**(2000) 08 GUJ CK 0012**

**In the Gujarat High Court**

**Case No :** O.J. Appeal No''s. 6 to 8 of 1995 and Company Petition No. 51 of 1991

Smt. Shantadevi Pratapsinh Gaekwad APPELLANT

Vs

Sangramsinh P. Gaekwad RESPONDENT

**Date of Decision :** 09-08-2000

**Acts Referred:**

Companies Act, 1956 — Section 291, 397, 398

**Citation :** (2000) 08 GUJ CK 0012

**Hon'ble Judges :** R.K. Abichandani, J;Anil R. Dave, J

**Bench :** Division Bench

**Advocate :** V.M. Trivedi, P.V. Kapoor and Krishna Kumar, for the Appellant; Jayendra R. Shah, K.S. Jhaveri, Uday M. Joshi, Rohit Kapadia and Kailash Jethmalani, for the Respondent

# Judgement

Abichandani, J.—These three appeals are directed against the judgment and order passed by the learned single Judge on 17-4-1995, in the Company Petition No. 51 of 1991, dismissing the petition which was filed under the provisions of sections 397 and 398 of the Companies Act, 1956 (''the Act''). O.J. Appeal No. 6 of 1995 has been preferred by the petitioners of the Company Petition No. 51 of 1991 and the other two O.J. Appeal Nos. 7 and 8 of 1995 have been preferred by the supporting original respondent Nos. 11 and 12. Since common points were involved, all these three appeals have been argued together by referring to the record of the O.J. Appeal No. 6 of 1995, by both the sides.

2. The case of the appellants in O.J. Appeal No. 6 of 1995 (hereinafter referred to as the petitioners) was that the respondent No. 6 company Gaekwad Investments Corpn. (P.) Ltd. ("the company") which was initially incorporated as a Public Ltd. company in the year 1958 was converted into a Private Limited Company around the year 1971 and its registered office is situate at "Indumati Mahal'', Jawaharal Nahru Marg, Baroda 390 001". The company was established with the objective of carrying on business of an investment trust company and to transact the activities which are referred to in the memorandum of association of

the company and its articles of association at Annexure "A" to the petition.

2.1 According to the petitioners, the said company was closely held by family members and family friends who were its shareholders. Since its incorporation and until his demise on 1-9-1988, Shrimant Fatehsinh Gaekwad was the Chairman of the company and in his absence, his mother the petitioner No. 1 Smt. Shantadevi Pratapsinh Gaekwad used to function as the Chairman. Shrimant Fateshinhrao Gaekwad was holding about 75 per cent of the equity shares of the company. According to the petitioners, the equity share capital in the company consisted of 425 shares of Rs. 100 each, out of which Shrimant Fateshinhrao Gaekwad owned 301 shares, the petitioner No. 1 owned 7 shares, the supporting respondent Smt. Shubanginidevi owned 5 shares, the supporting respondent Smt. Mrunalinidevi Puar owned 10 shares, the respondent No. 1 Shri Sangramsinh P. Gaekwad, brother of Shrimant Fatehsinhrao Gaekwad owned one share and his wife Smt. Asharaje Gaekwad, respondent No. 2 herein owned 5 shares. The remaining shares were held by the members of the family of Shrimant Fatehsinhrao Gaekwad and his friends. The statement showing shareholding pattern of the 425 shares is at Annexure "A-I" to the petition. According to the petitioners, on the demise of Shrimant Fatehsinhrao Gaekwad on 1-9-1988, his mother, the petitioner No. 1 was his sole heir.

2.2 On or about 23-3-1988, according to the petitioners, in a family meeting it was decided to broaden the capital base of the company by further issue of 15,000 equity shares of Rs. 100 each and it was agreed at that meeting and also in a subsequent meeting of the board of directors that out of 15,000 equity shares, 8,000 would be allotted to Shrimant Fatehsinhrao Gaekwad, 500 equity shares to Smt. Mrunalinidevi Puar who was also his sister and 6475 shares to respondent No. 1 Shri Sangramsinh P. Gaekwad. No date was fixed for payment to be made in respect of those shares and the share certificates were to be issued as and when the payments were made. These averments seem to have been made in the petition on the basis of copies of a requisition note containing endorsements in the hand-writing of Shri N.K.K. Mohammed, who was the Personal Secretary of the respondent No. 1 and the draft minutes prepared on that basis. At Annexure "B" to the petition is annexed the said note which is described as a note dated 23-3-1988 in the petition, but on perusal it appears that the said date is written below the endorsement made by Shri N.K.K. Mohammed, which reads ''Minutes of Committing meeting on this basis''. This note is a typewritten note, containing particulars of ''requisitions so far'' and in the margin it bears an endorsement ''Chairman has okayed this''. Annexure ''C'' to the petition is a note dated 29-3-1988 signed by the Company Secretary Mr. M.N. Khade forwarding draft minutes of the Committee meeting held on 21-3-1988 to Mr. N.K.K. Mohammed with a request to approve the same, both the said note bearing endorsement of Mr. N.K.K. Mohammed and the draft minute forwarded under the note dated 29-3-1988 of the Company Secretary Mr. M.N. Khade, reflected the agreed basis for allotment of 15,000 shares as stated in the petition. According to the petitioners, on the death of Shrimant

 

Fatehsinhrao Gaekwad the right in respect of the 8,000 equity shares which were decided to be allotted as per the draft minutes to Shrimant Fatehsinhrao Gaekwad vested in his mother the petitioner No., who was his sole heir. The respondent No. 1 as a member of Shrimant Fatehsinhrao Gaekwad family had been managing the affairs of the company for sometime and after the death of Shrimant Fatehsinhrao Gaekwad, he continued to manage the same. According to them, they had reposed trust and faith in him believing that he would be managing the affairs fairly and honestly and will discharge his obligations to his mother, sisters and other members of the family and close friends. Therefore, no accounts were checked nor any questions asked by the petitioners to the respondent No. 1.

2.3 It is alleged that in or about October/November 1990, the petitioners came to know that the respondent No. 1 had transferred some of his shareholding and that of his immediate family to a non-member with an ulterior motive. The petitioner No. 1, therefore, took inspection of the register of members and the register of transfers and learnt that apart from issuing 6475 equity shares to himself and the members of his family, (as per the requisition note and the draft minutes at Annexures ''B'' and ''C'' to the petition), the respondent No. 1 had fraudulently issued further 3,000 equity shares to his son and daughter, who are respondent Nos. 4 and 5 in the petition, increasing in the process his total shareholding in the company together with the shareholding of his wife, son and daughter and his HUF, i,e., the respondent Nos. 2, 3, 4 and 5 to 9481 equity shares. The respondent No. 1 had thus, changed behind the back of the petitioners, the basic idea of the company being the company of Shrimant Fatehsinhrao Gaekwad and after his death, his mother as the sole heir of Shrimant Fatehsinhrao Gaekwad. It is further alleged in the petition that the petitioners also came to know that the respondent No, 1 and his wife, the respondent No. 2, purportedly transferred 9415 equity shares out of the 9481 to a company named Indreni Holdings (P.) Ltd. (hereinafter referred to as "Indreni") on or about 30-3-1990. According to the petitioners, the said conduct of the respondent Nos. 1 and 2 was motivated to grab the control of the company and the transfer of shares in favour of Indreni was illegal, null and void. After the transfer of their shares to Indreni, the balance number of shares that remained with the respondent No. 1 was 26 and that the respondent Nos. 2,3,4 and 5, ten each, i.e., in all 66. Some of the shareholders filed Suits at Baroda and Rajkot, being Suit Nos. 867 of 1990 and 305 of 1990 respectively, in which ad interim injunction was granted restraining Indreni from exercising any voting rights in respect of the 9415 equity shares transferred to it. The injunctions were served on Indreni on or about 15-12-1990. On 20-12-1990, the respondent No. 2, as the executive director of the company, had called an Annual General Meeting (AGM) of the company, by a notice dated 10-12-1990. It is alleged that the said notice, at Annexure ''D'' to the petition, was not valid since it was not a notice of fourteen clear days as required. The Board meeting at which annual accounts were approved, was held at Bombay on 10-12-1990 and therefore, according to the petitioners, it was physically impossible for the annual accounts to be sent thereafter on that day itself, i.e., 10-12-1990 to the auditors of the company at Baroda for their examination and report and for the auditors to have examined and made the report on that very day at Baroda, and to send it back to Bombay. The fact that all this could not have been done in a single day shows the mala fide conduct of the respondent Nos. 1, 2, 9, 10 and 11. It is further alleged that several shareholders including the petitioners had objected to the validity of the AGM as its very commencement on 20-12-1990. At that meeting which was held in the registered office of the company at Baroda, the respondent No. 1 had taken the Chair and 15 shareholders who are named in paragraph 10 of the petition attended in person or through their proxies. Besides these persons, Shri H.A. Shinde, Shri V.K. Raichand and Shri P.U. Rana also attended the meeting as the directors of the company. The objecting members agreed to participate at the meeting under protest without prejudice to their objections against the validity of the notice. The agenda for the said meeting contained in the notice dated 10-12-1990, referred to the fact that the respondent No. 1 and Dr. G.M. Oza, who were directors, were eligible for re-election and had so offered themselves for that purpose. The agenda also referred to the fact that four additional directors, namely - the respondent No. 2 Smt. Asha Raje Gaekwad, the respondent No. 9 Shri Dilip Thaker, the respondent No. 10 Shri Bhupatsinh Jadeja and the respondent No. 11 Shri V.K. Raichand held office until the date of the said meeting and the resolutions would be considered for their appointments as directors. The other matters on the agenda related to appointment of auditors and payment of a sum of Rs. 3,500 per month as remuneration to the respondent No. 2 who was the executive director. At the AGM, it was pointed out by the other directors who were present that Dr. G.M. Oza had already written a letter to the company, a copy of which was endorsed to all the directors that he had not offered himself for re-election. A copy of that letter dated 17-12-1990 (Annexure "E" to the petition), was shown in the meeting by the director Shri P.U. Rana. It was thereupon unanimously decided to drop the agenda regarding appointment of Dr. G.M. Oza. It is further alleged that after all the items on the agenda were discussed, the respondent No. 1 directed that poll be taken by ballot on all the items except item No. 4 relating to the re-appointment of Dr. G.M. Oza, separately but simultaneously. Shri Ajitsinh Gaekwad, a shareholder and Shri P.U. Rana were appointed as scrutinisers. Ballot papers were distributed to all the members and proxy-holders and after each of them had cast his/her votes, they were collected. It is then alleged that when the question of counting the number of votes arose, the Register of Members was taken out and the number of equity shares mentioned against each member''s name was considered to be the number of votes to which that member was entitled. In the register of members, the number of shares shown against the respective member''s names were indicated as described in para 14 of the petition, as per which 26 shares were shown against the name of the respondent Nos. 1 and 10 each against the names of respondent Nos. 2, 3, 4 and 5. It is then alleged that when the votes were counted, the resolution for the appointment of auditors was unanimously passed. However, the resolutions on all other items on the agenda, including the resolution regarding re-appointment or appointment of the respondent Nos. 1,2,9,10 and 11 as directors of the company were, defeated by a majority of 1122 votes against and 66 for the resolutions. The respondent Nos. 1 to 5 had voted in favour of the resolutions while all others had voted against them. When the respondent found that these resolutions were lost, it is alleged, he took physical possession of the ballot papers, the registers of members, the proxy register, the attendance register and other records and in a fit of rage threatened in presence of the petitioner No. 1 and other lady members that he would be taking them away to Bombay. It is stated that many members attempted to persuade the respondent No. 1 to prevent him from taking away the registers, ballot papers and other documents, but he threatened them by saying that a Police complaint had already been lodged on his behalf and those obstructing him from leaving the meeting with the record of the company would face dire consequences. The members of the company were witness to the conduct of the respondent Nos. 1 and 2 taking away the said record. On ascertaining from the Navapura Police Station, Baroda, it was learnt that the respondent No. 1 had lodged in advance what he described as a Police complaint, a copy of which is at Annexure "F" to the petition. On perusal of that document, it appears that it was written on 20-12-1990 by the Advocate Mr. Kailash P. Jethmalani to the Police Inspector on behalf of his client Shri R.M. Desai, authorised attorney of the respondent No. 6 company, stating that the AGM of the company was fixed at 11 A.M. at the venue stated therein and that his client anticipated that some problem would be caused and some person might break the law and disturb and, therefore. Police Inspector was requested to give Police protection at the said meeting. The petitioners allege that the attempts of the petitioners and other shareholders to persuade the respondent No. 1 to return the papers, failed.

2.4 It is then stated that in the civil suits instituted against the respondent Nos. 1, 2 and 5 at Baroda and Rajkot, they had filed affidavits stating that the share transfer in favour of Indreni on 30-3-1990 was rescinded in a meeting of the board of directors which was claimed to have been held on 9-8-1990. It is stated that in the said affidavits it was mentioned that at the meeting of the board of directors held on 13-7-1990, it had been stated that the notices of transfers of shares of the company by the respondent No. 1 and his family members were not sent to all the members and that since the transfer might not be valid, a legal opinion should be obtained. It was further stated by these respondents that in the Board meeting held on 9-8-1990, the transfers in favour of Indreni were rescinded and the offers for the sale of shares were permitted to be withdrawn. According to the petitioners, the purported transfer in favour of Indreni had in fact not been rescinded at any stage. However, with a view to circumvent the ad interim injunctions granted by the Civil Courts at Baroda and Rajkot in the civil suits, Injuncting Indreni from voting on the 9415 shares already transferred to it, the respondent No. 1, as an after-thought, had belatedly offered this explanation that the transfers were rescinded on 9-8-1990. It is alleged that the said affidavits were filed by the respondents only after the respondent Nos. 1 and 2 took away the register of members and other documents and records of the company with them on 20-12-1990. It is contended that if the transfer of shares in favour of Indreni had already been rescinded in the Board meeting of 9-8-1990, the respondents would not have waited till 20-12-1990 to file a reply in the Suits at Baroda and Rajkot, for stating that the said transfers were rescinded on 9-8-1990. It is also stated that the plaintiffs in the Baroda suit had on 21-12-1990 asked for copies of the minutes of the Board meeting allegedly held on 13-7-1990 and 9-8-1990, but these respondents have not supplied the same till the filing of this petition. The petitioners had made enquiries from the Company Secretary Mr. M.N. Khade, who was present at the meeting of 13-7-1990 and were informed that in the said meeting there were no discussion at all on the fact that the transfer notices were not sent to the shareholders and there was also no discussion about any legal opinion concerning the validity of such transfers to Indreni. Mr. M.N. Khade had informed the petitioners that the alleged meeting of 9-8-1990 had not at all been held and that the transfers to Indreni had not been rescinded at all. The petitioners had stated that they would file an affidavit of the Company Secretary Mr. M.N. Khade to that effect and this they have done later on by annexing his affidavit with the affidavit-in-rejoinder filed by the petitioner No. 1. According to the petitioners, the contention of these respondents that the transfer purportedly made in favour of Indreni was discussed at the meeting of 13-7-1990 and was rescinded on 9-8-1990 was false to their knowledge. It is alleged that this story is belied by the fact that an interim dividend was paid by the respondent No. 6 company to Indreni and that the tax deducted at source was deposited in the State Bank of India after 9-8-1990. It is also stated that the petitioners and several other shareholders had inspected the register of members on 20-12-1990 at the AGM of the company and had found that the name of Indreni was shown therein as the holder of 9415 equity shares and that the respondent Nos. 1 to 5 were holding a total of only 66 equity shares as per the said register. It was stated that the petitioners had obtained certified true copies of the register of members and register of transfers on 10-12-1990, which are produced at Annexures "G" and "H" to the petition. The petitioners apprehended that the respondent Nos. 1 and 2 had tampered with the said registers, which were taken away by them and retained in their custody since 20-12-1990. It was submitted that the respondent Nos. 1 and 2 should be directed to produce before the Court the Minutes of the board of directors as well as those of Committees of board of directors of the company and the register of members, register of transfers, attendance register of AGMs proxies lodged with the company, ballot papers of the AGM of 20-12-1990 and other records and papers which were taken away by them.

