenses including the remuneration of the Marshall which is assessed at Rs. 4000/-, which the defendant --petitioner will be entitled to recover from the plaintiff--respondent. The costs so incurred by the petitioner will be added to the claim of the petitioner in the decree.

Stay asked for and is declined, Liberty to apply to give effect to this decree and orders made.

All parties including the Marshall, the Official Referee, Customs Authorities, Port Authorities and the Port Police to act on a signed copy of the operative portion of this judgment and order on the usual undertaking.

58. Order accordingly.