

(2012) 07 KAR CK 0024
In the Karnataka High Court
Case No : Company Appeals No. 8 of 2008

L. Chandramurthy

APPELLANT

Vs

Pearl Insulations P. Ltd. and others

RESPONDENT

Date of Decision : 11-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Companies Act, 1956 — Section 10 F, 397, 398, 402

Citation : (2012) 173 CompCas 301

Hon'ble Judges : H.S. Kempanna, J; D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : T. Rukmangadhachar, for the Appellant; A. Murali for Respondents Nos. 1, 5 and 6, C.K. Nanda Kumar and Sanjay Nair, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Kempanna, J.—These two appeals preferred u/s 10F of the Companies Act, 1956, read with section 151 of the Code of Civil Procedure, 1908, are directed against the order dated May 30, 2008 (since reported in L. Chandramurthy v. Pearl Metal Products (Bangalore) P. Ltd. [2009] 149 Comp Cas 291 (CLB)) passed in Company Petitions Nos. 42 of 2006 and 41 of 2006 respectively presented under sections 397, 398, 402 and 409(1), (2) and (3) of the Companies Act, 1956 (hereinafter referred to as "the Act" for short) by the Company Law Board, Additional Principal Bench, Chennai, dismissing the said company petitions preferred by the appellant seeking for the relief in respect of the acts of oppression complained against the management, and majority shareholders of the first respondent-company in both the petitions. As the parties in both the appeals are common except for the first respondent-companies and as the facts and question of law involved in both these appeals are identical/similar, with consent of Learned Counsel for the respective parties, they are heard together and disposed of by this common judgment.

2. The brief facts of the case are as follows :

It is the case of the petitioner that he along with respondents Nos. 2 to 4 initially floated a company under the name and style Pearls Insulation's P. Ltd., in which, they were the directors for life holding 25 per cent shares each in the capital structure of the company amounting to Rs. 4,50,00,000. The company started its production activities in a rented shed to begin with. As the petitioner is more technically qualified than the second, third and fourth respondents he took keen interest and toiled with commitment for over all improvements of the company with all dedications. Even he mortgaged his residential property where he was living with his family and raised loan to the tune of Rs. 65,00,000 with the State Bank of India, Yeshwanthpur Branch, Bangalore, in order to enable the company to come out of all the acute financial constraints and other teething troubles which it was facing initially. The residential property was the subject-matter of mortgage by way of security to the bank, until the company was able to sustain in the market, competitively. Respondents Nos. 2 to 4 had no immovable property of their own at that time. However, they were carrying out their duties in close association with the petitioner. The company in due course gradually earned a good name and was able to withstand tough competition from like companies in the market with the joint and concerted efforts of the petitioner and respondents Nos. 2 to 4. The petitioner and respondents Nos. 2 to 4 visualising good market potential for their products, decided to start one more unit at Nelamangala situated within Tumkur District of Karnataka. Accordingly, the petitioner and respondents Nos. 2 to 4 entered into a memorandum of understanding among themselves on January 16, 1997, under which an arrangement was arrived at to safeguard the interest of the company and also the welfare of the families of the partners for all times to come.

3. In pursuance of the said memorandum of understanding, the petitioner and respondents Nos. 2, 4 and Smt. Leelamma, wife of the third respondent floated a company which was incorporated on February 27, 1997, under the Act having its registered office at Bangalore. Initially, the company was established as a firm and later it was converted into M/s. Pearl Metal Products (Bangalore) P. Ltd., Bangalore, which is the first respondent-company in Company Appeal No. 9 of 2008. The promoters of the company were the equal partners and they are the first directors who shall hold the office permanently. However, the third respondent later became a permanent director consequent upon acquiring shares from his wife, namely, Smt. Leelamma. The entire issued and paid-up capital of the company was equally held among the petitioner and respondents Nos. 2 to 4. By virtue of a share purchase agreement (SPA) and shareholders agreement (SHA) dated December 3, 1998, the sixth respondent acquired 51 per cent, of the equity shares from the petitioner jointly with respondents Nos. 2 to 4 at a price of Rs. 718 per share. By virtue of the SHA, the promoters and the sixth respondent agreed that for a period of five years from the completion of the SPA, each of the promoters would have continuing right to sell and the sixth respondent, would have an obligation to buy 12.25 per cent. shareholding on the terms and conditions specified therein. The promoters will have a right of refusal

in respect of shares offered to them in proportion of their respective shareholding.

4. The SPA and SHA being private agreements are never registered with the Registrar of Companies. The SPA shall come into effect only on fulfilment of all the conditions stipulated in clause 2.1 therein, which shall not be later than December 20, 1998, or such other extended date as may be agreed between the parties in writing. Nevertheless, the conditions in relation to the regulatory approvals and amendments of the memorandum and articles of association as envisaged in clause 2.1(e) and (f) have not been duly complied within the stipulated time. The proposal for amending the existing articles of association of the company is merely supported by the minutes of the board meeting dated December 9, 1998 and not by any other documents. There is no material to show that Form 23 along with the copies of the board resolution dated December 9, 1998 and the amended articles have been filed with the Registrar of Companies. The Registrar in his report dated August 23, 2007, has not confirmed the filing of any Form 23 for alteration of the articles of association of the company. Therefore, the articles produced along with the main petition, without incorporation of any of the clauses of the SHA are not binding on the parties. The certified copy of the articles of association of the company obtained from the Registrar of Companies by the respondents and produced in the present proceedings is neither taken on record nor registered by the Registrar of Companies. None of the clauses relating to the SPA and SHA has been incorporated in the memorandum and articles of association of the company. The petitioner has obtained a certified copy of the memorandum and articles of association of the company on April 5, 2004, which disclose that the memorandum and articles of association of the company have been filed with the Registrar of Companies on February 20, 1997, in terms of the receipt issued by the Registrar of Companies. The articles of association of the company does not contain any of the clauses of the SHA, whereas the company falsely claims that all clauses of the SHA are duly incorporated in the articles of association of the company. The amended articles of association of the company produced by the petitioner before the Company Law Board along with the un-numbered company petition containing the terms of the SHA does not have the seal of the Registrar of Companies. A memorandum of understanding came to be entered on December 10, 1998, among the petitioner and respondents Nos. 2 to 4 in the best interest of the company and welfare of their families, according to which (a) the board of the company shall always be represented by one person from each of the family members of the petitioner and respondents Nos. 2 to 4 ; (b) the Board shall appoint the spouse or daughter or son of the petitioner and respondents Nos. 2 to 4 as chief executives on monthly remuneration basis ; (c) the directors shall retire at the age of superannuation and shall name a family member to be the executive director on the board of the company ; and (d) the bank account shall be operated by one of the members of the board of management up to Rs. 50,000 and in case of any amount exceeding Rs. 50,000 the cheques shall be signed by any two of the members of the board of

management.