2.5 It was further contended that since the respondent Nos. 1, 2, 7, 8 and 9 had ceased to be directors of the company in any event with effect from 20-12-1990, if not earlier, they had no right to represent themselves to be the directors of the company. The petitioners however, received a notice dated 5-1-1991 as per Annexure "I" to the petition, under the signature of the respondent No. 2, claiming to be the executive director of the company, stating that an Extraordinary General Meeting was called on 14-1-1991 at Bombay. By that notice, an intimation was given for removing Shri P.U. Rana and Shri H.A. Shinde, who had been directors of the company for last several years. The notice for their removal was moved by the respondent No. 4 Shri P.S. Gaekwad, who is the son of respondent Nos. 1 and 2. Furthermore, the registered office of the company which had ever since its inception been situated at ''Indumati Mahal'' at Baroda was sought to be shifted to Surat and the respondent No. 1 was sought to be made a permanent director and Chairman of the company. The restrictions on the transfer of shares were sought to be diluted to facilitate the transfer of shares of the company in favour of concerns in which these respondents had an interest. According to the petitioners, all these changes were sought to be effected in haste to defeat the legitimate claims and rights of the petitioners and to perpetrate the power and authority of these respondents to use the company to their own personal benefit. The power to call such meeting was questioned by several shareholders including Shri P.U. Rana and Shri H.A. Shinde and telegrams dated 13-1-1991 were addressed stating that since the respondent Nos. 1 and 2 ceased to be the directors, and had no authority to call such a meeting. These are produced at Annexures "I-A" collectively to the petition. Shri P.U. Rana sent a detailed letter dated 10-1-1991 to the respondent Nos. 1 and 2 in this regard, which was according to the petitioners, evasively and falsely replied. These are at Annexures "J" to "M" of the petition. It is also alleged that the notice dated 5-1-1991 was not valid as it was not a 14 clear days notice. The respondent Nos. 1 and 2 published an advertisements (at Annexures "O* and "P" to the petition), alleging that the extraordinary general meeting of the company was held on 14-1-1991 and at the said meeting, the respondent No. 1 was appointed as a permanent director and Chairman of the company; (2) that Shri P.U. Rana and Shri H.A. Shinde had been directors of the company; (3) that the registered office of the company had been shifted from Indumati Mahal, Baroda to Surat and (4) the article of association of the company had been altered. According to the petitioners, the respondent Nos. 1, 2, 9, 10 and 11 ceased to be directors of the company and, therefore, had no authority or power to call such meeting. The company through its director Shri P.U. Rana, published an advertisement in various newspapers as per Annexure "Q" to the petition, in which according to the petitioners, true and correct facts were stated.

2.6 It is also contended that despite the petitioner No. 1 having called upon the respondent No. 1 orally on several occasions and later by a letter dated 29-11-1990 to give share certificates of the said 8,000 equity shares which were to be allotted to Shrimant Fatehsinhrao Gaekwad, respondents had neglected to do so. A copy of the letter dated 29-11-1990 is at Annexure "R" to the petition. The petitioners alleged that the respondent Nos. 1 and 2 had further colluded and purported to allot 3,000 equity shares to their children Pratapsinh S.

 

Gaekwad and Miss Priyadarshini S. Gaekwad, i.e., the respondent Nos. 4 and 5, who were minors and thereby had acted contrary of the decision which was arrived at in March 1988, by appropriating in the names of their children, additional 3,000 equity shares over and above 6475 equity shares, to which as per the decision taken in March 1988, the respondent No. 1 was entitled for allotment. The respondent Nos. 1 and 2 had illegally attempted to transfer 9415 shares out of their holdings of 9481 equity shares to Indreni and had raised "palpably false story" that the transfer in favour of Indreni was rescinded on 9-8-1990. It is also alleged that respondent Nos. 1, 2, 9, 10 and 11 had purported to relieve long standing employees of the company including its Company Secretary Shri M.N. Khade. On these allegations it was contended that the affairs of the company were being carried on in a manner prejudicial to the interest of the company and to the public interest. It was also pointed out that the respondent Nos. 1 and 6 have filed Civil Suit No. 63 of 1991 in the Court of learned Civil Judge (Senior Division) at Surat against the petitioners and others claiming themselves to be the directors of the company and seeking various reliefs it is also alleged that in order to grab control and properties of Alaukik Trading Investments (P.) Ltd. the respondent Nos. 1 and 2 acting as the board of directors of the respondent-company filed Special Civil Suit No. 675 of 1990 in the name of the company, in the civil Court (Senior Division) at Baroda. According to the petitioners in view of various acts and omissions on the part of the respondent Nos. 1 and 2, the affairs of the company were being conducted in a manner prejudicial to the public interest and for the ulterior motive of serving the personal interest of the respondent Nos. 1 and 2 and their beneficiaries.

2.7 On the above allegations, the petitioners initially sought a relief of declaring that the petitioner No. 1 and/or her nominees were the allottees of 8,000 equity shares of respondent No. 6 company besides the shares previously held by late Shrimant Fatehsinhrao P. Gaekwad, a direction on the company to issue share certificates on that basis by adjusting the amount of Rs. 8 lakhs as share money from out of the deposits standing to the credit of the petitioner No. 1 with respondent No. 6 company, a declaration that the issue of allotment of 3000 shares in excess of 6475 equity shares to respondent No. 1 and/or his nominees, respondent Nos. 2 to 5 was null and void and seeking rectification of the register of members, a declaration that the petitioner No. 1 as mother and sole heir of Shrimant Fatehsinhrao P. Gaekwad was entitled to be in the majority and/or control of respondent No, 6 company, a declaration that respondent Nos. 1, 2, 9, 10 and 11 had ceased to be the directors of respondent No. 6 company and by an amendment, an alternative declaration that all the allotments of shares in the respondent No. 6 company made beyond the original paid up capital consisting of 425 equity shares as existing on 23-3-1988 were null and void, illegal and of no legal effect and seeking to set aside the same, alternatively, a declaration that the allotment of 6475 equity shares of respondent Nos. 1 to 5 and/or their nominees was subject to the simultaneous allotment of 8,000 equity shares to petitioner No. 1, 500 equity shares to Smt. Mrunalinidevi Puar, 25 equity shares to Smt. Shubhanginidevi and that the allotment of any further shares including the said 3,000 shares to respondent Nos. 4 and 5 was null and void. It was also prayed that in the event of the Court holding that allotments of 6475 shares to respondent Nos. 1 to 5 and 3,000 shares to respondent Nos. 4 and 5 were valid, it should be directed that the said 9475 shares which were transferred to Indreni shall be offered and transferred by the respondent No. 6 to the shareholders, on pro rata basis of their original shareholding of 425 equity shares. There are various other prayers for interim relief, which need not be referred to here.

3. In response to the petition, the respondent No. 1 filed his affidavit-in-reply dated 21-3-1991, denying the allegations and raising a preliminary ground that the petition ought not be entertained in view of the fact that the allegations and grievance set out in the petition were urged in some form or the other in the related proceedings pending before the civil Courts, namely - three Suits at Baroda, one Suit at Rajkot and one Suit at Surat, as per the list Annexure-I to the af fidavit-in-reply. It was contended that the provisions of sections 397 and 398 were not attracted and that there was no oppression of minority as contemplated by these provisions. According to the respondent No. 1, the petition was calculated by the petitioners and their supporters to wrest control and management of the well-known and prosperous Public company, namely - Baroda Rayon Corpn. Ltd. It is alleged that the petitioners had made false statements that the respondent No. 6 company and various other business entities were meant to be the personal property of late Shrimant Fatehsinhrao Gaekwad and that they passed by inheretence. Moreover they had made false statements relating to the issue of 15,000 equity shares and related aspects and concerning the AGM held on 20-12-1990. The case of the respondent No. 1 is that he was appointed as an Additional Director of Baroda Rayon Corpn. from 1 -7-1970, became its Joint Managing Director in 1975 and after the death of the managing director on 3-9-1976, he assumed full responsibility of that company under the supervision of the Board and subsequently was designated as managing director for two periods of 5 years with effect from 19-2-1980 and 19-2-1985. After the death of the Chairman Shrimant Fatehsinhrao P. Gaekwad on 1-9-1988, the Board appointed him as Chairman and managing director on 23-9-1988 in the said Baroda Rayon Corpn. According to him, he had devoted his full time and attention and brought that company to its prosperous days.

3.1 It is alleged that the Baroda Rayon Corporation and the respondent No. 6 company were managed by the executives and outside professionals and that Shrimant Fatehsinhrao Gaekwad was not actively involved in their day-to-day management. In 1988, the respondent No. 2 was appointed as an executive director in the respondent No. 6 company and managed it with the assistance of the Executives. It is further alleged that Shrimant Fatehsinhrao Gaekwad was not interested in business or actual participation in financial matters and a large chunk of his shares, i.e., 300 out of 425 shares was held by one Jaysing Ghorpade Trust, through Shrimant Fatehsinhrao Gaekwad as the trustee and, therefore, he was not the owner of the shares because he had no beneficial interest therein. Moreover, there were members from outside the family, namely Shri Jadeja, Shri V.L. Raichand, Shri Dilip Thakker, Shri K.D. Merchand, Shri E.B. Desai and Shri K.K. Shah, who had been in the board of directors. According to him, the respondent No. 6 company was a small investment company and it made loss in the years ending 31-3-1987 and 31-3-1988, as a result of which substantial part of the equity and reserves were wiped out. When Baroda Rayon skipped the dividend in year 1986-87, this company also came into financial trouble. In these circumstances, at a Board meeting of the company held on 8-1-1988 when the respondent No. 1 was in chair and Shrimant Fatehsinhrao Gaekwad was absent, while Mr. P.U. Rana and Mr. P.H. Chinoy had attended the meeting, after taking into account all the circumstances, the board of directors resolved that 15,000 equity shares of Rs. 100 each be issued at par to the members of the company. The resolution which was passed at Board meeting, which has been reproduced in the affidavit-in-reply, reads as under:-

"RESOLVED that out of 25,000 equity shares of Rs. 100 each, 15,000 equity shares of Rs. 100 covering Rs. 15,00,000 be issued at par to the members of the company at present and the balance as and when required.

FURTHER RESOLVED that the management Committee of the company be and is hereby authorised to issue equity shares to members in such proportion as it deems fit.

FURTHER RESOLVED that the Management Committee be and is hereby authorised to do all such acts, deeds and things necessary for the purpose."

Pursuant to the above resolution, the Company Secretary Mr. M.N. Khade issued a circular letter dated 12-2-1988 to all the existing shareholders requesting them to subscribe for the equity shares at par. It was stated therein that if no reply was received by 10-3-1988, it would be presumed that the shareholders concerned were not interested in the offer. That letter is at Annexure "16" of the affidavit-in-reply of the respondent No. 1. The minutes of the earlier meeting held on 8-1-1988 were confirmed at the Board''s meeting held on 13-2-1988. It is further stated in paragraph 6(g) of his reply that since no offers were received from the existing shareholders, the Managing Committee decided at its meeting held on 21 -3-1988 to extend the time for the said offer and it was further decided that out of 15,000 shares, 8,000 shares be kept apart for the time being for Shrimant Fatehsinhrao Gaekwad "as he was desirous of subscribing to the same". The balance 7,000 shares were kept apart for the other existing members of the company including 6475 shares for the respondent No. 1 and his children. It was further stated by the respondent No. 1 in the said reply that between March 1988 and 9-6-1988, the company subsequently reminded Shrimant Fatehsinhrao Gaekwad to subscribe to 8,000 shares which were offered to him, but he decided that he would not subscribe to them and renounced the offer in favour of the respondent Nos. 1, 4 and 5. In the meanwhile during the period between 21-3-1988 and June 1988, the said 7,000 shares were allotted on various dates during that period to the shareholders who subscribed to the shares and paid application money to the company. In addition to the 500 shares already allotted to Mrs. Puar, she was further allotted 500 shares out of 8,000 shares kept apart for Shrimant Fatehsinhrao Gaekwad. According to the respondent No. 1, at this stage itself the sanctity of keeping aside 8,000 shares for Shrimant Fatehsinhrao Gaekwad was broken. It is then stated that as far as balance 7,500 shares were concerned, in view of the clear expression of disinterest by Shrimant Fatehsinhrao P. Gaekwad and his renunciation thereof in favour of the respondent No. 1 and his children in June 1988, the same remained unallotted. It is also stated that all efforts were made to find subscribers from the existing members to take up the remaining 7,500 shares. Ultimately, the respondent No. 1, his children Pratapsinh Gaekwad and Priyadarshiraje S. Gaekwad applied for further 3,000 shares through their guardian and in view of the availability of shares, the Board of the company decided to issue and allot the said 3,000 shares to them, thereby leaving only an unallotted quantity of only 4,500 shares, which according to the respondent No. 1 were not available for allotment. It was contended that the suggestion in the petition that the petitioner No. 1 had as long back as in November 1988 deposited an amount of Rs. 15 lakhs to subscribe for shares of the company and that by letter dated 29-11-1990 sought retrospective entitlement to 8,000 shares on the ground of being the sole heir of the beneficial interest/right of Shrimant Fatehsinhrao P. Gaekwad was false and incorrect. According to the respondent No. 1, an amount of Rs. 15 lakhs was paid as a loan to the company and that she had no right to apply for 8,000 shares. It was contended that in any event, the right to the said issue was renounced by Shrimant Fatehsinhrao Gaekwad in favour of the respondent No. 1 and his children.

3.2 It was further stated in the said reply that the respondent Nos. 1 to 5 had floated their own investment company, namely Indreni Holdings (P.) Ltd., in which the respondent Nos. 1, 2, 3 and 4 had 50 equity shares each and the other holder Prasang Holdings (P.) Ltd. had 800 equity shares in the company. It was stated that in Prasang Holdings (P.) Ltd., the respondent Nos. 1, 2, 3 and 4 had 250 equity shares each and under the circumstances, Indreni was wholly owned investment company held and controlled by the respondent No. 1 and his family. For wealth-tax purposes, it was felt that barring a token shareholding to be held by the respondent Nos. 1 to 5, the bulk of their shareholding in the respondent No. 6 company would be transferred to Indreni and accordingly 9,415 shares were transferred to Indreni, as stated in paragraph 6(m) of the affidavit-in-reply. It is stated that the respondent Nos. 1 to 5 had requested the Company Secretary Mr. M.N. Khade to circulate a formal offer in accordance with articles 5 to 9 of the articles of association of the company. On an assurance from him that all procedures were complied with, the transfers were effected to Indreni at the Board meeting held on 30-3-1990. It is further stated that in the Board meeting held on 9-6-1990, on enquiries being made it was ascertained that the share transfer register was not traceable either at the registered office of the company or at the Bombay office of the company and, therefore, the respondent No. 1, as a Chairman, directed that a fresh transfer register should be maintained. According to the respondent No. 1, at the Board meeting held on 13-7-1990, the Board was for the first time informed that the transfer notices under article 9 of the articles of association of the company were not given and it was suggested that the transfer of shares by the respondent Nos. 1 to 5 to Indreni may be considered to be irregular. It was therefore, decided to reconsider the issue and invite legal opinion on the matter and to reconsider the matter after receiving views from the transferors and transferees and in accordance with legal opinion. It was further stated that after considering all aspects of the case including the legal opinion, on 9-8-1990, the Board decided to cancel and rescind the transfer of 9415 shares which was made by the respondent Nos. 1 to 5 to Indreni, and, thereupon the status-quo ante was restored. According to the respondent No. 1, the Company Secretary Mr. M.N. Khade had acted against the interest of the company and at the behest and as a puppet of the petitioner''s group. In paragraph 6(4) of the affidavit-in-reply, it was stated that before it was decided by the respondent Nos. 1 to 5 to transfer the shares to Indreni, Mr. M.H. Khade was told to inform the existing shareholders as per the articles of the company. It was stated that it was felt that keeping in mind the closely held nature of Indreni which was merely respondent Nos. 1 to 5 in a corporate form, none of the other members would get hyper-technical but would readily consent in the transfer to Indreni, as any reasonable and fair-minded person would have done and hence, there was no real danger of having to disinvest in favour of other members. It is further stated that even though he had prepared a letter dated 15-11-1989 to all the shareholders, he did not deliver them to any of them and falsely informed the respondent Nos. 1 to 5 that there was no response to the proposed transfer it is stated that this was recorded in the minutes of the Board meeting held on 27-12-1989 "in usual course". It was stated that in view of the conduct of Mr. Khade, he was removed from service of the company from 5-1-1991.

3.3 In paragraph 6(I)(2) of the affidavit in reply it is stated that in Suit No. 305 of 1990 filed on 28-11-1990 at Rajkot by Smt Pramilaraje Kachar of Jasdan for similar reliefs an interim order was obtained in respect of these shares on the same day. The date of hearing was fixed on 11-12-1990, but on that day the injunction order was extended till 10-1-1991. It is stated that a couple of days before the date of the AGM i.e., on or around 16-12-1990, some of the defendants of the suit were served the injunction order of the Court. It is stated in paragraph 6(0)(3) of the reply that Suit No. 872 of 1990 was filed by Shri Ajitsinh Gaekwad in the civil Court at Baroda on 19-12-1990, inter alia, for freezing rights in respect of 9415 shares and that the application for injunction was successfully resisted as caveates were filed. It was further stated that at the meeting of the board of directors held on 10-12-1990 at Bombay, the Board had adopted annual accounts for the period ended 31-3-1990. These accounts had been audited by and finalised in consultation with Haribhakti & Company, a Chartered Accountants firm on 7th, 8th and 9th at Bombay. The board of directors had approved draft of the AGM to be called on 20-1-1990. A shorter notice was permissible in accordance with Article 18 of the articles of association and that these notices were dispatched to the shareholders. According to the respondent No. 1, since the board of directors had rescinded the transfer in favour of Indreni on 9-8-1990, the status-quo ante prior to the original transfer to Indreni had been restored and therefore, notice of the meeting was not sent to Indreni. Feeling that the voting rights in respect of 9415 shares were frozen since Indreni was prevented from voting, the petitioner''s group was keen to proceed with the meeting on 20-12-1990. The respondent No. 1, contended in paragraph 6(x)(c) of the reply that the ex parte injunctions which were obtained in Civil Suit No. 867 of 1990 before Baroda Civil Court and Civil Suit No. 305 of 1990 before Rajkot Civil Court were however, infructuous and inoperative, because, those injunctions were obtained against Indreni which was no more a shareholder in law at the relevant time.

3.4 The minutes of the AGM held on 20-12-1990 are annexed at Annexure "18" to the affidavit-in-reply of the respondent No. 1, who has denied any statement or allegation in the petition contrary or inconsistent with these minutes. As regards the resolution for appointment of Dr. G.M. Oza at the said meeting, it is stated by the respondent No. 1 that the said resolution had been included in the notice convening the meeting on the basis of past practice and his oral consent and in any event, implied consent was obtained prior to the meeting. It is contended that the reference to the appointment of Dr. G.M. Oza was entirely irrelevant to the present proceedings and cannot assist the petitioner in their case of ''oppression'' by the majority shareholders within the meaning of section 397 it is further stated that having regard to the conduct of Mr. P.U. Rana and Mr. H.A. Shinde it was decided at the AGM of 20-12-1990 that it was in the interest of the company that they should not continue on the board of directors of the respondent No. 6 company. In the meanwhile, the respondent No. 4 Mr. P.S. Gaekwad had issued notices u/s 190 and section 284 of the Act, proposing resolutions for their removal. These were placed before the board of director on 5-1-1991, when it was decided to convene an Extraordinary General Meeting of the company at a short notice on 14-1-1991. The Extraordinary General Meeting had on its agenda, also a resolution for appointment of respondent No. 1 Shri Sangramsinh Gaekwad as the permanent director and Chairman of the company, a resolution for shifting the registered office of the company to Surat, and a resolution for amendment of the articles of association of the company. It is stated that this meeting was held on 14-1-1991 and the entire agenda was adopted, as a result of which Mr. P.U. Rana and Mr. H.A. Shinde were removed as the directors of the company. The requisite form was filed with the Registrar of the company as per Annexure "20" of the affidavit-in-reply. The respondent No. 1, therefore, prayed that the petition should be dismissed.

4. In the affidavit-in-rejoinder, the petitioner No. 1 reiterated that Shrimant Fatehsinhrao Gaekwad was holding 300 equity shares out of 425 and stated that the Trust was created for the purpose of tax planning. It is stated that after the demise of Shrimant Fatehsinhrao Gaekwad, the petitioner No. 1 and her

 

daughter Smt. Mrunalinidevi were the trustees of the private trust and that the petitioner No. 1 was the managing trustee. It is pointed out that Shri Jaysinh Ghorpade was the brother of the petitioner No. 1 and living with them since child-hood till his death.

4.1 It is stated in paragraph 11 of the affidavit-in-rejoindcr that the petitioner No. 1 with her daughter Smt. Mrunalinidevi had gone to the registered office of the company on 10-12-1990 for inspection of the register of members, register of transfer and other registers and papers and when she inspected the register of members and register of transfers, she was shocked to note various entries made therein. Thereupon, she asked the director of the company Mr. P.U. Rana who had given her the inspection, also to give inspection of the minutes book of the board of directors of the company as well as minutes book of the Committee meetings. To this Shri P.U. Rana informed that the shareholders were not entitled to see or inspect these Minutes books whereupon she tried to convince him that it was at any rate not illegal to give such inspection, particularly when it was a family company and serious illegalities and fabrication of documents was suspected. On inspection of the minutes book of meetings of the board of directors and the Minutes book of the Committee meetings, these petitioners noted that in the minutes book of the board of directors the last minutes that were recorded were of the meeting of 30-3-1990. They were signed by the respondent No. 1, although there was no date. They also found that the minutes of the Managing Committee meeting held on 21-3-1988 and 10-12-1988 were totally fabricated and were under the signatures of the respondent No. 1. They, therefore, requested Shri P.U. Rana to give xerox copies of the register of members, register of transfers the last recorded minutes of the meeting of the board of directors and minutes of the committee meetings of 21-3-1988 and 10-12-1988 duly certified by a Notary Public. It is further stated that Shri Rana took the documents and got the same xeroxed and thereafter Shri M.C. Vaidya, Notary was called to the office, who then verified the said copies and after comparing the same with the originals, certified the same to be true copies, These copies were handed over to the petitioner No. 1 and the certified copies of the minutes of board of directors of 30-3-1990 and the minutes of the Committee meetings held on 21-3-1988 and 10-12-1988 are produced at Annexures A/1, A/2 and A/3 of the affidavit-in-rejoinder. It is indicated in the minutes of the meeting of the Managing Committee held on 21-3-1988, which is at Annexure A/2 to the rejoinder that only two persons, i.e., the respondent No. 1 and one Shri P.H. Chinoy were present at the meeting, while the respondent No. 1 in his affidavit-in-reply II(2)(vi) had stated that at a meeting of the Managing Committee held on 21-3-1988, he requested Shrimant Fatehsinhrao Gaekwad to reconsider his decision. As per the minutes of the meeting held on 21-3-1988, it was decided to issue 51 per cent additional equity share capital to Shrimant Fatehsinhrao Gaekwad and not 8,000 shares. It is further stated on the rejoinder that though the respondent No. 1 had stated in his affidavit-in-reply that at the said meeting it was decided that 6475 shares should be kept apart for respondent No. 1 and others, from the minutes of 21-3-1988 at Annexure A/2 it appeared that they did not at all provide that 6475 shares should be kept apart for the respondent No. 1 and others. In fact, the said minutes recorded that the balance 49 per cent of the additional equity share capital had to be issued to the existing members of the company and there was no reference to 6475 shares being kept apart for respondent No. 1 and others. There was no reference to the fact that the time was extended in the said minutes of the meeting held on 21-3-1988 as was stated by the respondent No. 1 in his affidavit-in-reply in paragraph 6(g). It was submitted in the rejoinder that as per the minutes of the Managing Committee held on 21-3-1988, neither the respondent No. 1, nor any of his family members were allotted any shares on that date.

4.2 It was further stated in paras 12 and 13 of the rejoinder that the story of letter dated 11-6-1988 and of Shrimant Fatehsinhrao Gaekwad expressing his lack of interest in subscribing to the additional share capital and renouncing the same in favour of the respondent No. 1 and his children was totally fabricated and false, and that nobody would have refused to subscribe to the shares of the respondent No. 6 company at Rs. 100 per share when the real value of the share (looking to the huge properties of the company worth several crores of rupees) "was several hundred times more than only Rs. 100 per share". It is denied that the respondent Nos. 4 and 5 were allotted 3000 shares on 6-12-1988 as contended by the respondent No. 1. It was further stated that in view of the minutes of the Managing Committee meeting on 10-12-1988, 7500 could not have been allotted prior to 11-6-1988 while the Register of Members indicated that the shares were allotted prior to that date. The petitioner No. 1 has produced the affidavit of Mr. Khade at Annexure "A/4" to the rejoinder in support of her version. She has stated that she had advanced more than 15 lakhs free of interest to respondent No. 6 and Smt. Mrunalinidevi Puar had also advanced Rs. 15 lakhs free of interest, and that no interest has been paid to her.

4.3 As regards the meeting of 20-12-1990, she has stated that the minutes produced by the respondent No. 1 are fabricated and has annexed at Annexure "5" collectively, affidavits of other persons who had attended the meeting to show as to what transpired at that meeting. It is further pointed out in paragraph 22 of the rejoinder that the affidavit in the Baroda Court which is said to have been filed on behalf of these respondents as well as ''the ''purshis'' were filed only after the general meeting of 20-12-1990. It is stated that they were filed after the respondent No. 1 and his wife took physical control of the register of members and other documents and papers and spirited them away. It is also stated that after the respondent Nos. 1, 2, 9 and 11 ceased to be directors, remaining board of directors filed their annual return and form 32 to the Registrar of Companies and had also written letters to Baroda Rayon Corporation, Banks and others intimating to them that the said respondents had ceased to be the directors of the company on 20-12-1990.

4.4 It is stated in the said rejoinder that the statement of the respondent No. 1

 

that the information of the transfer register being misplaced furnished by Mr. P. U. Rana was false as can be seen from the fact that Mr. P.U. Rana did not attend the Board meeting of 29-6-1990. It is also stated that at the Board meeting of 13-7-1990, there was no talk whatsoever regarding the transfer of shares to Indreni being irregular or the notice of transfer not having been sent to the shareholders. The petitioner No. 1 has relied upon the affidavit of Mr. M.N. Khade in this regard. It is further alleged that from the minutes of the meeting dated 13-7-1990 produced by the respondent No. 1, it can be seen that no resolution was passed at that meeting appointing Shri Rameshchandra Desai as the power of attorney holder of the respondent No. 6 company. In the power of attorney annexed at Annexure A/10 to the rejoinder it had been stated that it was being executed pursuant to the authority in that behalf contained in the meeting of the board of directors of the company held on 13-7-1990. From this it is contended that the respondent No. 1 had fabricated the said minutes of 13-7-1990. It is also contended that the notice dated 10-12-1990 for calling the AGM was not in accordance with clause 18 of the articles of association and that there was nothing on record to show that any share-holders holding not less than 50 per cent of the paid-up capital had agreed in writing to a shorter notice. It is reiterated that there was no meeting of the board of directors on 9-8-1990 and the transfer in favour of Indreni was not at all rescinded. It is further stated in paragraph 39 of the rejoinder that the petitioner No. 1 had seen the register of members on 20-12-1990 during the AGM when votes were required to be counted and she and others had seen therein that Indreni was shown as holding 9415 equity shares in the respondent No. 6 company, and till votes were ascertained from the Register of members there was no correction made in it. It is, therefore, alleged that the Register of members appears to have been altered only after the AGM of 20-12-1990.

5. The supporting respondent No. 12 Smt. Mrunalinidevi Puar in her affidavit has stated that she was allotted 1,000 shares in the company and was not aware from whose alleged quota of shares she was being allotted the shares. According to her, she was intimated by the respondent No. 1 that certain funds were required for the respondent No. 6 company and she had sent him two separate cheques dated 23-3-1988 and 19-5-1988 for Rs. 20,000 and Rs. 80,000 respectively under the forwarding letter dated 19-5-1988 and the share certificates were issued to her by the respondent No. 1 on or about 30-5-1988. She has denied that she was given 500 equity shares from 8000 shares kept apart and allotted to her late brother Shrimant Fatehsinhrao Gaekwad. She has stated that she had made no application for any of these 1000 shares. As regards the AGM of 20-12-1990, she has stated that at the said meeting all the resolutions except the resolution for appointment of the auditors, were defeated by majority of 1122 to 66. She has stated that she gone through the affidavits made by Shri P.U. Rana and others in this regard and that what is stated therein as regards what transpired at the said meeting was true and nothing said to the contrary by the respondent No. 1 was true. The appellant No. 4 Shri Rajnitsinh

 

Gaekwad has also given similar version as regards the meeting of 20-12-1988, stating that after counting of the votes it was made known to the meeting that the resolution for the appointment of the auditors was passed unanimously while all other resolutions including the resolutions for re-appointment of various directors were lost by majority of 1122 votes against the resolutions and only 66 votes in favour of them. He also has stated that when the members and proxy holders including himself had seen the register of members to know the number of votes to which they were entitled, Indreni was shown therein to be holding 9415 equity shares. Similar averments are made in the affidavit which has been filed by the supporting respondent No. 13 Smt. Shubhanginidevi and Shri Ajitsinh Gaekwad. Mr. P.U. Rana, Mr. H.S. Shinde and Mr. G.G. Sirvee who were the directors of the respondent No. 1 company have all stated in their affidavits filed in support of the petitioner''s version that they had not received any notice of any meeting of the company''s Board stated to have been held on 9-8-1990 and that they had not sent any note for granting them leave of absence from the said meeting. They have all stated that they used to send in writing a letter for granting leave of absence.

6. In this affidavit in-sur-rejoinder, the respondent No. 1 has denied the averments made in the rejoinder of the petitioner as well as in the affidavits which were produced in support of the version of the petitioners. He has stated that he did not admit the minutes of the Managing Committee held on 21-3-1988 and 10-12-1988, which were produced by the petitioner No. 1 with her rejoinder. He stated that the draft minutes of the meeting of the Managing Committee on 21-3-1988, which were relied upon by the petitioners and were at annexure ''C to the petition indicated that Shrimant Fatehsinhrao Gaekwad was present at the said meeting. He has then stated in paragraph 14 of the sur-rejoinder that "51 per cent of the shares has always been 8000 shares representing a convenient approximation". It was contended in the sur-rejoinder that the fact that 6475 shares were kept apart for him and others was confirmed even by the petitioners themselves in the petition throughout as also in the proceedings before the Rajkot Court. It is denied that at the time of the meeting held on 20-12-1990, 9415 shares of the company were held by the Indreni. It is also denied that any shareholder or proxy holder had seen the register. As regards the appointment of Dr. G.M. Oza as the director, he has produced at Annexure ''D'' to the sur-rejoinder letter dated 11-3-1991 written by Dr. Oza to the respondent No. 2, who was the executive director, in reply to her letter dated 28-2-1991, which was delivered to him in person by Shri Khoth, stating that he was surprised that the respondent No. 2 had not received his original letter dated 17-12-1990 and the copies addressed to other directors, which were left by him on the table of Mr. M.N. Khade Company Secretary of the respondent No. 6. It is stated in the said letter by Dr. Oza that he still confirmed and maintained that he had already resigned on 17-12-1990 from the Directorship of the respondent-company and that he had no intention to be re-elected as a director. He has annexed copies of his letter dated 17-12-1990 which was addressed to the respondent-company.