5. The fourth respondent, in terms of the SHA, issued a letter dated August 4, 2003, to the petitioner together with a valuation certificate of shares issued by the auditors of the company, in order to ascertain whether the petitioner was interested to purchase his balance 12.25 per cent, of equity shares at the rate of Rs. 1,012.12 per share, in response to which the petitioner had endorsed on the said communication on August 5, 2003, stating that he was not interested in buying the shares of the fourth respondent. Respondents Nos. 2 and 3 had similarly declined to buy the balance equity shares of the fourth respondent and there is no material to show that respondents Nos. 2 and 3 ever agreed to buy the shares of the fourth respondent, pursuant to his offer made in their favour. The petitioner declined the offer made by the fourth respondent with the intention that the shares of the fourth respondent would be purchased by the sixth respondent, whereas it subsequently came to his knowledge that respondents Nos. 2 and 3 had purchased on November 14, 2003, the shares of the fourth respondent. The fourth respondent being the managing director, is duly bound to inform the petitioner before selling his shares to respondents Nos. 2 and 3. The sale of shares in favour of respondents Nos. 2 and 3 was also beyond a period of 30 days from the date of offer made by the fourth respondent in terms of clause 7.6 of the SHA. The sale of 12.25 per cent. equity shares of the fourth respondent in favour of respondents Nos. 2 and 3 was approved at the meeting held on November 14, 2003, as borne out by the summary actions of the aforesaid meeting. The petitioner was not served with any notice of the meeting held on November 14, 2005, approving the sale of shares belonging to the fourth respondent in favour of respondents Nos. 2 and 3. Article 10 stipulated that every member who intends to transfer shares must give notice constituting the company as his agent for sale of the said shares to members of the company at a price to be agreed upon by the vendor and the company or in default of agreement at a fair selling price, certified by the board of directors in consultation with the auditors of the company. The company shall, upon fixation of the price, forthwith give notice to all members of the company of the number and price of the shares to be sold, ascertaining their willingness to purchase the maximum number of shares, within the time as stipulated in article 11. The petitioner was not served with any such notice before selling the shares of the fourth respondent in favour of respondents Nos. 2 and 3, under these articles. The company did not choose to file Form 2 with the Registrar of Companies approving of the sale of shares of the fourth respondent in favour of respondents Nos. 2 and 3. Respondents Nos. 2 and 3 being directors of the company, grossly abused their fiduciary duties as directors vis-a-vis the company and surreptitiously acquired the shares of the fourth respondent by holding invalid meeting on November 14, 2003. The fourth respondent also committed breach of his fiduciary powers, as managing director of the company. The registration of share transfer being violative of the articles of association of the company would constitute an act of oppression in the affairs of the company.

6. The petitioner gave a notice dated August 11, 2003, in terms of clause 7.6 of the SHA, of his desire to sell his 12.25 per cent, of equity shares of the company in favour of respondents Nos. 2 to 4 and called upon them to exercise their option in terms of clause 7.2 of the SHA, to purchase all or any of his shares at the rate of Rs. 1,012.21 per share. When respondents Nos. 2 to 4 declined to acquire any of the shares of the petitioner, the latter gave a notice dated August 23, 2003, as per clause 7.1 of the SHA, conveying his desire to sell his 12.25 per cent. of equity shares at the rate of Rs. 1,012,21 in favour of the sixth respondent. The sixth respondent though acknowledged, never conveyed its acceptance to acquire the equity shares of the petitioner. The requirements of articles 10 and 11 have not been complied with in the case of sale of shares of the petitioner in favour of the sixth respondent.

7. The respondents failed to call for any board meeting of the company in spite of repeated requests made by the petitioner for holding discussions on various clauses of the SPA and SHA. Though the company used to send notice of every board meeting to all directors, who threadbare deliberated every business as enlisted in the agenda before passing any resolution, the petitioner never received any notice of the board meeting during the period between April 10, 2003 and December 1, 2003. The petitioner has produced copies of a number of notices received in respect of the board meetings held on October 25, 2000, May 15, 2001, April 29, 2002 and April 14, 2004 and general meetings of July 31, 2000, July 27, 2001 and May 12, 2003, convened and held by the company. The company is maintaining an attendance register of the meetings in accordance with the clause 19.18 of the articles of association of the company. The petitioner has signed the attendance register for almost every meetings, in particular the annual general meeting, extraordinary general meeting and board meeting for approving accounts and declaring dividends. However, the respondents are taking false stand that no attendance register is maintained by the company. The directors present at the relevant board meeting approved the board minutes, as reflected from the minute dated February 16, 2000, February 28, 2000, December 18, 2001 and March 25, 2003, of the board of directors of the company. The respondents have produced a copy of the notice of the board meeting convened on October 18, 2003, without containing any agenda and this notice, is a concocted one. At the board meeting held on October 18, 2003, without notice to the petitioner, in terms of article 201, the directors present approved the purchase of 12.25 per cent. equity shares of the fourth respondent by respondents Nos. 2 and 3 equally at the rate of Rs. 1,012.21 per share ; recorded no objection to acquire by the sixth respondent 12.25 per cent, equity shares of the petitioner to initiate necessary steps for acquiring the shares of the petitioner. The respondents have similarly taken a number of decisions at the board meetings held on September 22, 2003, October 18, 2003 and November 14, 2003, without notice to the petitioner. The respondents have not produced the attendance register as required under regulation 71 of Table A of Schedule I of the Regulations for management of a company limited by shares to the Act or

any other document as a proof of service of notice on the petitioner before the Bench. In view of the settled proposition of law that if any board meeting is held without proper notice even to a single director, such a board meeting is invalid and therefore, the resolutions passed at the aforesaid meetings are liable to be held invalid. The representation of the sixth respondent made before the Foreign Investment Promotion Board ("FIPB") to obtain permission for acquiring 12.25 per cent. equity shares of the petitioner is, thus based on false resolutions, improper and unauthorised documents. Consequently, the communication of FIPB dated December 30/31, 2003, permitting the acquisition of shares of the petitioner by the sixth respondent has to be declared as null and void. By virtue of the principles of legitimate expectation, the petitioner being a permanent shareholder is entitled to continue on the board as a director for life and enjoy all financial benefits flowing therefrom. The terms of private agreements cannot override, the rights of the petitioner which are guaranteed under the statute and the articles of association of the company. Clause 20.2 of the articles provides that a quorum for a meeting of the board should comprise of at least one director appointed by the sixth respondent whether present-in-person or through an authorised person appointed in accordance with the articles and therefore, in the absence of the sixth respondent, the fifth respondent shall be chairman of the company. By virtue of article 20.4 no resolution can be passed at a meeting of the board of directors, without an affirmative vote of at least one director appointed by the sixth respondent. Nevertheless, the fifth respondent without any authority in terms of article 20.2 chaired the board meetings on a number of occasions and all such proceedings are liable to be set aside.

8. The fifth respondent, though represented that the FIPB granted clearance to the sixth respondent to acquire the shares of the petitioner, he did not choose to furnish copy of any such communication and further failed to convene any board meeting for ascertaining the developments in this regard. Nevertheless the respondents stated forcing the petitioner to resign from the office of director, since he would no longer be holding any shares, in terms of clauses 7.14 and 8.6 of the SHA. The fifth respondent has been reiterating from time to time that unless the petitioner resigns from the office of director of the company, no payment would be made to his 12.25 per cent. equity shares, thereby infringing the petitioner's legal and proprietary rights as a promoter, first director and as a permanent member under the articles of association of the company. At a meeting held on November 15, 2004, at Bangalore with participation of the petitioner, the fifth respondent and Shri A. S. Lakshmanan, director of the sixth respondent, the petitioner was forced and coerced to sign a letter of resignation dated January 15, 2004, which was prepared well in advance without the knowledge of the petitioner, and invoices, despite the protest and resistance of the petitioner, and thereby compelled to resign from directorship of the company. The petitioner was further forced to handover the original share certificates in respect of his holdings, on January 17, 2004, at Bangalore and pursuant to which the petitioner received an amount of over Rs. 3 crores by way of a pay order for

his shares, the proceeds of which are kept in fixed deposits, thereby deriving some income by him. The petitioner prepared to return the said amount on the directions of the Bench. The fifth respondent and Shri A. S. Lakshmanan exceeded the powers and acted beyond the provisions of the Act, violated several of the statutory provisions and committed breach of the articles and the SHA dated December 3, 1998. The respondent notifying as if the petitioner had voluntarily resigned from the office of director of the company. The fifth respondent and Shri A. S. Lakshmanan were hand-in-glove with the other respondent for the purpose of ousting the petitioner from the office of the joint managing director of the company, despite the fact that the petitioner is a permanent director for life, as envisaged in the articles of association of the company. Thus they played fraud on the petitioner and the company and deprived the petitioner of the future financial benefits and rights. It is necessary to cross-examine the respondents with reference to their objections and affidavits filed by them, which will in no way prejudice the parties. The Company Law Board vested with inherent powers under regulation 44, to try the petition on every issue arising there from, may permit cross-examination of the respondents, to meet the ends of justice as claimed in C. A. No. 205 of 2006.

9. Clause 7.14 of the SPA contemplates that in the event of any promoter sells his shares, he shall automatically also resign as a managing/joint managing director as the case may be, of the company and all his rights under the SPA shall ipso facto come to an end. Clause 8.6 of the SHA specifies that directors shall be entitled, to continue in office until their shareholdings reduced below 12.25 per cent. or they cease to hold the office of managing director/joint managing director for any reason whatsoever or they are attain the age of 65 years, which ever is earlier. These clauses are not incorporated in the articles of association of the company and therefore, the company is not bound by any of these clauses of the SPA and SHA. The petitioner being a permanent member and director of the company, can manage his individual rights with all privileges and is entitled for strict compliance with the provisions of the Act, rules, regulation and the memorandum of association and articles of association of the company. The articles do not contemplate any qualification shares and therefore, the petitioner being a promoter and signatory to the memorandum of association and articles of association cannot be deprived of his corporate right of holding his minimum shares of the company to which he subscribed at the time of incorporation of the company. The petitioner cannot be compelled and coerced to resign from the office of director of the company and is permanently entitled to continue in the office as director of the company. The respondents are attempting to exclude the petitioner from participation in the management of the company and it is therefore, just and equitable to grant appropriate reliefs putting an end to the acts complained of by the petitioner.

10. The petitioner's 10 per cent. preference shares redeemable on May 31, 2004, were redeemed on October 31, 2003, without notice to the petitioner, prior to the redemption date, and without even calling a meeting of the members of

the company and obtaining the consent of the petitioner and assigning any reasons and arranged forced payment prior to the date of redemption. By virtue of sections 106(a) and (b) of the Act, any redemption in the absence of a valid notice, valid meeting of the members and a valid consent letter of the preference shareholder and a valid special resolution, prior to reduction of preference shares, is invalid. The petitioner was forced to hand over the original preference share certificates under his covering letter dated November 3, 2003, through one of the employees of the company.

11. The petitioner was denied inspection of the statutory and other records of the company in spite of the written requests made by him in this regard, compelling the petitioner to come out with an application to direct the company to furnish copies of the statutory records, in terms of C. A. No. 151 of 2006. The second respondent appointed all his three sons as executives, while the third respondent appointed one of his daughters and son-in-law and the fourth respondent appointed his son-in-law as executives of the company but denied such privilege to the petitioner's sons or daughters. The remuneration of respondents Nos. 2 and 3 has been increased without any justification whatsoever. Therefore he sought for the following reliefs :

(i) to declare that the redemption of 10 per cent. preference shares of the petitioner by the company is null and void ;

(ii) to set aside the board resolution of the company, approving the transfer of 10 per cent. preference shares in favour of respondents Nos. 2 and 3 or the sixth respondent ;

(iii) to set aside the proceedings of the board meeting held on November 14, 2003 and declare that the transfer of 12.25 per cent. equity shares effected by the fourth respondent in favour of respondents Nos. 2 and 3 is illegal ;

(iv) to direct respondents Nos. 2 and 3 to surrender 12.25 per cent. equity shares of the fourth respondent in favour of the company ;

(v) to declare that the petitioner is entitled to purchase one-third shares along with respondents Nos. 2 and 3 from and out of the balance 12.25 per cent. equity shares of the fourth respondents ;

(vi) to allow the petitioner to invest his monies in the company to purchase one-third shares of the fourth respondent ;

(vii) to restrain the respondents from interfering with the functions and duties of the petitioner as a permanent director of the company ;

(viii) to direct the company to call for a board meeting for passing a special resolution to :

(a) restore back to the petitioner 10 per cent. preference shares by the company ;

- (b) maintain status quo in respect of equity shareholding parity ;
- (c) declare that the board meeting held on October 18, 2003 and the resolutions passed thereat the board meeting are invalid and bad in law ;
- (d) declare that the share purchase and shareholders' agreement are private documents and not binding and enforceable on the company and its members ; and
- (e) direct the respondents to produce the statutory records maintained by the company.

12. After service of notice, the respondents appeared and resisted the petition. In their statement, inter alia, among other things it was contended that the petitioner had originally filed a company petition as early as on February 1, 2003, which was not registered by the registry for various infirmities, upon which the petitioner came out with C. P. No. 26 of 2004 for redressal of his grievances in the affairs of the company. C. P. No. 26 of 2004 was dismissed on August 25, 2004, on the ground that the petitioner ceased to be a member of the company, even before approaching the Company Law Board. The petitioner challenged the Company Law Board's order dated August 25, 2004, before the High Court of Karnataka and in terms of the order of the High Court dated November 17, 2005, has now, come out with the present company petition carrying substantial new allegations and different reliefs, which would constitute gross abuse of the process of law. After dismissal of C. P. No. 26 of 2004, the petitioner is estopped from reviving the un-numbered petition dated November 29, 2003, under the guise of the present company petition.

13. By virtue of the SPA dated December 3, 1998, the sixth respondent had purchased on December 18, 1998, 30,906 (12.75 per cent.) equity shares of the company, from each of the promoters, namely, the petitioner and respondents Nos. 2 to 4 at a price of Rs. 718 per share, aggregating a sum of Rs. 2.22 crores and thereby the sixth respondent came to acquire 1,23,624 equity shares constituting the 51 per cent. of the issued and paid-up capital of the company, for a total sum of Rs. 8.88 crores.