 

He has stated that he had not offered for re-election nor did he wish to be re-elected as a director of the said company. This was his response to the notice of the AGM, which was to be held on 20-12-1990, in which the resolution for his re-election was proposed. Another letter dated 17-12-1990 addressed to the respondent-company with copies to the Chairman, Shri H. S. Shinde. Sri S.G. Shirke, Shri P.U. Rana, Shri P. Chinoy which were forwarded for favour of information is also annexed with the letter of Dr. Oza dated 11-3-1991 at Annexure "D" to the sur-rejoinder of the respondent No. 1. The respondent No. 1 while referring to this letter in paragraph 44 of his sur-rejoinder has stated that it appeared that Mr. P.U. Rana took away the said letter deposited by Mr. Oza and did not inform about it to the company even during the AGM and only thereafter had sought to make confusion. He has reiterated his stand as regards the Board meeting of 13-7-1990 and 9-8-1990, maintaining that transfers of shares to Indreni by the respondent Nos. 1 to 5 which were earlier made by them were rescinded. He has denied the averments made by Mr. M.N. Khade in his affidavit to the effect that the last minute drawn in the minutes book of the meeting of the board of directors was of 30-3-1990 as on 10-12-1990. He has stated that he did not admit that his Secretary Mr. N.K.K. Mohammed had received the minutes book of the Committee meeting or that Mr. Mohammed had okayed the same as having been received by putting his initial by handwriting the word "O.K." on the carbon copy of Mr. Khade''s letter, which was referred to in his affidavit and annexed thereto. He has stated that in fact the writing was only his initial and not "O.K." signifying acknowledgement of the said letter and the parcel sent with it by Mr. Khade. He has denied that Mr. Khade did not receive any letter written by Mr. Mohammed stating that the minutes book of the Committee was not returned as stated by Mr. Khade in his affidavit. The respondent No. 1 along-with his sur-rejoinder has produced an affidavit of Shri Vishwang Desai at Annexure "F", which according to him gives account of the AGM, which was held on 20-1 -1990, stating that the contents of the minutes of the said meeting were true and correct recital of the proceedings. Mr. Vishwang Desai, aged about 29 years was an Advocate and Solicitor, who is said to have been invited by the respondent Nos. 1 and 2 at the meeting of 20-12-1988 along with other persons who were not the members of the respondent-company. In support of his say, the respondent No. 1 also relied upon the affidavits of Mr. Bipin Babubhai Shah, who is said to have been appointed as a scrutiniser at the said meeting and the affidavits of Capt. V.K. Raichand, who is respondent No. 11 in this appeal, Mr. Pirojshah Hiraji Chinoy, who was one of the directors of the company, and, Mr. K.V. Khoth, who is said to have written the letter dated 11-6-1988 under the directions of Shrimant Fatehsinhrao P. Gaekwad, renouncing the additional shares offered to him in favour of the respondent No. 1 and his children.

7. In the background of the above broad contours of the controversy between the rival groups, the learned single Judge by his judgment and order dated 17-4-1995, came to a finding that there was a mandate of the Extraordinary General Meeting which was held on 17-12-1987 for issuance of 25,000 equity

 

shares of the company. It was also found that the board of directors at its meeting held on 8-1-1988 decided to issue only 15,000 shares in the first instance, leaving its managing committee to carry out the mandate. It was further held that so far as the allotment of 6475 shares to the respondent group in concerned, the petitioners had not earlier objected though they had objected to the issue of additional 3,000 shares in favour of the respondent Nos. 4 and 5. It was however, noted that the reliefs as they now stand after the amendment in the petition went to the extent of challenging the entire fresh allotment that was made above 425 shares which were held prior to the increase in the share capital as decided by the Extraordinary General Meeting. It was observed that if that and other analogous reliefs in that regard were granted, the situation will be that respondent No. 6 company will be in the same position as it was at the time when the Extraordinary General Meeting was convened in the month of December 1987, in so far as its equity capital was concerned. The learned single Judge held that the body of the petition did not bring about any change so far as the allotment of 6475 shares to the respondent No. 1 were concerned. It was observed by the learned Judge that the situation namely that the entire issue over and above the original issue of 425 shares was challenged in the relief clause while maintaining the earlier reliefs to the claim of 8,000 shares may initially appear to be contradictory and confusing. It was further observed that if the prayer for striking down allotment of 3,000 shares to the respondent Nos. 4 and 5 was granted, even then the petitioners'' group would not be in majority, because, even then the respondent group will have 6475 shares, subject of cpurse to the disputes raised as to the transfer of shares to Indreni. Unless, therefore, 8000 shares are issued to the petitioner No. 1, the petitioners'' group cannot be in majority in the company. It was also observed that if the transfer to Indreni were set aside the shares will not be available to the respondent group automatically, but the board of directors will have to offer the shares to the remaining members of the company, who will have a right to buy them if they so desired and, therefore, if this prayer of setting aside the transfer of shares to Indreni were allowed in proportion to the respective holdings, the petitioners'' group will be in a position to acquire majority. It was observed that the amended prayers leading to the setting aside of the entire issue above the original issue of 425 shares if granted, would bring about a situation that the petitioner''s group will be in majority. The learned Judge held that while dealing with a matter under sections 397 and 398, the question of oppression with or without mismanagement, if any, is required to be considered and in his opinion, such oppression should be subjectively felt and objectively established and according to the learned Judge the oppression, if any, related to the control that had slipped into the hands of respondent No. 1 and nothing else. His Lordship took note of the fact that there were prayers found in the present petition as well as other two proceedings before the CLB that the shares transferred to Indreni be offered to other shareholders except the respondents'' group and that the transfer to Indreni were invalid. It was held that the additional issue of 15,000 shares was to be dealt with after keeping apart 8,000 shares for Shrimant

 

Fateshsinhrao P. Gaekwad and the rest were to be issued in different names. It was observed that 51 per cent of shares referred to in the minutes of the meeting dated 21-3-1988 will work out to 7650, but the difference of about 350 shares on the basis of 51 per cent on one side and the round figure of 8,000 on the other was in the opinion of His Lordships, of no consequence. The learned Judge opined that the resolution of the Board dated 8-1-1988 continued to hold the field and the business of allotment as continued all throughout was done in keeping with it. It was held in para 88 of the judgment that "this will automatically cover the allotment of 6475 shares as it does, allotment of 25 shares to respondent No. 13 and 500 shares to respondent No. 12?. It was further held that advancing of loans by the petitioner No. 1 and the respondent No. 12 of Rs. 15 lakhs each to the company in November 1988 was not for buying shares. It was further held that the decision to issue 3,000 shares to the respondent Nos. 4 and 5 in December 1988 irrespective of the letter of 11 -6-1988 was in the exercise of the power of the Managing Committee. It was also held that upto 31st March, 1989 i.e., the closure of the accounting year, none of the directors of the company who were with the petitioners'' group had questioned this action. As regards the time limit of 10-3-1988, it was held that unless it was shown that while delegating its power the Board had also imposed time limit upon the Committee, the petitioners had no case in that regard. As regards the transfer of shares by the respondent Nos. 1 to 5 to Indreni, the learned Judge rejected the contention that the minutes of the Board meeting dated 13-7-1990 with regard to transfer to Indreni were not correct and the contention that there was in fact no meeting held on 9-8-1990. It was further held that at the AGM held on 20-12-1990, the result had gone in favour of the respondents'' group. The learned single Judge held that at the meeting of 14-1-1991 of the Extraordinary General Meeting, the director Shri P.U. Rana, Shri A.K. Shinde and others who were supporting the petitioners and lost their Directorship, and the registered office of the company had been shifted from Baroda to Surat. It was observed in paragraph 156 of the judgment that: "This would have been an example of what a majority minded to ride a rough shod over minority can do", and, "This could have, therefore, been a target for a petition under sections 397 and 398 of the said Act". It is observed that the relief in that regard therefore, could have been granted. It is then stated in paragraph 167 of the judgment that: "However, I am not inclined to grant any, because to do so, would be to put the clock back so far as the board of directors of GIC is concerned and allowing the directors thus removed to complete their tenure as per the articles of association. This having taken place in the month of January 1991 and more than 4 years having passed and more particularly because the fate of BRC is inextricably linked up with that of GIC, in larger public interest, keeping in mind BRC, I would not give any relief to the petitioners. If reliefs were to be given it would have been to strike down the said EGM and its entire proceedings and declared the directors removed thereat to be continuing as directors from that order onwards till the remaining time of the tenure." It was finally held that the petitioners had failed to make out a case of oppression. It was held that as regards mis-management, if at all, the case of the petitioners was only an apprehension that the respondents'' group coming in majority will mis-manage the company, but this apprehension was belied. It was held in paragraph 167 of the judgment that there was no question of aggrandisement on the part of the petitioners and "Except for getting 9481 shares for themselves, they had done nothing". The learned single Judge therefore, dismissed the petition, with no order as to costs, having regard to the relationship between the parties.

8. The learned senior Counsel appearing for the appellant, i.e., the original petitioners, contended before us that the Managing Committee could not have exercised its powers to make allotment of shares as it pleased, in view of the embargo laid down in the articles of association that transfer of shares to non-members was not permissible and in view of the Board''s decision that the additional shares were to be issued only in favour of the members of the company. It was submitted that there was nothing to show in the circular dated 12-2-1988 that it was sent to all the members of the company. It was also argued that in view of the deadline of 10-3-1988 indicated in the said circular letter which was approved by the Board''s meeting of 13-2-1988 and in view of the admitted fact that no response was received to that letter, the Managing Committee could not have made any allotment of shares on the basis of that letter. It was contended that as regards the decision said to have taken on 21-3-1988 by the Managing Committee, there were conflicting versions. From the requisition note and the draft of the minutes which were found by the petitioners and annexed to the petition at annexures "B" and "C" it appeared that a decision was taken to allot 8,000 shares to Shrimant Fatehsinhrao Gaekwad, 6475 shares to the respondent No. 1,1,000 shares to the respondent No. 12 and 25 shares to the respondent No. 13. It was submitted that though in the requisition note at Annexure "B" to the petition, the words ''and others'' were not there alongside the name of the respondent No. 1, they appeared to have been added by hand in the draft of the minutes which were forwarded under letter dated 29-3-1988 by the Company Secretary to the Secretary to the respondent No. 1 as per Annexure "C" to the petitioner. It was pointed out that in the third version, which emanated from the minutes for the Committee meeting said to have been held on 21-3-1988, a true copy of which was obtained by the petitioner No. 1 on 10-12-1990 and which was produced along with the affidavit-in-reply of the petitioner No. 1 at Annexure "A/2" to that reply, there was no mention at all, of allotment of 6475 shares to respondent No. 1. It was also pointed out that the said minutes were signed by the respondent No. 1 as the Chairman and only two directors were present at that meeting, namely the respondent No. 1 and Shri P.H. Chinoy, as stated in these minutes while in the draft minutes at Annexure "C" collectively to the petition, even the name of Shrimant Fatehsinhrao Gaekwad was mentioned as the Chairman present in the meeting. It was also submitted that this conflicting version put under cloud the entire process of allotment of shares to the members of the company by the

 

Managing Committee. It was also submitted that since the Managing Committee admittedly consisted of three persons, namely Shrimant Fatehsinhrao P. Gaekwad, the respondent No. 1 and Shri P.H. Chinoy, the decision taken by two of the three numbers of the Managing Committee was not a decision of the Managing Committee. It was further contended that since Rs. 15 lakhs, were already standing to the credit of the petitioner No. 1 in the books of account of the company, there was no fear of not being able to recover from her the face value at which the shares were to be allotment to the members. It was submitted that there was, under the law, no time limit for getting entitlement transferred to the name of the heir and therefore, even when the letter dated 29-11-1990 was written by the petitioner No. 1 to the company, the shares could have been registered in her name on the basis of such entitlement. It was contended that the respondent No. 1 could not have made allotment of 6475 shares to himself and to his family members, in absence of any valid decision for such allotment. It was submitted that his minor children, the respondent Nos. 4 and 5 were not entitled to be allotted the shares in view of the fact that the shares could not have been allotted to non-members. It was argued that by showing himself as the natural guardian of the respondent Nos. 4 and 5, the respondent No. 1 had cornered a large portion of the shares which was intended only for the members of the company. Moreover, these minor children on becoming major, continued as the members of the company in the record of the company. It was submitted that minors could not have been made the members of the company because a minor is not capable of entering into a contract. It was further argued that if the decision of 21-3-1988 of the Managing Committee is to be accepted, then a firm allotment of 8,000 shares or 51 per cent of the total of 15,000 shares which were to be issued ought to have been allotted to the petitioner No. 1, who was the sole heir of Shrimant Fatehsinhrao Gaekwad, who passed away on 1-9-1988. It was submitted that instead of doing that, 3000 shares out of those shares were allotted in favour of the respondent Nos. 4 and 5 by their father, the respondent No. 1 and the rest of the issue was treated as closed without the matter being referred to board of directors, which had decided to issue 15,000 shares to its members. It was further contended that the respondent Nos. 1 to 5 had transferred 9415 shares to Indreni without giving any transfer notice to the company for the exercise of the right of pre-emption by the members under the articles of association of the company. It was also argued that since the transfer to Indreni had reduced the shareholding of the respondents group to 66 and the resolution Nos. 3 to 10 which were on the agenda at the AGM of 20-12-1990 were all defeated, the story that the transfer which was made by the respondent Nos. 1 to 5 to Indreni was rescinded on 9-8-1990 has been invented by these respondents. It was submitted that the ''notarised'' true copies which were supplied to the petitioner No. 1 by the director of the company on 10-12-1990 clearly indicated that uptil that date, the shares were not transferred back from Indreni to the respondent Nos. 1 to 5. It was also argued that the respondent Nos. 1 and 2 had removed the registers and other documents of the company and shifted the office of the company from

 

Baroda to Surat and also removed the longstanding directors of the company by convening an extraordinary meeting on 14-1-1991 and thereby they gained a complete control over the company. It was submitted that the course of conduct of the respondent Nos. 1 and 2 clearly indicated that they acted in self-interest, with a view to enhance power and control to the detriment of the interest of the company and its other shareholders and in breach of the fiduciary duties of the directors.

8.1 In support of his above submissions, the learned counsel relied upon the following decisions:-

1. Decision in Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others, was cited for its prosecution that if the conduct of the directors lacks in probity and is unfair and causes prejudice to the exercise of shareholders''legalandproprietary rights, it would amount to oppressive conduct. It was held therein that such conduct must be continuous acts on the part of the majority shareholders showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. This decision was also relied upon to point out that it was held that clause (c) of Section 81(1) of the Act cannot apply to the erstwhile private companies which had become public companies u/s 43A and which include, that is to say - which retain or continue to include in their articles of association the matters specified in Section 3(1)(iii) of the Act, and that, if clause (c) were to apply to Section 43A, proviso-companies, it would be open to the offerees to renounce the shares offered to them in favour of any other person or persons, which would result directly in the infringement of the article relating to the matters specified in section 3(1)(iii)(b) because, under clause (c) of section 81(1), the offeree is entitled to split the offer and renounce the shares in favour of as many persons as he chooses, depending partly on the number of shares. It was held that the right to renounce the shares in favour of any other person is also bound to result in the infringement of the article relating to the manner specified in section 3(l)(iii)(c), because an offer which give to the offeree the right to renounce the shares in favour of a non-member is, in truth and substance, an invitation to the public to subscribe for the shares in the company.

2. Decision in M/s. World Wide Agencies Pvt. Ltd. and another Vs. Mrs. Margarat T. Desor and others, was relied upon for the proposition that the legal representatives of deceased member whose name is still on the register of members were entitled to file a petition under sections 397 and 398.

3. Decision in Nanalal Zaver and Another Vs. Bombay Life Assurance Co. Ltd. and Others, was referred to for the proposition that the directors cannot act against the interest of the company or mala fide.

4. Decision in Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd. and Others, was cited for the proposition that once all the evidence is before the Court and the case of oppression clearly emerges from the facts disclosed, it

 

would not be proper to measure the rights of the parties only in terms of the assertion made in the petition.

5. The decision in Jadabpore Tea Co. Ltd. v. Bengal Dooars National Tea Co. Ltd. [1984] 55 Comp. Cas. 160 was cited to point out that the Calcutta High Court had held mala fide allotment to reduce a majority shareholder to minority would be void for mis-management.

6. The decision of the Supreme Court in M/s. John Tinson and Co. Pvt. Ltd. and others etc. Vs. Mrs. Surjeet Malhan and another etc., was referred to for the proposition that it was well settled that articles of association of a private company was a contract between the parties. This was cited in context of the minors being allotted the shares of the company at the instance of the respondent Nos. 1 and 2, who were their parents.

7. The decision in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, was cited for the proposition that while a transfer of shares may be effective between the transferor and transferee from the date of transfer, the transfer is truly complete and the transferee becomes a shareholder in the true and full sense of the term, with all the rights of a shareholder, only when the transfer is registered in the company''s register.

9. The learned Senior Counsel appearing for the contesting respondents supported the judgment and order of the learned Single Judge and contended that the oppression on the part of the petitioners was neither subjectively felt by them, nor was it objectively established. It was contended that from the averments which were made in the petition as it was originally filed, it was clear that there was no dispute raised about the issue and allotment of 6475 shares in favour of respondent Nos. 1 to 5 and the only dispute that was raised was in respect of 3,000 shares issued to respondent Nos. 4 and 5 and in respect of alleged entitlement of the petitioner No. 1 to 8,000 shares which were kept apart for Shrimant Fatehsinhrao Gaekwad. It was submitted that initially no relief was sought for transfer and recession in record to the said 6475 shares. It was submitted that in order to ascertain whether the cardinal principle that the oppression must be subjectively felt and objectively established was satisfied, one should view the matter from the manner in which the ''players'' have perceived it. It is submitted that the petitioner No. 1, the supporting respondent No. 13 who had filed Civil Suit No. 867 of 1990 and Shri Ajitsinh Gaekwad, who had filed Special Civil Suit No. 872 of 1990 had all in their pleadings referred to the total holding of the respondent Nos. 1 to 5 of 9481 shares in respect of which no grievance was raised so far as the allotment to the respondent Nos. 1 to 5 in respect of 6475 shares were concerned. It was therefore contended that since the petitioner''s group did not perceive any oppression in respect of 6475 shares allotted to the respondent Nos. 1 to 5, the petitioners cannot be heard to say that they were oppressed by such allotment. It was submitted that the factum of the issue of these shares was reflected in the accounts of the company which were approved at the AGM of 13-9-1989, in which the respondent No. 1 was not

 

even present. It was argued that if the respondent No. 1 had any guilty mind, he would have remained present at that meeting. It was submitted that even in the annual return of 30-11-1989, it was shown that the issued capital of the company was 10,500 shares and there was nothing clandestine about it. It was also submitted that the share certificates which were issued were signed by Shri Shinde, who was the director and the Company Secretary Shri Khade. It was therefore, submitted that everybody knew about these allotments including the allotment of 3,000 shares. The learned counsel argued that the whole problem started because of the filing of the Suit by the other company Alaukik Trading and Investments (P.) Ltd. ("Alaukik"). It was submitted that by letter dated 17-5-1990, the respondent No. 6 was suddenly informed that Alaukik was no more its subsidiary and since this was done behind the back of the respondents'' group, the Suit was filed against the petitioners'' group. It was submitted that nobody in fact had any objection to issuance of 9481 shares to the respondent Nos. 1 to 5 and it was only because the said was Suit filed that the petitioners retaliated by a flurry of Suits and this petition in which they had not questioned the allotment of 9481 shares, but questioned only 3000 out of them, though by an amendment in the petition they had thereafter questioned everything. It was also submitted that petition under Sections 397 and 398 should not be entertained by the Court where civil proceedings were filed and pending, and which covered the reliefs claimed in the petition or a part of them. It was submitted that since the reliefs in respect of the transfer to Indreni of the shares of respondent Nos. 1 to 5 were also claimed in the Suits filed by some shareholders who supported the petitioners'' group, the present petition ought not to be entertained when alternative remedy forum was already chosen. It was submitted that shorn of the Indreni issue which was the subject-matter of Civil litigation the complaint of issuance of shares was impossible to sustain. It was further contended that the petition under Sections 397 and 398 has been filed for collateral purpose, as can be seen from prayer clause (c) of the petition, in which it was prayed that it should be declared that the petitioner No. 1 as the mother and sole heir of late Shrimant Fatehsinhrao P. Gaekwad was entitled to be in the majority and or control of the respondent No. 6 company. It was submitted that the learned Single Judge had correctly lifted the corporate veil of-Indreni and seen to it that it was a company consisting of the members of the respondent No. 1 family, who completely controlled it. It was submitted that the learned Single Judge had exercised discretion against the petitioners which should not be lightly interfered with. It was also submitted that the controversy in respect of the AGM on 20-12-1990 raised by the petitioners was not justified and the contemporaneous record showed that a ''pursis'' was filed by 3 p.m. in the Civil Suit at Baroda on 20-12-1990 on behalf of these respondents that their group had exercised voting rights. (The said ''pursis'' was filed in Civil Suit No. 872 of 1990, which was filed by Shri Ajitsinh Gaekwad and it was stated therein that the AGM of the company had taken place on 20-12-1990 at 11 a.m. as schedule and was over at 11.25 a.m. It was mentioned that the defendant Nos. 3 to 7, i.e., respondent Nos. 1 to 5 had exercised their voting right therein and that voting was done in respect of all the important resolutions. The outcome of the voting was however, not mentioned in that Pursis. It was submitted that there was no reason for the petitioner''s group that had attended the said meeting to feel scared because of the so-called complaint which was filed with the Police. It was submitted that the petitioners'' group was not so naive as to get afraid by the letter written by an Advocate to the Police Inspector, in which it was requested to make an arrangement to prevent any possible disturbances at the meeting. It was also submitted that since Indreni was not an outsider was it as completely controlled by the respondent Nos. 1 to 5, there was no need to give any transfer notice when the shares were transferred by the respondent Nos. 1 to 5 to Indreni. It was argued that Mr. M.N. Khade who was supposed to circulate the notice in respect of the transfer had misinformed the respondent Nos. 1 to 5 as a result of which the transfer to Indreni was later on rescinded. It was submitted that the real object of the petition was to exert pressure for restoration of power, which shows the mind-set of the petitioner. Since the petition is filed for a collateral purpose, it constitutes an abuse of the process of the Court. He submitted that since the respondent Nos. 1 to 5 were in majority, they were entitled to take the decisions in the board of directors in respect of the affairs of the company and such decisions cannot be assailed on the ground that they were oppressive to the minority.

9.1 In support of his submissions, the learned Senior Counsel referred to the relevant material on record and also the following citations:-

1. He referred to Pennington''s Company Law, Seventh Edition p. 901 for the proposition that a petition for relief from oppression under the statutory provision would be dismissed, if it was not presented in good faith solely in order to obtain such relief.

2. Decisionin Hunger ford Investment Trust Ltd. v. Turner Morrison & Co. Ltd. ILR 1972 (1) Cal. 286 was cited for pointing out that the Calcutta High Court in paragraph 55 of its judgment at page 313 held that serious and disputed questions of title and controversies already the subject of pending legal proceedings, should not generally be adjudicated in a summary proceeding u/s 397 of the Act.

3. Decision in Bengal Luxmi Cotton Mills Ltd., In re[l965] 35 Comp.Cas. 187 (Cal.)was referred to for pointing out that the High Court held at page 249 of the report that where a winding up order on the just and equitable ground cannot be made as there is another remedy available for redress of the grievance relating to transfer of shares and that remedy was resorted to, no order can be u/s 397 of the Act.

4. The decision of this Court in Shantilal Manibhai Patel v. Laxmi Film Laboratory & Studios (P.) Ltd. [1984] 56 Comp. Cas. 110 was cited to point out that the High Court had at page 127 of the report, taking note of the fact that a Civil Suit was filed for declaration that the plaintiff had continued to be director of the

 

company, held that the question raised in the petition that the notices were not served on him could be decided in the suit and that it could be satisfactorily disposed of after the parties have had an opportunity of leading oral evidence in the suit pending before the Court. It was held that it was not proper to decide the question on affidavits particularly when the suit was pending in the subordinate Court in which this question could be satisfactorily resolved only on evidence properly adduced by the parties.

10. The respondent No. 6 company is a Private Limited Company to which Regulations in Table "A" of Schedule I to the Companies Act, 1956 except in so far as they are excluded by Article 2 of the articles of association of the respondent No. 6 company apply. The power to allot or otherwise dispose of the shares in the capital of the company was in the directors. Under Article 3(a) read with Article 6 of the articles of association of the company, the right to transfer its shares was restricted in the manner and to the extent provided in Articles 7 to 15, article 7 provided for the preemption right of members of the company by restricting the transfer of shares first to a member selected by the transferor emphasising that no share shall be transferred to a person who is not a member so long as any member was willing to purchase the same at the fair value. The purpose of such restriction, common in the articles of a private company, is to preserve the proportionality of the other members'' shareholding as between themselves. A member cannot evade such provision for preemption by contracting to sell his shares to an outsider. It was therefore, incumbent on a proposing transferor to give a transfer notice in writing to the company that he desires to transfer the share. Such notice shall specify the fair value and shall constitute the company as agent for the sale to any member of the company, A transfer notice could not be revoked without the sanction of the directors as provided by article 8 of the articles of association. The company was required, within 28 days after being served with the transfer notice to find out the purchasing member to whom the proposing transferor was bound to transfer the share upon payment of its fair value as per article 9. The transfer rules incorporated in Article 13 provided that the share specified in any transfer notice shall be offered by the company to the members other than the proposing transf erer as nearly as may be in proportion to the existing shares held by them respectively and the offer shall, in each case, limit the time within which the same, if not accepted, shall be deemed to be declined. If the members do not claim their proportions, the unclaimed shares were to be used for satisfying the claims in excess of members who desired to have excess shares. The transfer was required to be registered in the name of the transferee as provided by Article 15. Article 14 under which shares could be transferred by a member to their issues or other beneficiaries under a will did not originally provide for the transfer of shares by the members of the respondent No. 6 company to a wholly owned company of the existing shareholders or the company owned by the family members of the shareholders, and, for this reason mentioned in the explanatory statement as required by section 173(2) of the Act attached to the

 

notice said to have been given on 5-1-1991 for Extraordinary General Meeting of the company convened on 14-1-1991, Article 14 was amended by a resolution passed at that meeting for this purpose.

10.1 Articles 23 to 27 of the articles of association provided for appointment of directors and Articles 28 and 29 for their powers and duties. Accordingly, the minimum number of directors was fixed at two and maximum at fifteen. The directors could appoint ''Alternate Directors'' during absence of a director as provided in Article 24 and casual vacancy occurring in the board of directors could be filled up for the remaining period by the directors under Article 25. At every AGM one third of the directors were liable to retire by rotation under article 27. Managing Director could be appointed under Article 31 by the directors but he was liable to be removed or dismissed as stipulated therein though not subject to rotational retirement. There is no provision in the articles of association for appointment of a permanent director or Chairman.

11. By a special resolution passed in the Extraordinary General Meeting of the company held on 17-12-1987, the board of directors of the company was authorised to issue 25,000 shares to any members they deem fit, Thereafter, in the Board meeting of 8-1-1988 it was resolved that out of 25,000 equity shares, 15,000 be issued to the members of the company ''at present'' and the balance as and when required. The Managing Committee was authorised to issue these shares to members in such proportion as it deemed fit. As per the admitted break-up of the original 425 shares held by the members, before 15,000 equity snares were offered to the members at par by letter dated 12-2-1988 out of 425 total number of equity shares, 301 stood in the name of Shrimant Fatehsinhrao P. Gaekwad, 7 in the name of his mother the petitioner No. 1 Smt. Shantadevi Gaekwad, 10 in the name of his brother Shri Ranjitsinh Gaekwad the petitioner Nos. 4, 1 in the name of Smt. Devyanidevi Chandrasen Gaekwad - the petitioner No. 2, 10 in the name of the petitioner No. 3 Capt. V.S. Hazare, 5 in the name of the petitioner No. 5 - Smt. Lalitadevi Kirdatt, 10 in the name of the supporting respondent No. 12 Dr. (Mrs.) Mrunalinidevi Puar and 5 in the name of the supporting respondent No. 13 Smt. Shubanginidevi Raje Gaekwad. The respondent No. 1 Shri Sangramsinh P. Gaekwad and his wife respondent No. 2 Smt. Ashraraje S. Gaekwad had 1 and 5 shares respectively in the company. Thus, prior to the disputed fresh allotments of shares, according the appellants, their group owned 348 shares out of 425 while the respondent Nos. 1 and 2 together held six shares. There is no dispute about the fact that late Shrimant Fatehsinhrao P. Gaekwad''s only class one heir was his mother, the petitioner No. 1 - Smt. Shantadevi Pratapsinh Gaekwad, because he died intestate on 1-9-1988. When the member of the respondent-company bequeaths his shares under a will, the succession will be given effect to as per Article 14 of the articles of association without the restriction in article 16 of the directors'' right to refuse to register any transfer or transmission being attracted. Regulations 25 to 28 of Table A of Schedule I to the Companies Act, which applied to this company under Article 1 read with Article 2 of the articles of association, relate to transmission of

 

shares. Accordingly, on the death of a member, who was a sole holder, his legal representatives shall be the only persons recognised by the company as having any title to his interest in the shares. Any person becoming entitled to a share in consequence of the death of a member may elect either to be registered himself as holder of the share or to make such transfer of the share as the deceased could have made as provided in regulation 26, read with regulation 27 of Table "A" of Schedule I to the Act. A person becoming entitled to a share on death of a member is, as recognised by regulation 28, entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share except any membership right in relation to the meetings of the company which he can get only on getting himself registered. Thus, the fact that the property in share passes by inheritance to the heir of the deceased member like his any other property is duly rec6gnized. The words ''other advantages'' in regulation 28 suggest that all the entitlements of a deceased member will pass on to his heir who becomes entitled to a share of such deceased member. The transmission of share related rights will take place irrespective of the factum of registration of the successor. The only thing that a Board can do is to give a notice requiring any such person to elect to be registered himself or to transfer the share and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share, until the requirements of the notice have been complied with as laid down in regulation 28. In the present case, therefore when Shrimant Fatehsinhrao P. Gaekwad died intestate on 1-9-1988, his mother, i.e., petitioner No. 1 who was the only class one heir succeeded to the shares which were already held by him and became entitled under regulation 28 to the same dividends and other advantages to which she would be entitled if she were the registered holder of the shares of Shrimant Fatehsinhrao P. Gaekwad. This statutory entitlement did not depend upon the mercy of the board of directors which could have, at the best, given a notice as required by the proviso to regulation 28. There is no time limit provided in regulation 28 for exercising the option given to such successor to get registered as holder of the share or to make transfer of the share as the deceased could have made. In other words, there is no contingency provided by which the rights which devolved on the heir would lapse, and the attribute of a vested right in the share of the deceased member devolving on the successor is duly recognised. Therefore, if there was a valid decision taken to allot new shares and such shares are earmarked for such allotment to a member who became entitled to subscribe therefore and received them, such entitlement of the deceased member would also devolve on his heir who would step into his shoes and can claim that advantage to which the deceased member was entitled as if the successor were the registered holder of shares. The petitioner No. 1 therefore, as a sole heir of the deceased member Shrimant Fatehsinhrao P. Gaekwad, became entitled to his entire shareholding out of 425 shares at the time of his demise on 1-9-1988 with all its advantages under the said regulation.