14. In terms of clause 7.1 of the SHA dated December 3, 1998, each of the promoters has a right, but no obligation to sell his remaining 29,694 (12.25 per cent.) equity shares of the company to the sixth respondent at a pre-determined price as specified therein and to be certified by the company's auditors. The SHA further stipulates that before calling upon the sixth respondent to purchase the shares in terms of clause 7.1, each of the promoters would have to offer the shares to the other three promoters at the same computed price, who would have a right of first refusal, before the sixth respondent is called upon to purchase the shares. This option is available to each of the promoters for a period of five years from December 18, 1998 to December 18, 2003.

15. Clause 7.14 of the SHA explicitly provides that in the event of any one of the

promoters exercising his option to sell his shares in terms of the SHA, he shall automatically also resign as a managing/joint managing director of the company and all his rights under the SHA shall come to an end. Article 19.4 incorporating clause 8.6 of the SHA, envisages that the petitioner was entitled to be the joint managing director until (a) shareholding is reduced below 12.25 per cent.; or (b) he ceases to hold the office of joint managing director for any reason ; or (c) he attains the age of 65 years which ever is earlier. There is no provision for any "directorship for life" in the amended articles of association of the company.

16. The company adopted a fresh set of articles of association incorporating various clauses of the SHA at the extraordinary general meeting held on December 9, 1998. Accordingly, clauses 7 and 8 of the SHA came to be incorporated as articles 9 and 19 respectively and duly filed Form 23 with the Registrar of Companies. The petitioner has admitted in his original unregistered petition dated November 29, 2003, that the articles of association of the company was amended incorporating the provisions of the SHA and, therefore, he cannot retract from his past stand. The four promoters, namely, the petitioner and respondents Nos. 2 to 4 have resigned on December 18, 1998, from the office of director of the company, as stipulated in clauses 8.3 and 8.4 of the SHA and clauses 19.2 and 19.3 of articles of association of the company, which was recorded at the board meeting held on December 18, 1998. This was followed by Form 32 filed with the Registrar of Companies, notifying the appointment of nine directors for a period of three years. The petitioner and respondents Nos. 2 and 4 have given a declaration that conditions preceding to the acquisition of the 51 per cent. of shares by the sixth respondent have been completed which included the stipulation regarding the amendment of articles of association of the company in accordance with clauses 2.1 and 2.3 of the SPA. The amended memorandum and articles of association containing various clauses of the SHA have been produced by the petitioner along with his unregistered petition dated November 29, 2003, whereas he has produced the old and unamended memorandum and articles of association of the company along with the present petition, with a view to misguide this Bench. Clause 8 of the SHA deals with the control and management of the company. All directors shall be appointed once in three years in accordance with the principle of proportional representation, as envisaged in section 265 of the Act. The petitioner and respondents Nos. 2 to 4 were appointed as the whole-time directors including the petitioner as the joint managing directors in terms of clause 8.6 of the SHA, which has been incorporated as article 19.4 of the amended articles of association of the company and further obtained necessary approvals of the Central Government in the matter of appointment as well as remuneration of the directors. The petitioner and the joint managing director, in pursuance of article 19.4 discharged his functions accordingly, drawing remuneration for the whole period of his term, as the whole-time director and the joint managing director of the company. At the extraordinary general meeting of the company held on December 19, 2001, the nominees of the sixth respondent were elected as

directors and promoters were re-appointed as the whole-time directors, including the petitioner as the joint managing director, upon expiry of the original term of the years from 1998, as reflected in Form 32 filed with the Registrar of Companies. The petitioner similarly acted upon the aforesaid resolutions and availed the remuneration from the company for more than two years until his resignation in January, 2004.

17. The fourth respondent in terms of the SHA offered to sell his remaining 12.25 per cent. shares in the company at the rate of Rs. 1,012.21 per share in favour of the petitioner and respondents Nos. 2 and 3, upon which the petitioner promptly declined to accept the offer made by the fourth respondent by way of making necessary endorsement in the letter of offer dated August 4, 2003. Respondents Nos. 2 and 3 purchased equal number of shares from the fourth respondent at the price certified by the company's auditors, which was followed by delivery of share certificates, invoices, shares transfer forms, letter of resignation and no claim by the fourth respondent as well as delivery of cheque by respondents Nos. 2 and 3. The petitioner having admittedly declined to buy the shares offered by the fourth respondent, is estopped from claiming one-third shares of the fourth respondent. The petitioner did not challenge the purchase of shares of the fourth respondent by respondents Nos. 2 and 3 in the unregistered company petition dated November 29, 2003.

18. The petitioner, in terms of clause 7.6 of the SHA had offered on August 11, 2003, his remaining 12.25 per cent. of equity shares of the company at the auditor certified price, namely, Rs. 1,012.21 per share to respondents Nos. 2 to 4, who declined the offer made by the petitioner, and thereafter, the petitioner gave a notice dated August 23, 2003, calling the sixth respondent to purchase his 12.25 per cent. of equity shares in terms of the clause 7.1 of the SHA. The petitioner categorically stated in paragraph 9 of the unregistered company petition dated February 16, 2004, to the effect that the petitioner offered to sell his balance 12.25 per cent. shares to the existing promoters, at the first instance in terms of the SHA and the refusal the petitioner offered such shares to the sixth respondent on August 23, 2003, before the stipulated period. This would show that the petitioner willingly offered his balance shares to the sixth respondent. There was no need on the part of the sixth respondent to confirm the purchase of the shares of the petitioner, since it was not under obligation to purchase but the sale was made in exercise of the option at the instance of the petitioner. Furthermore, the sixth respondent acknowledged the letter of offer issued by the petitioner for doing needful action as admitted by the petitioner. At the board meeting held on October 18, 2003, the directors recorded no objections for acquiring the shares of the petitioner by the sixth respondent, pursuant to the option exercised by the petitioner in terms of the SHA and no business was transacted affecting the rights of the petitioner in any manner. The sixth respondent concluded the purchase of the shares offered by the petitioner by making full payment of Rs. 3,00,56,267 on January 17, 2004, by way of a pay order, after obtaining the FIPB permission, in the first week of January, 2004,

against delivery of invoices, share certificates, share transfer form and resignation letter of the petitioner. The petitioner promptly encashed the pay order on January 20, 2004 and absolutely enjoyed the proceeds of his remaining equity shares. It is, therefore, beyond doubt that the petitioner sold his equity share voluntarily in favour of the sixth respondent. The summary of action at the meeting held on January 17, 2004, attended by the petitioner, the fifth respondent and director of the sixth respondent would evidence the due process of sale of shares of the petitioner in favour of the sixth respondent. The letter of resignation and no claim was prepared on January 15, 2004 and signed on January 17, 2006, on completion of the formalities of the sale and after receipt of the pay order by the petitioner, the proceeds are still held by him.