 

11.1 The petitioner No. 1 had addressed a letter dated 29-11-1990 as per Annexure "R" to the petition, as stated in paragraph 21 of the petition, in which it was stated by her that after the death of Shrimant Fatehsinhrao P. Gaekwad, she was entitled as his sole legal heir to the 8,000 equity shares of Rs. 100 each which were set apart in favour of and for Shrimant Fatehsinhrao P. Gaekwad, on payment for the same. It was stated that she had paid to the company in or around November 1988 a sum of Rs. 15 lakhs of which Rs. 11,15,000 was stilllying with the company to her credit. It was stated that a sum of Rs. 8 lakhs be appropriated therefrom as share money. However, if the company so required, she would send Rs. 8 lakhs by Demand Draft. In the meeting held on 30-3-1990 wherein transfer of 9415 shares by the respondent Nos. 1 to 5 to ''Indreni'' was approved, transmission of 23 shares standing in the name of Shrimant Fatehsinhrao P. Gaekwad to the name of the petitioner No. 1 Smt. Shantadevi Gaekwad was also approved. Therefore, the petitioner No. 1 was already treated as the sole heir who was entitled to the shares of Shrimant Fatehsinhrao P. Gaekwad on his demise. However, the question whether the entitlement of Shrimant Fatehsinhrao P. Gaekwad to 8,000 shares stood transmitted to her on his demise was never put upon the agenda though the fact that she being the sole heir of Shrimant Fatehsinhrao P. Gaekwad was known to all. It appears that no reply was sent to the letter dated 29-11-1990 addressed by the petitioner No. 1 to the respondent No. 1 in his capacity as Chairman of the company.

12. This brings us to the stand taken up by the contesting respondents that Shrimant Fatehsinhrao P. Gaekwad had before his demise renounced his entitlement to 8,000 shares which were decided to be allotted to him, in favour of the respondent No. 1 and his children. This story has surfaced in the affidavit-in-reply of the respondent No. 1. According to the respondent No. 1, after the company resolved in its Extraordinary General Meeting held on 17-12-1987 to increase the share capital, it was resolved in the Board meeting of 8-1 -1988 that 15,000 equity shares of Rs. 100 each be issued at par to the members of the company and that the Managing Committee of the company be authorised to issue equity to members in such proportion that it may deem fit. The Secretary of the company Mr. M.K. Khade thereupon issued letter dated 12-2-1988 as per Annexure ''16'' to the affidavit-in-reply of the respondent No. 1, communicating the decision to increase the equity share capital of the company by issuing to its member 15,000 equity shares at Rs. 100 each at par and requesting them to convey their acceptance for the number of shares the member would like to subscribe, with a cheque for the full amount on or before 10-3-1988, failing which it would be presumed that the member was not interested in the offer and the shares will be offered to the other members. There is some dispute over the fact whether this letter was sent to all the members, because the copy at Annexure "16" of the affidavit-in-reply of respondent No. 1 shows that it was addressed to Shrimant Fatehsinhrao P. Gaekwad. The minutes of the Board meeting held on 13-2-1988 as per Annexure ''9A'' to the affidavit-in-reply of the respondent No. 1 however, shows that the Board was apprised of the fact that

 

necessary action was taken on the agenda of the Board''s meeting dated 8-1-1988 and that letters were addressed on 12-2-1988 to the shareholders informing them that the company had issued 15,000 equity shares of Rs. 100 each to members an to convey their acceptance on or before 10-3-1988.

12.1 It is an admitted fact that no acceptance was conveyed by any of the members for the subscription of the new shares till 10-3-1988. According to the respondent No. 1''s case as reflected in paragraph 9(g) of his affidavit-in-reply filed on 11-4-1992 in the Company Petition No. 7 of 1992, since no offers were received from the existing shareholders, the Managing Committee decided at its meeting on 21-3-1988 to extend time for the offer and further decided that out of 15,000 shares, 8,000 be kept apart for the time being for Shrimant Fatehsinhrao P. Gaekwad. The balance 7,000 shares were kept apart for the other existing members of the company. Thereafter, the respondent No. 1 instructed the Company Secretary Mr. Khade "to give first option to other family members to subscribe for shares according to their request and the remaining be put in the name of myself and my family". His version in paragraph 6(g) and (h) of the affidavit-in-reply is that: "Since no offers were received from the existing shareholders. Managing Committee decided in its meeting on 21-3-1988 to extend the time for the aforesaid offer. It further decided that out of 15,000 shares 8,000 shares be kept apart for the time being for Shrimant Fatehsinhrao P. Gaekwad as he was desirous of subscribing to the same. The balance 7,000 shares were kept apart for the other existing members of the company including 6475 shares for myself and my children."

12.2 It is stated by the respondent No. 1 in paragraph 31(b)(vi) of his affidavit-in-reply dated 1-4-1992 in Company Petition No. 7 of 1992 (CLB) that subsequently, i.e., between March and 9-6-1988, Shrimant Fatehsinhrao P. Gaekwad was reminded to subscribe to 8,000 shares which were offered to him but he indicated that he would not subscribe to these 8,000 shares and renounced the offer in favour of the respondent No. 1 and his children. In para II(2)(viii) of the affidavit-in-reply filed in this company petition it is stated by the respondent No. 1 that ultimately on 11-6-1988 addressed a letter to him through his personal Secretary renouncing the offer made to him "in my favour and in favour of my children". A copy of the letter dated 11-6-1988 said to have been addressed to the respondent No. 1 by the Secretary to Shrimant Fatehsinhrao P. Gaekwad, Mr. K.V. Khoth is annexed at Annexure 10 of the said affidavit-in-reply. Much reliance is placed on this letter on behalf of the contesting respondents to contend that the entitlement to get 8,000 shares which were kept apart for Shrimant Fatehsinhrao P. Gaekwad could not have been inherited by his mother the petitioner No. 1 on his demise, because, it was already renounced in favour of the respondent No. 1 and his children. Thus, even according to the respondent No. 1, Shrimant Fatehsinhrao P. Gaekwad was entitled to subscribe to the additional share capital, but he renounced his rights in favour of the respondent No. 1 and his children through his Secretary''s letter. Obviously, if the entitlement was renounced by Shrimant Fatehsinhrao on 11-6-1988 in favour of the respondent Nos. 1, 4 and 5, there was no advantage in form of such entitlement which could have devolved on his mother by succession on his demise on 1-9-1988. The communication dated 11-6-1988, therefore, merits a close look. It is a letter which was addressed to the respondent No. I in his personal name and not to the company. The new shares were offered to Shrimant Fatehsinhrao P. Gaekwad by the company and admittedly no communication was addressed by him to the company in response to that offer. After the alleged communication of the letter dated 1 -6-1988 said to have been written by his Secretary to the respondent No. 1, the Board''s meetings took place according to the respondent No. 1, on 8-7-1988, 26-8-1988, 26-10-1988 and 3-12-1988, but the said letter dated 11-6-1988 was not placed or even referred to before the board of directors and it was for the first time mentioned in the minutes of the Managing Committee said to have been held on 10-12-1988 (Certified copy at Annexure A/3 of the rejoinder of the petition), in which it was recorded that in terms of the offer made in the letter dated 12-2-1988, response was received only from the four existing shareholders and that the Chairman of the company Shrimant Fatehsinhrao P. Gaekwad who was offered 51 per cent shares out of the additional 15,000 shares also declined to accept the offer, vide his Executive Secretary''s letter dated 11-6-1988. Hence, in terms of the decision taken in the Committee meeting held on 21-3-1988, the shares were offered for subscription amongst the family members of the shareholders. It was further stated that accordingly the company had received applications, namely for 2,000 shares from the respondent No. 1, 1475 shares from the HUF of the respondent No. 1,1,000 shares from Smt. Mrunalinidevi Puar, 25 shares from Smt. Shubanginidevi, 1500 shares from the respondent No. 2 Smt. Ashraraje and 1500 shares from Shri Pratapsinh Gaekwad, son of the respondent No. 1 - that is in all 7500 equity shares. It was recorded in the minutes that the Committee decided to allot 7500 shares, in the abqve proportions to them. Out of the remaining 7500 shares it was decided to offer 3,000 equity shares of Rs. 100 each between Shri Pratapsinh Gaekwad and Miss Priyadarshini Gaekwad in the proportion as they liked and as soon as the application money of Rs. 3 lakhs for 3000 equity shares was received, the subscription of additional shares be closed at 10,500 equity shares. Shrimant Fatehsinhrao P. Gaekwad had passed away on 1 -9-1988 and a meeting of board of directors was held on 26-10-1988 where the respondent No. 1 and Mr. P.H. Chinoy were present for a condolence resolution. The decision was taken therein for sale of Manav Mandir property of the company for not less than Rs. 50 lakhs and the respondent No. 1 was authorised to finalise the agreement. Similarly, for Kamalja property, it was decided to sell it for not less than Rs. 20 lakhs and it was left to the respondent No. 1 to finalise the agreement. Other important decisions were also taken in the said meeting, but there was no mention made at all to the letter dated 11-6-1988 by which Shrimant Fatehsinhrao P. Gaekwad was said to have renounced through his Secretary his entitlement to 8,000 shares in favour of the respondent No. 1 and his children which was to tilt the balance of power in his favour. Even in the meeting of the board of directors held on 14-3-1989 convened after the alleged allotment made by the Managing Committee on 10-12-1988, there was no mention made about it as can be seen from the minutes. The last meeting of the Board attended by Shrimant Fatehsinhrao P. Gaekwad was of 13-2-1988. The meetings of the Board held after 10-12-1988, i.e., the date of the allotment of the additional shares by the Managing Committee, on 14-3-1989, 26-5-1989, 1-7-1989, 21-7-1989, 2-9-1989, 3-10-1989 and 27-12-1989 were attended by only two persons i.e., the same respondent No. 1 as Chairman and Shri P.H. Chinoy. These were the only two persons who were present even at the meeting of the Managing Committee said to have been held on 10-12-1998 for allotment of shares.

12.3 There was admittedly no response to the notice dated 12-2-1988 in which the members were required to indicate the number of shares that they desired to subscribe with a cheque for the value thereof by 10-3-1988. None responded the deadline was not specifically extended beyond 10-3-1988. According to the respondent No. 1, on 21-3-1988 it was decided to allot the 15,000 shares of which 8,000 were decided to be allotted to Shrimant Fatehsinhrao P. Gaekwad. The minutes of the meeting of the board of directors held thereafter on 16th April, 1988 show that a transfer of 22 shares of 5 members was sanctioned in favour of Shrimant Fatehsinhrao P. Gaekwad. This transfer makes it clear that Shrimant Fatehsinhrao P. Gaekwad had not lost interest in holding shares in respondent No. 6 company. If he could care to buy 22 shares on 16-4-1988, it does not stand to reason that he would renounce 8,000 valuable shares on 11-6-1988. Renouncing 8,000 shares would have been a major event in which all shareholders would be interested and were entitled to be informed. No such renouncement was addressed to the company by Shrimant Fatehsinhrao P. Gaekwad. Admittedly, Shrimant Fatehsinhrao P. Gaekwad did not himself send any letter to the company or for the information of the shareholders who were close relatives and friends. The letter of so-called renouncement therefore does not inspire any confidence.

13. The petitioner''s case in paragraph 6.6 of the petition was that there was a family meeting on 23-3-1988, wherein it was decided to broaden the capital base of the company by issuing 15,000 shares of Rs. 100 each. It was decided therein and also subsequently at a meeting of the company''s board of directors that out of the 15,000 equity shares, 8,000 equity shares would be allotted to Shrimant Fatehsinhrao P. Gaekwad, 500 equity shares to Smt. Mrunalinidevi, 25 equity shares to Smt. Shubhanginidevi and 6475 equity shares to respondent No. 1 Shri Sangramsinh Gaekwad. It will be seen that these averments were based on a note of Shri N.K.K. Mohammed, Personal Secretary of the respondent No. 1 and the letter dated 29-3-1988 of Shri M.N. Khade forwarding draft minutes of the meeting of 21-3-1988 on the basis of that note, which were annexed at Annexures ''B'' and ''C'' to the petition. In the type written draft minutes attached to letter Annexure ''C'', the words ''and others'' are added in hand after the name of the respondent No. 1. On the basis of these words, the respondent No. 1 seeks to derive authority to get shares for his family members also. Here

 

however, it becomes important to see what were the final minutes drawn in respect of the meeting of the committee held on 21-3-1988. It will be noted from the draft minutes that the Managing Committee referred to therein consisted of (I) Shrimant Fatehsinhrao P. Gaekwad, (2) respondent No. 1 Shri Sangramsinh Gaekwad, and (3) Shri P.H. Chinoy. It was during their arguments confirmed by the learned counsel for both the sides that these three were the only members of the Managing Committee, which were authorised by the Board meeting of 8-1-1988 to issue equity shares to members in such proportion as the Committee deemed fit. The final minutes of the decision of the meeting of the Managing Committee held on 21-3-1988 which are duly signed by the respondent No. 1 as Chairman are on record at Annexure "A/2" of the affidavit-in-rejoinder of the petitioner No. 1 Smt. Shantadevi. The original minutes book of the Managing Committee is not forthcoming and according to the petitioners, the minutes books of the AGM board of directors meeting and Committee Meetings were sent to the Secretary of the respondent No. 1 by letter dated 20-11-1990, while according to the respondent Nos. 1 to 5, the minutes book of the Committee meetings was not received. It will however, be seen that the copy of the minutes of the meeting of the Managing Committee said to have been held on 21-3-1988 produced with the affidavit-in-rejoinder at Annexure A/2 by the petitioner No. 1 was notarised as a true copy on 10-12-1990 by a Notary of Baroda Mr. M.C. Vaidya as stated in paragraph 11 of the said rejoinder of the respondent No. 1. The signature of the respondent No. 1 appearing as Chairman therein, which was not disputed before us, shows that these minutes were duly authenticated by him. A copy of the minutes of the Managing Committee meeting held on 21-3-1988 signed by the respon- dent No. 1 as Chairman is also at Annexure "E" to the company petition No. 7 of 1992 filed by the respondent No. 12 before the CLB Delhi. A comparison between the draft minutes of the meeting of the Managing Committee held on 21-3-1988 forwarded under letter dated 29-3-1988 of the Company Secretary Mr. Khade at Annexure ''C'' collectively to the petition and the minutes of that meeting signed by the respondent No. 1 as Chairman at Annexure "A/2" to the rejoinder of the petitioner No. 1 shows the following differences:-

(a) In the draft minutes it was mentioned that the following three were present (1) Shrimant Fatehsinhrao Gaekwad Chairman, (2) Shrimant Sangramsinh Gaekwad, and (3) Mr. P.H. Chinoy; while in the final minutes signed by the respondent No. 1, it is stated that (1) Shrimant Sangramsinh Gaekwad, and (2) Shri P.H. Chinoy were present. Thus, the name of Shrimant Fatehsinhrao Gaekwad who was shown present as the Chairman of the meeting in the draft minutes, said to have been forwarded under the signature of Shri M.N. Khade, the Company Secretary, on 29-3-1988 to N.K.K. Mohammed, Bombay who was the Secretary to the respondent No. 1, is conspicuously absent in the final minutes.

(b) The final minutes of the Committee held on 21-3-1988 show that the respondent no. 1 was in the Chair and the minutes were signed by the respondent No. 1 as the Chairman of the meeting while in the draft minutes Shrimant Fatehsinhrao Gaekwad was shown to be the Chairman of the meeting.