19. The petitioner in his legal notice issued dated February 9, 2004, sent to the sixth respondent challenged only his letter of resignation from the office of director of the company and no grievances have been made of the sale of his shares to the sixth respondent, which has been reiterated in his reply legal notice dated March 6, 2004, showing the sale of his shares voluntarily effected in favour of the sixth respondent. The petitioner in his early company petitions (C. P. No. 14 of 2004 and C. P. No. 26 of 2004) raised grievances only in respect of his directorship and not of the sale of his shares to the sixth respondent. These company petitions were dismissed on August 25, 2004, on the ground that the petitioner ceased to be a member of the company even prior to initiating of the proceedings, against which appeals have been preferred before the High Court of Karnataka. The plea that the petitioner was coerced to sell his balance of shares to the sixth respondent is falsified by his categorical admission made in his reply notice dated March 6, 2004 and the unregistered company petition dated February 16, 2004. By virtue of clause 19.4 of the articles of association, the promoters can hold the office of director till their shareholding is not reduced below 12.25 per cent. Hence, the letter of resignation of the petitioner is superfluous and accordingly, he ceased to be director as sale of his 12.25 per cent. shares to the sixth respondent.

20. The petitioner's son and daughter have incorporated a company under the name and style of Icon Insulation P. Ltd. (IIPL) on February 21, 2004, immediately after the petitioner receiving the sale proceeds of his equity shares in the company, by subscribing to the memorandum and articles of association. IIPL is engaged in manufacturing of products which are identical and competing with the company. The petitioner has offered his personal guarantee as well as his residential properties to secure the bank dues availed by IIPL, thereby associating with IIPL since February, 2004 onwards contrary to the memorandum of understanding dated December 10, 1998.

21. The petitioner sold his entire shareholding in the company voluntarily and willingly for huge sums of money as early as January 17, 2004 and thereby he ceased to be shareholder as well as director of the company, not entitling either for inspection or for copies for the statutory records of the company. The

common order dated August 25, 2004, made in C. P. Nos. 14 and 26 of 2004 would show that the petitioner did not challenge the validity of the SPA and SHA in his earlier unregistered company petition filed on December 1, 2003. The petitioner is a party to these agreements and acted in accordance with the same for nearly five years and therefore, cannot selectively disclaim a part of the agreements at his whim and fancy. Nonetheless the provisions of the SHA have been incorporated in the articles of association of the company.

22. The petitioner having declined to purchase the shares of the fourth respondent and sold his own shareholding to the sixth respondent, in terms of the articles of association of the company is not interested to associate with the company. The petitioner has confirmed in his letter of resignation and no claim that the sale of his shares has been carried out in accordance with the terms and conditions as stipulated in the articles of association of the company. The petitioner has been further confirmed that he has no rights as a shareholder or director or promoter or employee of the company and that he has no claims against the company or any of its directors or shareholders.

23. The petitioner never raised any grievances in the unregistered company petition dated November 29, 2003, with regard to his preference shares redeemed in October, 2003 by the company. The petitioner could never be forced to handover the preference shares by a middle level officer working in the company, as claimed by the petitioner being the joint managing director and the covering letter dated November 3, 2003, does not indicate any protest on the part of the petitioner. In any event the petitioner himself had received and encashed the proceeds of Rs. 26 lakhs before November 3, 2003, on which date the preference share certificate came to be handed over by the petitioner. All preference shares were redeemed and the redemption proceeds were dispatched to all the promoters and therefore, there is no question of the petitioner being discriminated or oppressed as claimed by him. The petitioner at no point of time proposed the name of any of his children for employment in the company and however, cannot have any complaint, in view of their incorporation of a separate entity, thereby engaging in competing business with the company. Accordingly sought for dismissal of the petition.

24. The Company Law Board thereafter on hearing Learned Counsel for the parties and on the basis of the material placed on record held that the petitioner has not established any acts of oppression being harsh and wrongful or mismanagement in the affairs of the company, entitling him for any equitable reliefs as claimed and further he has neither made out any case justifying winding up order on just and equitable grounds and accordingly, rejected the petitions preferred by the appellant/petitioner by his order dated May 30, 2008.

25. The appellant/petitioner aggrieved by the order of rejecting his company petitions is in appeal before this Court.

26. We have heard Learned Counsel for the respective parties.

27. During the pendency of these appeals respondents Nos. 2 to 4 have filed their respective affidavits dated March 3, 2009, stating that neither they are the shareholders nor directors of the first respondent-company. Therefore, they are not necessary party to these proceedings and accordingly, their names be deleted from the proceedings.

28. Learned Counsel appearing for the appellant assailing the impugned order contended that the Company Law Board has erred in not directing its attention to the issues raised by the appellant for which he has placed ample material to show that the respondents have acted detrimental to the interest of the appellant. He further contended that though the appellant had placed material to show that he had not been issued with any notice of the meetings of the company in which meetings they had passed resolutions which affected the interest of the appellant and further as there is no material to show that the amended articles of association had been sent to the Registrar of Companies on which they are placing reliance to hold that the appellant had no interest in the company erred in holding non-issuance of notice has not prejudiced the interest of the appellant and the material on record has revealed that amended articles of association has been sent to the Registrar of Companies. He further contended that the Board has also failed in its function in not approaching the issues in the right perspective and examining the various acts of mismanagement oppression committed by the respondents/shareholders against which the appellant had complained. He also further contended that though it was pointed out that an uneven treatment has been meted out to him by the actions of the respondent which constituted an act of oppression, the Board holding it otherwise cannot be sustained. He further contended that the Company Law Board has erred in not taking into consideration the relevant aspects and the materials which has been placed by him before the Company Law Board and in the absence of worthwhile objections to the petition by the respondent, it has erroneously dismissed the petition and further as the decision of the Company Law Board is not based on the material placed on record and by not applying the relevant law to the petition on hand it is totally a perverse order. Further, he also contended that Company Law Board has passed orders in the chambers contrary to what is contemplated as per the Rules and Regulations governing the procedure to be followed by the Board inasmuch as the order was neither dictated nor pronounced after notifying the date in the open court hall, as such it being in violation of regulation 29 of the Company Law Board Regulations, 1991, the order is a nullity. Therefore, the impugned order of the Company Law Board cannot be sustained as it suffers from legal infirmity, accordingly, it be set aside and the petition filed by the appellant/petitioner be allowed by granting the reliefs sought for in the same.

29. Per contra, Learned Counsel appearing for the respondent-company supporting the impugned order contended that since the same is based on material facts supported with law, it does not call for any interference. In this connection, he submitted the material on record reveals that the petitioner had resigned from the company by taking the value of the shares which he was

holding and as he was a party to the meeting in which resolution was passed, he cannot be allowed now to somersault and say he was not a party to any of the resolution and he had no notice of the same. He further contended that the amended articles of association of the company had been sent to the Registrar of Companies which the petitioner himself has placed before the Company Law Board and in view of the same, the contention that there is no amendment to the articles of association cannot hold water. He further contended the Company Law Board after examining all the material on record has come to the right conclusion that the petitioner had no interest in the company and in view of his conduct in accepting the share amount and having started another company along with his daughter and son, he cannot make a grievance that his interest has been affected and he has been ousted without any proper justification. He further contended that in the facts and circumstances of the case, the petitioner has not made out any acts of oppression and mismanagement by the respondents. Taking from any angle the impugned order of the Company Law Board having been based on substantive material placed by the respondent which is justifiable, the same does not suffer from any illegality or infirmity calling for interference hence the appeal be dismissed.