(c) In the draft minutes there was no specific reference made to the resolution passed at the Board meeting on 8-1-1988 for issuance of 15,000 equity shares and about the offer letters dated 12-2-1988 having been sent to the shareholders, while in the final minutes these are specifically mentioned.

(d) In the draft minutes it was stated that after the discussion the allotment was decided as under:-

(i) Shrimant Fatehsinhrao P. Gaekwad - 8,000 shares of the value of Rs. 8 lakhs;

(if) Shrimant Sangramsinh Gaekwad and others (these last two words "and others" are written in hand) 6475 shares of the value of Rs. 6,47,500;

(in) Smt. Mrunalinidevi Puar 500 shares of the value of Rs. 50,000; and

(iv) Smt. Shubhanginidevi Gaekwad 25 shares of the value of Rs. 2,500

In the final minutes however, there is no mention of allotment of shares by number as stated in the draft minutes. Instead, it has been stated: "Out of these additional equity shares, it is decided to issue 51 per cent additional equity share capital to Lt. Col. Dr. Fatehsinh Gaekwad and the balance 49 per cent to be issued to the existing members depending on the offer accepted by them. In case the existing members do not subscribe to the additional share capital offered to them in terms of the letter of offer dated 12-2-1988 sent to all the members of the company, it was decided to offer these equity share capital remaining unsubscribed to the persons as the Committee deem fit. "Thus, in the final minutes of the meeting of the Managing Committee held on 21-3-1988, which were signed by the respondent No. 1 there was absolutely no reference to allotment of 6475 shares to the respondent No. 1. These minutes disclose that a firm decision to issue 51 per cent additional equity share capital to Shrimant Fatehsinhrao P. Gaekwad was already taken while the balance of 49 per cent was yet to be issued to the existing members depending on the offer accepted by them. It is only when the existing members did not subscribe to the offer made to them in letter dated 12-2-1988, it was decided to offer the unsubscribed shares to the persons as the committee deemed fit.

13.1 The version of the respondent No. 1 in paragraph 9(g) of his affidavit in reply in company petition No. 7/92 is that: "at the meeting of the Managing Committee held on 21-3-1988, 8,000 shares were kept apart for the time being, for Shrimant Fatehsinhrao P. Gaekwad. The balance 8,000 shares were kept apart for the other existing members of the company. Thereafter, I specifically instructed Mr. Khade to give first option to the other family members to subscribe for shares according to their request and the remaining be put in the names of myself and my family. The only two persons who responded to these were Mrs. Mrunalinidevi Puar for 500 shares and Mrs. Shubanginidevi Gaekwad for 25 shares and so automatically whatsoever was remaining was put down in my and my family''s name by Mr. Khade, which amounted to 6475 shares". In contrast to this version, the respondent No. 1 has stated in para 11(2)(vi) of his affidavit in reply in the present petition that: "despite his (i.e., Shrimant Fatehsinhrao Gaekwad''s) reluctance, 8000 shares were kept apart for him if he chose to subscribe for the same. It is for this reason that the committee meeting of 21st March, 1988 (draft minutes whereof are annexed at page 102 of the petition) specifically recorded that the shares would be allotted as and when amounts are received. At the said meeting it was further decided that 6475 shares would be kept apart for myself ''and others''. Since I was basically handling Baroda Rayon Corpn. and in this company, I was given liberty to either subscribe in my own name or through others including family members, whereas as far as others were concerned they, could be considered only if they themselves made the application personally and not by others". It is further stated by him:"...pursuant to the decision taken on 21-3-1988 by the Managing Committee I and my family members subscribed for 6475 shares which were available to me for subscription. I actually put in the subscription monies and was allotted shares in the period between April and June 1988. In the meanwhile Smt. Shubanginidevi Raje Gaekwad was allotted 25 shares and Smt. Mrunalinidevi for whom only 500 shares were kept apart applied and was allotted 1,000 shares in the aggregate on 30-5-1988." It is then stated that: "Thus, the position that obtained in end of May/June 1988 is that 7500 shares were issued and allotted and certificates issued and only balance 7500 shares were yet to be allotted." Then after referring to the so called renouncement by Shrimant Fatehsinhrao Gaekwad through his Secretary''s letter dated 11-6-1988, the respondent No. 1 in para 11(2)(viii) of his affidavit in reply stated that "Once again efforts were made to find out if any other members would like to give an offer for subscription of shares of the company, but no offer was forthcoming. With a view to augment the equity resources of the company, the respondent Nos. 4 and 5 (i.e., his minor son and minor daughter) made an application for 3000 shares of the company. No other persons were interested in subscribing out of the said balance of 7,500 shares. Under the circumstances, further allotment of 3,000 shares was made in favour of my children, the respondent Nos. 4 and 5 on 6-12-1988". In paragraph II(2)(x), he states that "under the circumstances, a further allotment was made in favour of my children on 6-12-1988. With this final allotment of 3,000 shares, the issue of 15,000 shares proposed on 8-1-1988 stood finally closed with the total allotment of 10,500 shares". In his version in the affidavit-in-reply filed in Company Petition No. 7 of 1992, in paragraph 0) the respondent No. 1 has stated that: "That existing members specifically refused to take up any shares out of balance 7500 shares, saying that they were short of funds. Ultimately, my children Mr. Pratapsinh S. Gaekwad and Kum. Priyadarshini Raje S. Gaekwad applied for further 3000 shares through me as their guardian and in view of the availability of shares, it was decided to issue and allot the said 3000 shares to them thereby leaving only an unallotted quantum of 4,500 shares. These 4,500 shares remained unallotted and in any event are not available for allotment after the issue was closed on 10-12-1988."

 

13.2 In the background of the above discrepancies in the version of the respondent No. 1 about his having been allotted 6475 shares for himself and his family, we may now refer to the minutes of the meeting of the Managing Committee said to have convened on 10-12-1988. A notarised true xerox copy of these minutes is produced at Annexure "A/3" of the affidavit-in-rejoinder of the petitioner No. 1, read with para 14 thereof. Heavy reliance was placed on behalf of the respondent Nos. 1 to 5 on these minutes in context of letter dated 11-6-1988 written by the Secretary to Shrimant Fatehsinhrao P. Gaekwad, which is referred to therein, by which Shrimant Fatehsinhrao P. Gaekwad is said to have declined to accept the offer of shares contained in the letter dated 12-2-1988, as well as, in respect of allotment of 3,000 shares to the respondent Nos. 4 and 5. These hand-written minutes bear the signature of the respondent No. 1 as the Chairman of the meeting at which the same two directors, namely the respondent No. 1 Shangramsinh Gaekwad and Shri P.H. Chinoy were present. It is recorded in these minutes that in terms of the offer letter dated 12-2-1988 sent to all the shareholders of the company pertaining to the issue of 15,000 equity shares of Rs. 100 each of the company, the response was received only from the four existing shareholders of the company. The Chairman of the company Shrimant Fatehsinhrao P. Gaekwad who was offered 51 per cent shares out of the 15,000 additional equity shares of Rs. 100 each also declined to accept the offer vide his Executive Secretary''s letter dated 11-6-1988. Hence, in terms of the decision taken in the Committee meeting held on 21-3-1988 the shares were offered for subscription amongst family members of the shareholders. Accordingly, the company had received application for 7500 equity shares as per the details given in the minutes, i.e., (1) Shri S. Gaekwad (individual) 2000 shares, (2) Shri S. Gaekwad (HUF) 1475 shares, (3) Smt. Mrunalinidevi Puar 1000 snares, (4) Smt. Shubanginidevi Raje Gaekwad 25 shares, and (5) Pratapsinh S. Gaekwad 1,500 shares i.e., in all 7,500 shares were applied for. Then comes the material part of the minutes which reads thus: "The Committee decided to allot 7500 equity shares of Rs. 100 each in the above mentioned proportions to the respective applicants of shares. Out of the remaining 7500 equity shares it was decided to offer 3,000 equity shares of Rs. 100 each between Pratapsinh Sangramsinh Gaekwad and Miss Priyadarshini Sangramsinh Gaekwad in the proportions as they like. As soon as the applicants money for 3,000 equity shares of Rs. 100 each amounting to Rs. 3,00,000 is received the subscription of additional shares be closed at 10,500 equity shares of Rs. 100 each amounting to Rs. 10,50,000". It would appear from these minutes of the Managing Committee that 7,500 shares were allotted out of the total 15,000 shares offered to the applicants for the first time on 10-12-1988 at a decision taken at this meeting. Out of the remaining 7,500 shares 3,000 shares were allotted to respondent Nos. 4 and 5 and the issue was closed on that day. The stands taken up by the respondent No. 1 in context of these minutes of 10-12-1988 in his affidavits are conflicting. In his sur-rejoinder to the rejoinder of the petitioner No. 1 in the petition, he has stated in paragraph 14 that he did not admit that the said minutes are genuine, but, in para 31(g) of his affidavit-in-reply filed in Company Petition No. 7 of 1992 on 11-4-1992, he has stated, in response to paragraph 6(9) of that petition in which a xerox copy of these very minutes was placed at Annexure "F" with an allegation that these were fraudulent and fabricated and brought about by Shri Sangramsinh P. Gaekwad (who is respondent No. 2 therein) with the sole object of gaining control of the company, that: Although the shares were to be allotted as and when the money came these minutes were written on 10-12-1988". He has denied in para 31(g)(i) of the said reply the allegation that these minutes of 10-12-1988 were fraudulent or fabricated. In para 31(g)(ix) the respondent No. 1 in response to the allegation that the alleged decision of the Managing Committee of 10-12-1988 was not placed before the Board meeting held on 14-3-1989 and that it was not ratified by the Board has stated thus: "I submit that as the very power of allotment of shares was given to the Managing Committee the question of ratification by the board of directors did not arise. The decision was, therefore, not required to be placed before the board of directors for its ratification or approval". When as per these minutes of the Managing Committee said to have held on 10-12-1988, the Committee took the decision to allot the shares for the first time at that meeting, the theory of the respondent No. 1 that 6475 shares were already allotted by the committee to the respondent Nos. 1 to 5 earlier, stands badly exploded. In the Board''s meeting of 16-4-1988, there was no mention of any such allotment but only a mention in paras 3 and 4 of the minutes that "the Board discussed the issue of 15,000 equity shares of Rs. 100 each of the company." There was no''reference made to any decision of the Managing Committee meeting held on 21-3-1988 but a generally worded resolution was recorded to the effect that the share certificates to cover equity shares be issued to the members and they be signed by respondent No. 1 and Shri H.A. Shinde, directors and countersigned by Mr. Khade, the Secretary of the company. It was also resolved that common seal of the company be affixed to the equity share certificates when ready in the presence of the respondent No. 1, a director of the company. In para 6 of these minutes, it is recorded that the Board sanctioned transfer of 22 equity shares in favourofShrimantFatehsinhrao Gaekwad. It will be noted from the minutes that the name of Shrimant Fatehsinhrao P. Gaekwad was initially written "present as Chairman" but appears to have been scored out and added in the list of directors who were granted leave of absence and the numbering is altered accordingly at all places. The only minutes that reflect a decision for allotment of shares to the respondent Nos. 1 to 5 of 6475 equity shares and to respondent Nos. 4 and 5 of 3,000 equity shares are these minutes of the meeting of 10-12-1988. It is not possible to believe that the respondent No. 1 would have signed these minutes recording the decision to allot 6475 shares to the respondent Nos. 1 to 5 on 10-12-1988 if the shares were already allotted to them earlier by the Managing Committee. No such earlier decision of the Managing Committee to allot 6475 shares is forthcoming. As noticed above, there was no indication to make any such allotment to the respondent Nos. 1 to 5 in the minutes of the Managing Committee held on 21-3-1988 which were signed by the respondent No. 1. We may note here that throughout the hearing there was no dispute raised over the fact that both the notarised minutes of the Committee dated 21-3-1988 and 10-12-1988 produced at Annexures A/2 and A/3 of the affidavit in rejoinder of the petitioner No, 1 with the particulars of such notarisation stated in para 11 thereof, contained the signature of the respondent No. 1 put as Chairman of these meetings and on our own perusing these signatures and keeping in view his other signatures on record it is clear that these are rightly not disputed. In fact as noted above the minutes dated 10-12-1988 have been admitted by the respondent No. 1 to be true in his affidavit-in-reply filed on 11-4-1992 in the company Petition No. 7 of 1992 before the CLB. It is obvious that being confronted by the notarised xerox copy of these minutes the respondent No. 1 has tried to avert his embarrassment that they caused as much as possible in the said affidavit-in-reply dated 11-4-1992 after having taken a different stand in the affidavit-in-reply dated 21-3-1991 and his sur-rejoinder dated 22-4-1991 filed in the petition before this Court.

13.3 It will be noted that in the minutes of 10-12-1988, there is no reference to the type of allotment referred in the draft minutes of 21-3-1988 which were forwarded to the Secretary or respondent No. 1 Mr. N.K.K. Mohammed under note dated 29-3-1988 of the Company Secretary. In the minutes of 21-3-1988 which were signed by the Chairman, there was no mention that the shares would be allotted as and when the amounts were received as was contained in the draft of the meeting. There was a firm decision to issue 51 per cent additional equity shares to Shrimant Fatehsinhrao P. Gaekwad and as regards balance 49 per cent they were to be offered to the existing members and if the existing members did not subscribe then to persons as the Committee deem fit. In this context, if we refer to the requisition note which is at Annexure "B" to the petition, read with para 6.5 thereof and also at Annexure "D" to the Company Petition No. 7 of 1992 (Volume 10 at page 81), it would appear that there are figures written therein showing the requisitions received till that day from the members mentioned therein. As per the particulars mentioned in it, the Chairman, i.e., Shrimant Fatehsinhrao P. Gaekwad, had requisitioned 8,000 shares, Maharani of Dhar (i.e., respondent No. 12) 500 shares. Princes Shubangini Raje 25 shares and the respondent No. 1 Shri Sangramsinh Gaekwad had requisitioned 6475 shares. There is an endorsement in the margin of these requisitions that the Chairman had okayed this. There is another endorsement below the type-written portion which reads: "Minutes of Committee meeting on this basis" and is signed by Shri N.K.K. Mohammed, Secretary to the respondent No. 1 Shri Sangramsinh Gaekwad with the dated 23-3-1988. The said date below the endorsement, Ie., 23-3-1988 is not shown as the date of any family meeting but the date on which the endorsement was put stating that the minutes be prepared on that basis. Since on the endorsement appears the dated 23-3-1988 for preparing the minutes, the draft minutes which was forwarded on 29-3-1988 would have been prepared on the basis thereof. However, in the draft minutes the words ''and others'' were added alongside the name of the respondent No. 1 which were not there in the said note of requisition which was said to have been approved by the Chairman. In the notarised copy of the minutes of the meeting of the Managing Committee held on 21-3-1988, signed by the respondent No. 1 as Chairman, there was no mention therein of Shrimant Fatehsinhrao Gaekwad even being present at that meeting. Only the respondent No. 1 and Mr. P.H. Shinoy were shown as present. Therefore, the story of 6475 shares being requisitioned by the respondent No. 1 and allotted to him which is reflected from the note of requisitions which bears the endorsement made by the Secretary of the respondent No. 1 on 23-3-1988 to the effect that the minutes of the Committee meeting be prepared on this basis and that the Chairman of the meeting (i.e., the respondent No. 1) had okayed this, has clearly emanated for the first time from the respondent No. 1 through his Secretary who caused the draft minutes being prepared on the basis of that note. Therefore, while in the final minutes of the meeting on 21-3-1988 there was no decision recorded for allotting any shares to the respondent No. 1 or that shares will be allotted in the names as stated in any such requisition note, it appears that by sending the requisition note with a direction issued by an endorsement made thereon by his Secretary at his own instance the respondent No. 1 got the minutes prepared by the Company Secretary Mr. Khade, which were forwarded under a note (Annexure "C" to the petition) to Mr. N.K.K. Mohammed, Secretary of the respondent No. 1 on 29-3-1988 by the Company Secretary, as can be seen therefrom. This course was not open to the respondent No. 1 on the basis of the decision taken at the meeting of 21-3-1988, as recorded in the minutes of that meeting (Annexure A/2 to the petition), which were signed by the respondent No. 1 as its Chairman.