30. In the light of the aforesaid facts, the material on record and the rival contentions the points that arise for consideration are :

- (i) Whether the appellant has made out a case of either oppression or mismanagement or both ?
- (ii) Whether the impugned order of the Company Law Board suffers from any legal infirmity calling for interference ?

31. The undisputed facts as disclosed from the material on record are :

Initially the petitioner along with respondents Nos. 2 to 4 floated a company under the name and style Pearl Insulations P. Ltd., in which they were the directors for life holding 25 per cent. share each in the capital structure of the company amounting to Rs. 4,50,00,000. Thereafter with the able assistance of the petitioner the said company prospered in the market and was able to withstand tough competition from the like companies with the joint and consolidated efforts of the petitioner and respondents Nos. 2 to 4. Thereafter visualising the good market potential for their products, they decided to start one more unit and accordingly, they entered into a memorandum of understanding among themselves on January 16, 1997, under which an arrangement was arrived to safeguard the interest of the company and also the welfare of the families of the partners for all times to come. In pursuance of the said memorandum of understanding the petitioner, respondents Nos. 2 and 4 and Smt. Leelamma, wife of the third respondent floated a company which was incorporated on February 27, 1997, under the Act having its registered office at Bangalore. Initially the company was established as a firm and later it was converted into M/s. Pearl Metal Products (Bangalore) P. Ltd., Bangalore. The

promoters of the company were the equal partners and they are the first directors who shall hold the office permanently. However, the third respondent later became a permanent director consequent upon acquiring shares from his wife, viz., Smt. Leelamma. The entire issued and paid-up capital of the company was equally held amongst petitioner and respondents Nos. 2 to 4.

32. By virtue of the SPA and SHA dated December 3, 1998, M/s. Von Roll Isola Holding Ltd., a company having its principal office at Gerlafingen, Switzerland had acquired 51 per cent. of the total issued, subscribed and paid-up capital, equity capital of the company through its 100 per cent. subsidiary being the sixth respondent herein from the petitioner and respondents Nos. 2 to 4 for a total price of Rs. 6.42 or ores on the terms and conditions set out in SPA. The SHA dated December 3, 1998, envisages, inter alia, that the sixth respondent and promoters shall respectively hold 51 per cent. and 49 per cent. of the equity share capital of the company. Each promoter would have for a period of five years from the completion of the SPA a continuing right to sell. The sixth respondent would have an obligation to buy from each of the promoters the remaining 12.25 per cent. shareholding of the company. The sixth for a period of five years from the date of completion of the SPA would have a continuing right to sell and the promoters will have only a first right of refusal in respect of shares offered to them in proportion of their respective shareholding in the company.

33. The terms and conditions of transfer of shares, which shall include price formula are explicitly specified in the SHA (clause 7.1). In the event of any one of the promoters desiring to dispose of his shareholding in the company, he has to necessarily first offer his shares to the other promoters in terms of the conditions specified in clause 7.1(a), (b) and (c). The exit option contained in clause 7 is available only in regard to the entire lot of 12.25 per cent. holding of each of the promoters in one lot, and not for any piecemeal disinvestment of such holdings. Any acceptance of shares by any parties in the SHA should require corresponding acceptance of the same number of shares of the company (clause 7.5). Any party desirous of selling its shares (the "selling shareholder") shall serve a notice in writing on all the other shareholders ("the non-selling shareholder") specifying the sale price in accordance with the price formula and certified by the auditors of the company, upon which a non-selling shareholder shall exercise its option to purchase the shares within a period of 30 days from the date of the notice. The sale price certified by the company's auditors shall be final and binding on the parties, unless mutually agreed to otherwise by them. The selling and non-selling shareholders shall make necessary applications to the concerned regulatory authorities to complete the sale transaction (clause 7.6). The non-selling shareholder in the event of not exercising its right to purchase the shares within the prescribed time, then for a period of 90 days, thereafter, the selling shareholder is entitled to transfer its shares to any third party. However, if the selling shareholder is unable to find a third party at the price formula specified in the SHA for a period of up to 90 days, then the same shares may be offered to a willing third party at a price lower than the price formula

stipulated in the SHA. However, the selling shareholder shall first offer the shares to the non-selling shareholder at a price which is higher by a rupee one per share above strike price per share negotiated with the third party by the selling shareholder (clause 7.8). In the event of any one of the promoters exercising his option to sell his shares in terms of the SHA, he shall automatically resign as a managing director/joint managing director, as the case may be, of the company and all his rights under the SHA shall automatically come to an end (clause 7.14). The sixth respondent, upon acquisition of 51 per cent. shareholding of the company would control the overall financial and operating policies of the company, while the day to day management and operations of the company would continue with the promoters, so, long as the promoters function in accordance with overall policies and strategies determined by the sixth respondent (clause 8.1). The election and appointment of directors shall be done in terms of clause 8.3, which envisages appointment of five directors by the sixth respondent including the chairman of the board and one director by each of the promoters (clause 8.3). All directors of the company shall be elected and appointed once in three years, in accordance with the proportional representation by, a system of cumulative voting as per the provisions of section 265 of the Act (clause 8.4). The sixth respondent shall have a right to fill in any casual vacancy caused in the office of directors appointed by it, by reason of his/her resignation, death, removal or otherwise. In the event of any of the promoters ceases to be the managing director/joint managing director of the company and the said promoter individually or together with his family members, as defined in clauses 7.12 hold 12.25 per cent. of the share capital of the company in accordance with the SHA, such promoter/family member shall be entitled to appoint another surviving family member as a director of the company (clause 8.14). In the event of any conflict between the terms of the SHA and those of the memorandum and articles of association of the company, the terms of the SHA shall prevail over the latter. The parties shall ensure that the terms and conditions of the SHA are adhered to, to the extent possible. The parties shall ensure that the memorandum of association or articles of association are altered as may be necessary to incorporate the terms of the SHA into the same.

34. The grievance of the petitioner is that :

- (a) Illegal redemption of preference shares ;
- (b) Coerced sale of equity shares belonging to the petitioner in favour of the sixth respondent ;
- (c) Forced removal of the petitioner from directorship of the company ;
- (d) Sale of equity shares of the fourth respondent to respondents Nos. 2 and 3, in gross violation of the terms and conditions of the SHA and articles of association of the company ;
- (e) Denial of access to statutory records of the company ;

(f) Non-sending of notices of board meetings ; and

(g) Statutory violations, while carrying on the affairs of the company.

35. It is the case of the petitioner none of the terms of the SHA has been incorporated into the articles of association of the company. On the other hand, it is the case of the respondent-company that the articles of association of the company has been duly amended incorporating the SHA terms and further, consequent legal formalities have been duly complied with by the company. The said agreement deals with transfer of shares of the company, appointment of directors as per section 265 of the Act and right of a director to appoint another surviving family member as a director. The minutes of the extraordinary general meeting dated December 9, 1998, attended by the promoters including the petitioner would reveal the unanimous approval accorded by the members of the company for amendment and adoption of the articles of association of the company. The said resolution has not been challenged by the petitioner. The cash counter receipt dated August 2, 2001, of the Registrar of Companies, Bangalore reveals that the document dated July 16, 2001, filed on August 2, 2001, with the Registrar of Companies was registered as document No. 162 on August 20, 2001. It is seen that the said document No. 162 relates to filing of Form 23 with enclosures thereon, viz., the extracts of the minutes of the extraordinary general meeting dated July 16, 2001, for conversion of the company from public to private u/s 43A(2A) of the Act together with the amended memorandum and articles of association of the company. The connected amendments pertains to document No. 162 by the Registrar of Companies reflected the amended memorandum and articles of association of the company. The amended memorandum and articles of association form part of a document No. 162, it contains the SHA clauses.

36. The amended articles incorporating the SHA clauses, relate to the document dated December 9, 1998, filed on December 22, 1998, with the Registrar of Companies. Though, this document, as per the report of the Registrar of Companies, a copy of which has been made available to Learned Counsel for both sides, has not been registered, yet the registered document No. 162 comprising of the amended memorandum and articles, contains the SHA terms. Therefore, the amended articles of association of the company incorporating the SHA clauses is deemed to have been taken on record by the Registrar of Companies. Even otherwise, the irregularities, if any, in this behalf will not fall within the ambit of the provisions of sections 397 and 398. The veracity of the amended memorandum and articles of association of the company which have been registered by the Registrar of Companies can never be in doubt and is binding not only on the company but also the members inter se, including the petitioner as well as the respondents, in the light of the decision in *Smt. Claude-Lila Parulekar v. Sakal Papers P. Ltd.* [2005] 124 Comp Cas 685 (SC) and *V. B. Rangaraj v. V. B. Gopalakrishnan* [1992] 73 Comp Cas 201 (SC), as reflected in the impugned order. A perusal of the amended articles of association which have

been extracted in the impugned order discloses that the amendments have been made and incorporated in the articles of association of the company. Therefore, the various clauses of the SHA now incorporated in the amended articles of association of the company would become relevant in respect of issue to be resolved in this particular case.

37. The material on record reveals that the members of the company including the petitioner at the extraordinary general meeting held on December 9, 1998, have approved and adopted the amended articles of association of the company incorporating the SHA clauses. No doubt an attempt is made by the petitioner to show that the Registrar of Companies was not to locate the documents, but having regard to the material on record which reveals that the amended articles of association and the relevant clauses of the SHA have been made available by the petitioner himself by way of copies in the unregistered petition dated December 29, 2003, it has to be taken that the respondents had taken all steps to issue the amended articles of association containing relevant clauses of the SHA with the Registrar of Companies. It is the case of the petitioner after having become the joint managing director asserted that all the joint managing directors shall be allowed to continue in the office as director till the age of superannuation, which is fixed at 65 years in terms of the articles of association of the company, but the amended articles of association of the company ; empowers the joint managing directors to hold their office until their (1) shareholding is reduced below 12.25 per cent., or (2) ceasing their office for any reason whatsoever, or (3) on attaining the age of 65 years, which ever is earlier.

38. The petitioner in his petition dated December 29, 2003, has conceded, the directorship of all the joint managing directors, in both the companies was for life. However, in view of the joint venture with Von-Roll Isola, the articles have been amended by fixing the superannuation at the age of 65 years. The petitioner in the unregistered company petition has accused that the respondents have been deliberately violating not only the articles of the company, but also provisions of section 284 of the Companies Act, 1956. It was with reference to the amended articles of association of the company. The minutes of the board meeting dated December 18, 1998, to which the petitioner is also a party would reveal that pursuant to the SPA/SHA and the articles of association of the company, the promoters had resigned from the board in order to make fresh appointment of directors on the board of the company on proportional representation by a system of cumulative voting u/s 265 of the Act at the proposed extraordinary general meeting. In the said meeting held on December 19, 1998, the promoters, including the petitioner came to be appointed as directors of the company pursuant to the amended articles of association of the company on the terms and conditions set out in the minutes of the aforesaid extraordinary general meeting. The promoters including the petitioner and other promoters have affirmed on December 18, 1998, by way of a declaration, duly stamped, inter alia, that all conditions contained in paragraphs 2.1 and 2.3 of the SPA have been completed. That goes to show that the company has duly fulfilled

in terms of the affirmation of the petitioner in dealing with the amended articles of association of the company. Therefore, the petitioner after having acted upon and enjoyed benefits of the amended articles of association of the company, by drawing his salary and perquisites as the joint managing director till the date of his disputed resignation, is estopped from urging that the SHA clauses have not been incorporated in the articles of association of the company.

39. Coming to the question of the respondent-company has redeemed the prescribed shares from the completion of the SPA, viz., May 31, 2004, it is relevant to know that the promoters and the sixth respondent expressly agreed as contemplated in clause 5(b) of the SHA that as far as possible in the best interest of the company and subject to any law for the time being in force, they shall not redeem the 10 per cent. preference shares subscribed by them before 5 years from the completion date of share purchase agreement. The intention of the parties is clear from the words employed, viz., as far as practicable in the best interest of the company. Therefore, the paramount interest of the company overrides the individual interest of the preference shareholders. Accordingly, there can be no prohibition for redeeming the preference shares in the interest of the company before the redemption period. The company has not adopted any partisan attitude, but has redeemed all preference shares before due date by making payments to all preference shareholders. The petitioner admittedly and without there being any proof of resistance has received the amount from the company due to him by way of cheque in October, 2003 and also realised the proceeds towards the value of preference shares held by the company. According to him he was forced to hand over preference share certificate, but his own letter dated January 31, 2003, enclosing the original preference share certificates duly cancelled by him and handed over to an official of the company by name Shivanand does not indicate any force or coercion played on the petitioner. Therefore it is unthinkable that the petitioner who was functioning as a joint managing director would yield to the pressure of his subordinate staff in respect of surrendering the certificate.

40. Further, after handing over the preference shares he has not chosen to make any complaint of any forced redemption of the preference shares with any competent authority. Apart from the same in the legal notice issued on February 9, 2004, he has never raised plea of any force. On the other hand in his reply legal notice dated March 6, 2004, there is no whisper of any force or coercion exercised on him at the time of premature redemption of preference shares. He has also not raised the said plea and the irregularities in the earlier petition. Therefore it being an after thought cannot be an act of oppression as contended by him. Thereby it cannot be considered as a grievance made out by him.

41. Coming to the next aspect of the sale of share of the fourth respondent in favour of respondents Nos. 2 and 3, the petitioner admittedly has declined to exercise his option to purchase the shares of the fourth respondent and thereby he has waived his right to purchase the same on being offered to him. By virtue

of the SHA the fourth respondent is entitled to sell his shares to any third party in the event of the non-selling shareholder not exercising his right at a price lower than the price formula specified in the manner prescribed therein. After the petitioner rejected the offer of the fourth respondent and having lost his remedy as per the agreement cannot in any way make any grievance of the sale of the shares by the fourth respondent in favour of respondents Nos. 2 and 4 despite they having not exercised the option at the first instance in view of the fact that the shares were acquired by them at the price formula. On the other hand, there would have been justification to question the sale of shares in favour of respondents Nos. 2 and 3 in the event of their acquiring shares from the fourth respondent at a price lower than the price formula. The minutes recording the summary actions of the meeting held on November 14, 2003, in relation to sale of share of the fourth respondent in favour of respondents Nos. 2 and 3 depicts due completion of the transaction between the parties and from the aforesaid very minutes, it is clear that it could not relate to any board meeting of the company and as such, there is no need to send any notice to the petitioner of the meeting held on November 14, 2003. The material on record reveals the transfer of shares of the fourth respondent in favour of respondents Nos. 2 and 3 was not approved in the meeting held on November 14, 2003. The meeting of November 14, 2003, not being a board meeting cannot invalidate for not sending notice to the petitioner. Articles 10 and 11 laid down restrictions on account of transfer of share forming part of the original articles of association whereas, the amended articles of association of the company does not retain either clause 10 or 11 of the original articles in view of the amendment. Therefore, the transfer of share of the fourth respondent need not be in compliance of clauses 10 and 11 of the original articles as claimed by the petitioner.

42. The next charge that the sale of shares in favour of respondents Nos. 2 and 3 is beyond 30 days of the offer made by the fourth respondent do not survive on account of the rule of estoppel and waiver which squarely applied to this case. This purported irregularity according to the petitioner cannot constitute oppression when the petitioner himself has made-up his mind to sell the balance equity shares by issuing notice dated August 11, 2003, in terms of the agreement to respondents Nos. 2 to 4 which was followed by another notice dated August 22, 2003, offering his shares to the sixth respondent. Therefore, there is no merit in the grievance of the petitioner in respect of sale of shares in favour of respondents Nos. 2 and 3.

43. The next grievance of the petitioner is in relation to the transfer of his 10.25 per cent. of equity share of the company in favour of respondent No. 6 on the ground it was done by practicing coercion and making him to sell by force. The material on record reveals the petitioner has made the offer by issuing notice dated August 11, 2003, in terms of the SHA thereby offering his 29,694 equity shares of the company at the price formula specified in the SHA in favour of respondents Nos. 2 to 4 was explicitly declined by them. When respondents Nos. 2 to 4 exercised the first right to refuse in respect of the shares offered to them

by the petitioner, the petitioner offered the same to the sixth respondent by issuing notice dated August 23, 2003, as per the SHA. In his legal notice dated February 9, 2004, though he made a grievance that the sixth respondent has grossly flouted the clauses of the SPA and the SHA, in his reply notice dated March 6, 2004, has clearly admitted that he was not coerced to sell the balance 12.25 per cent. of shares, but he exercised his right. Therefore, from his own admission as reflected in his reply notice it cannot be said that there was any coercion or pressure brought on him. On the other hand he has voluntarily sold his 12.25 per cent. equity shares in exercise of his right and option as provided in the SHA. He has not made any grievance of the same in his earlier petition. Therefore, there is no merit in the contention of the petitioner that his 12.25 per cent. equity share have been transferred in favour of the company by exerting coercion and forcing him to sell. Apart from this it is on record that in the meeting held on January 17, 2004, at Bangalore, the petitioner has received cheque for Rs. 3,00,56,267 for purchase of his shares, has tendered the letter of resignation and no claim from the petitioner to the company. The material on record which includes letter of resignation and no-claim of the petitioner to the company would categorically go to show that he has sold his balance equity shares in the company to the sixth respondent and has delivered the share certificates together with the signed share transfer forms in accordance with the articles of association of the company. He has also confirmed his resignation from the board of directors of the company and has acknowledged the receipt of entire dues arising from his employment as managing director of the company. Therefore, the petitioner will have no claim as a shareholder or director or promoter or employee under the memorandum and articles of association of the company or under the SHA. In view of the admission made by him the sixth respondent has completed the deal after obtaining necessary approval from the FIBP in terms of his communication dated December 30/31, 2003, under which permission for conveying of the Government in favour of the sixth respondent to acquire the equity shares of the petitioner in the company. The record clearly reveals that the petitioner has lost his interest in the company by not only selling his shares accepting the value of the said shares, but also tendering his resignation to the company and issuing no claim certificate.

44. In the board meeting held on October 18, 2003, the board of directors recorded no objection in respect of respondents Nos. 2 and 3 acquiring the equity shares of the fourth respondent held in the company and the sixth respondent acquiring equity shares in the company. The grievance of the petitioner is that he had no notice of the said meeting and other board meetings. But, the petitioner has not been able to place any material to show any prejudice that he has suffered on account of the resolutions of the board of directors regarding no objection of the sale of shares by the petitioner and the fourth respondent or any hardship faced pursuant to any resolution passed by any other board meetings. Therefore, the non-issuance of the notice would not vitiate the board meetings as no prejudicial decision has been taken in the said meetings.

45. As already pointed out in view of his tendering resignation on January 17, 2004 and as he has received the amount in respect of the equity shares to the extent of 12.25 per cent. held by him to the company, he cannot lay any claim that he is still a permanent shareholder in the company to continue as joint managing director.

46. Further, the material on record reveals that the petitioner approached the Board by filing a petition in which he had not raised any of these issues. His grievance is the Board failed to summon the records from the Registrar of Companies which would substantiate his case that there were no amended articles of association and that of the SHA. But, the material on record is otherwise which have been adverted to above which clearly discloses that the petitioner was a party to the meetings in which the amendments were made to the articles of association of the company, after the sixth respondent gained entry into the company by acquiring the shares. The impugned order of the Board and the material on record now placed before us would not disclose that the grievance made by the petitioner are supported with any substantive material. In view of the fact that the petitioner has resigned from the company after taking the value of his shares and as his daughter and son have started another company which is competing with the respondent-company, there is no merit in the case made out by the petitioner in respect of oppression and mismanagement.

47. In so far as the contention of Learned Counsel that the Company Law Board has passed orders in the chambers by not pronouncing in the open court hall after notifying the date and therefore, it is vitiated on account of it being in violation of regulation 29 of the Company Law Board Regulations, 1991, is concerned, at best it may amount to an irregularity and not an illegality affecting the order and as the decision of the Board being based on merits and the irregularity not affecting the order nor it has affected the interest of the appellant-company, we are not inclined to disturb the impugned order in this appeal only on account of such procedural irregularity.

48. Taking from any angle the impugned order of the Board having been passed on facts and justifiable in law, does not suffer from any infirmity or illegality calling for interference in this appeal. Accordingly, we proceed to pass the following order :

The appeals are dismissed.