13.4 The minutes book of the Managing Committee according to the affidavit of the Company Secretary Mr. Khade, was forwarded by him to Mr. N.K.K. Mohammed on 20-11-1990 (paragraph 9 of the affidavit) along with the minutes books of the general meetings and the meetings of the board of director. He has stated that they were delivered to Mr. N.K.K. Mohammed through a personal messenger and Shri N.K.K. Mohammed, "received the same and okayed having been received by putting in his own hand-writing the words "O.K." on the carbon copy of my said letter dated 20-11-1990." He has produced a photocopy thereof. Not being aware of the fact that xerox copies of the minutes of the meeting held on 21-3-1988 and 10-12-1988 bearing his signatures as chairman will be produced, the basis of allotment was tried to be worked out in the manner reflected in the requisition note okayed by him and forwarded to the company Secretary by his Secretary for preparing minutes and on the basis of which the draft minutes were prepared and forwarded to his Secretary on 29-3-1988, the respondent No. 1 seems to have taken up a convenient stand that the minutes book of the meetings of the Managing Committee was not received from Mr. Khade. Merely because the minutes books were sent under a letter dated 20-11-1990 to the Secretary of the respondent No. 1 at Bombay, it cannot be inferred that they remained at Bombay and were not available at the registered office of the company at Baroda when the notarised xerox copies thereof were taken on 10-12-1990. In fact, these minutes of 10-12-1988 have been admitted by the respondent No. 1 in his affidavit-in-reply filed on 11-4-1992 in the company petition No. 7/ 92 as noted hereinabove and, therefore, the stand taken up in para 14 of his sur-rejoinder by the respondent No. 1 that the minute book of the Managing Committee meetings was lying at Bombay and its copy could not have been taken out on 10-12-1988 is insignificant and misleading. The averments contained in paragraph 11 of the affidavit-in-rejoinder of the petitioner No. 1 that she had along with her daughter inspected on 10-12-1990 the Register of members. Register of transfer, minute books of the board of directors and the minutes book of the committee meetings and saw the minutes dated 21-3-1988 and 10-12-1988 which were under the signature of respondent No. 1 as stated by her and obtained xerox copies thereof from the director Shri P.U. Rana which were verified by Shri M.C. Vaidya after comparing the same with the original and certified by him as true copies, is a version which deserves to be accepted in view of the notarised copies not only of these minutes but also of the register of members and other documents duly notarised on 10-12-1990 having been produced on the record of this petition. It is clear that on that day all these registers and minute books including the minutes book of the Managing Committee were lying in the Registered office of the company at Baroda even though they may have been sent earlier to the Secretary of the respondent No. 1 on 20-11-1990. The director of the company Mr. P.U. Rana in his affidavit produced at Annexure "5" collectively with the rejoinder of the petitioner No. 1 has stated in paragraph 2 that he did allow the petitioner No. 1 who was a seniormost member of the Royal family to inspect the Register of members, the Register of transfers, the minutes book of the meetings of the board of directors of the respondent No. 6 company, and the minutes book of different committee meetings on 10-12-1990. He also states that he had got the required documents xeroxed and called the notary Shri M.C. Vaidya to the registered office of resporr-dent No. 6 company at Indumati Mahal, Baroda, who after comparing the xerox copies with the originals certified the xerox copies to be true copies. Amongst the certified copies thus given by him to the petitioner No. 1 were copies of the Register of minutes, Register of transfers, the last minutes in the minutes book of the meetings of the board of directors held on 30-3-1990 and Minutes of the committee meetings dated 21-3-1988 and 10-12-1988. It is thus, clear that the minutes book of the committee meeting was amongst other minute books and registers at the company''s office on 10-12-1990 and the certified copies thereof which have been produced on the record were obtained by the petitioner No. 1 on that day.

13.5 The allotment of 51 per cent of the new shares to Shrimant Fatehsinhrao Gaekwad firmly reflects from the minutes of 21-3-1988 and there was no reference therein or even in the minutes of 10-12-1988 about any decision to issue any share to the respondent No. 1. That decision has emerged in the requisition not on which the Secretary of respondent No. 1 made endorsement for preparing minutes on 23-3-1988, at the instance of the Chairman who had okayed it. That Chairman was none other than the respondent No. 1 who had signed the minutes of 21 -3-1988. On the basis of that requisition note the draft minutes were made to show as if it was decided to give 6475 shares to the respondent No. 1 and others while in fact no such decision was recorded in the minutes of the meeting of the Managing Committee of 21-3-1988 or of 10-12-1988 in which that decision of 21-3-1988 was referred and which were signed by the respon- dent No. 1. Since admittedly the Managing Committee consisted of three Directors, i.e., Shrimant Fatehsinhrao P. Gaekwad, the respondent No. 1, Shri Sangramsinh Gaekwad and Shri P.H. Chinoy, the endorsement in the requisition note was capable of being construed to mean that Shrimant Fatehsinhrao P. Gaekwad had okayed the allotment as Chairman. Only the respondent No. 1 was interested in bringing about such a situation on record because Shrimant Fatehsinhrao P. Gaekwad''s allotment of 51 per cent share was firmly mentioned as reflected in the minutes of 21-3-1988 was that would have gone to his heir on his demise. Thus, though there was no decision for allotment of 6475 shares to respondent No. 1 as per the minutes of the meeting of the Managing Committee dated 21-3-1988 signed as chairman by him the respondent No. 1 who was the director of the company brought about the allotment of such shares to himself and his family members, which were later transferred by the respondent Nos. 1 to 5 to Indreni. Such issuance of shares coupled with blocking of 51 per cent equity shares from devolving on the sole heir of Shrimant Fatehsinhrao P. Gaekwad was obviously intended by the respondent No. 1 to enhance his power and position by allotting shares to himself and his family members. The exercise was obviously intended for destroying the existing majority and creating a new majority of his group. The transfer of the new shares in the Register and issuance of share certificates in favour of the respondent Nos. 1 to 5 was clearly not warranted by any valid decision of the Managing Committee or the board of directors.

13.6 Self-interest is the commonest instance of improper motive leading to abuse of power. Where the question is one of abuse of powers the state of mind of those who exercised power as reflected from the surrounding circumstances and the materials which throw light upon that aspect so as to show whether they were honestly acting in discharge of the powers in the interest of the company or were acting for their own advantage of improperly favouring themselves or one section of the shareholders against another is to be examined. Where directors have acted in what they believe to be an interest which they were entitled to serve, their exercise of power can only be set aside, if it be found that the interest they were serving was an inadmissible or corrupting interest, such as self-interest. The power to issue shares being of fiduciary nature its exercise can be set aside when it is exceeded or abused. There can be no dispute over the proposition that a majority shareholders cannot control the directors as to the exercise of their fiduciary powers. The directors of a company, however, cannot use their fiduciary powers over the shares of a company for the purpose of destroying an existing majority. The purpose of altering the balance of voting power is never permissible. If the purpose of issuing shares was solely to alter the voting power, the issue would be invalid. The directors cannot manipulate the issue of shares for private purposes, or merely to secure voting power. A power of the directors to issue shares must be exercised for the benefit of the company because primarily it is given to them for the purpose of enabling them to raise capital when required for the purpose of the company. There may be occasions when the directors may fairly and properly issue shares in case of a company. However, when shares are issued to persons who are obviously meant and intended to secure necessary statutory majority that will not be a fair and bona fide exercise of power. If the shares are issued under the general and fiduciary powers of the directors for the express purpose of acquiring an unfair majority for the purpose of altering the rights of parties under the articles, the Court ought to interfere because it would be unconstitutional for the directors to use their fiduciary powers over the shares in the company purely for the purpose of destroying an existing majority, or creating a new majority. If there is added to this immediate purpose an ulterior motive to enable an offer for shares to proceed which the existing majority was in a position to block, the departure from the legitimate use of the fiduciary power will be considered to be greater. This precisely was done by the respondent Nos. 1 and 2 who were the directors of the company for their self-aggrandisement and in breach of their fiduciary duty to the company and the shareholders.

14. In the meeting held on 27-12-1989, the respondent No. 1 who chaired it and the other director Mr. P.H. Chinoy took some interesting decisions as reflected from the minutes. The Chairman ''informed'' in the meeting where these two alone were present that it was necessary to expand the Board by appointing additional directors "so that the company can get the benefit of their guidance and experience". The chairman, i.e., the respondent No. 1 was authorised to invite his wife - the respondent No. 2 Mrs. Ashra Raje, Mr. Dilipbhai Thakker, Mr. Bhupat Singhji Jadeja and Capt. V.K. Raichand to join the Board as directors. These minutes also indicate that the Board approved the transfer of shares by the respondent Nos. 1, 2 and their son P.S. Gaekwad. There is an indication that no objections were received from the shareholders in response to transfer notices but no particulars regarding the nature of transfer or number of shares of the transferee were mentioned.

14.1 In the meeting of the Board held on 30-3-1990 the respondent No. 1, Mr. P.H. Chinoy and the above four newly invited directors were present and they participated. The other four directors remained absent. The respondent No. 1 took the Chair and informed the Board that the company''s day-to-day management hither to was looked after by the Managing Committee of directors, and that, with the appointment of the new directors on the Board, it was proposed that the day-to-day management could be vested in one of the directors. The minutes record that the matter was discussed and it was proposed that the respondent No. 2 Mrs. Ashra Raje be appointed as the executive director of the company. The Board resolved that the Managing Committee of the directors of the company be dissolved forthwith, i.e., with effect from 30-3-1990 and that Mrs. Ashra Raje, the respondent No. 2 be appointed as the executive director of the company with effect from 1-4-1990 which powers; (a) to look after the day-to-day management of the company and to exercise such powers from time to time as may be required, (b) to buy and make investments on behalf of the company in shares/securities of other companies and in immovable properties up to Rs. 50 lakhs in a financial year, (c) to sell and disinvest shares/ securities of other companies held in the name of the company and immovable properties of the value of Rs. 50 lakhs in a financial year, and, (d) to do all that was necessary for conducting exports business of the company as a merchant exporter in the interest of the company. Such transactions and business were to be placed before the Board for ratification. The Chairman placed before the Board the documents received for transmission of shares from the name of late Shrimant Fatesinhrao P. Gaekwad to the name of his mother Smt. Shantadevi Gaekwad and it was resolved that 23 equity shares of the company standing in the name of Shrimant Fatehsinhrao Gaekwad be transmitted to the name of Smt. Shantadevi Gaekwad. Even here it was not mentioned that the entitlement of Shrimant Fatehsinhrao Gaekwad to 8,000 shares was not available to her because he had renounced the shares in favour of the respondent No. 1 and his children. The Board then took a decision on the basis of the transfer documents placed before the meeting by the respondent No. 1 and resolved that the transfer of 9415 equity shares of the company be approved. By this resolution the transfers of, 1495 shares of respondent No. 2 Smt. Asha Raje, of 2740 shares of the respondent No. 4 Mr. Pratapsinh, 1975 shares of the respondent No. 1 Shri Sangramsinh Gaekwad, 1465 shares of his HUF and 1740 shares of his daughter the respondent No. 5 Priyadarshini were approved and necessary entries in the transfer register and issuance of certificates was authorised to be made by the respondent No. 2 the executive director. These 9415 shares were transferred to a company named Indreni Holdings Pvt. Ltd. (Indreni for short) by the respondent Nos. 1 to 5.

14.2 The minutes of the meeting held on 30-3-1990 are said to have been confirmed at the meeting held on 29-6-1990. At that meeting it was resolved to remove the name of the respondent No. 1 as the guardian of Pratapsinh who had become major. It was resolved to maintain a new share transfer register as directed by the Chairman on the ground that the share transfer register of company was not traceable at the company''s office. It was further resolved to approve purchase of 4,000 equity shares of the Baroda Rayon Corporation Ltd. by the company. The meeting of the Board held on 13-7-1990, as per the minutes, took decisions on important financial transactions and fixed the remuneration of the executive director to be paid with effect from 1-4-1990. It was also resolved that the transfer of 9415 equity shares in favour of Indreni Holdings Pvt. Ltd. be reconsidered and the matter be referred to transferors. It was decided to pay the dividend to Indreni Holdings (P.) Ltd. and subject to its refunding the same to the transferees "in the event the same being found irregular". The Board took a serious view of the Alaukik Trading & Investments (P.) Ltd. having issued further shares without informing the company, which held more than 80 per cent shares of Alaukik & decided to seek legal opinion. The Alaukik Trading & Investments Pvt. Ltd. had informed by letter dated 17-5-1990 that it had ceased to be the subsidiary of this company. In the minutes of the meeting of the Board meeting allegedly held on 9-8-1990, relied upon by the respondent Nos. 1 to 5, the Board had resolved to rescind the transfer of shares and permit revocation of transfer notice and rescinded the resolution dated 30-3-1990 by which transfer of 9415 equity shares had been approved in favour of Indreni. The respondent No. 2 executive director was authorised to make the required endorsements in the register and on the share certificates and the transferors and transferees were permitted to cancel the transfer.

15. The case of the respondent No. 1 in para 6(9) of his affidavit-in-reply was that before it was decided by the respondent Nos. 1 to 5 to transfer the shares to Indreni, Mr. Khade the company Secretary was told to inform the existing shareholders about it. It was stated that though he prepared a letter dated 15-11-1989 to all the shareholders as per copy at Annexure "17" to the reply, he did not deliver these letters to any one of them and on the contrary he falsely informed them that there was no response to the proposed transfer. In the minutes of the meeting of board of directors held on 27-12-1989, there is reference to a report from the secretary of the company about the procedure followed in response to the transfer notice received from the shareholders of the company but no such report is forthcoming Mr. Khade who was the company Secretary has stated in his affidavit at Annexure "5" collectively to the rejoinder of the petitioner No. 1 that there was no talk about transfer of shares to Indreni in the Board meeting of 13-7-1990 and that there was no Board meeting held on 9-8-1990. He states that he had taken the minute book of the Board meetings to the auditors in or about October/November 1990 and till that time the last minutes written were of the Board meeting held on 3-3-1990 and that no minutes were written in the minutes book of the Board meetings after 30-3-1990 till he went on leave on or about 5-12-1990. He has categorically denied that there was any talk about transfer notices to the shareholders on 13-7-1990. He has denied the allegation of wilful default made by the respondent No. 1 against him and has stated in para 7 of his affidavit that the minutes as now produced were neither true nor correct. He also states that he was present in the meeting of the board of directors held on 29-6-1990 and there was no mention about the transfer register being not traceable or about maintaining a new transfer register. He states in para 9 of his affidavit that he had sent the minute books of the General Meetings, Board Meetings and Committee Meetings under the forwarding letter dated 20-11-1990 to Mr. N.K.K. Mohammed, the Secretary of the respondent No. 1 and they were delivered to him through a personal messenger which he acknowledged on the copy by endorsing "OK".

15.1 Before the shares were transferred to Indreni, it was incumbent upon the transferor to give a transfer notice to the company as required by clause 8 of the articles of association. Admittedly, no such transfer notice was given in respect of 9415 shares to the company by the respondent Nos. 1 to 5. Therefore, the transfer in favour of Indreni by them which was effected at the behest of the respondent Nos. 1, 2 and their group at the meeting of 30-3-1990 in breach of the articles of association and ignoring the rights of other members to be offered by the company shares specified in a transfer notice as nearly as may be in proposition to their existing shares, as envisaged by clause 13 of the articles of association. The transfer notice under clause 8 of the articles of association was required to be given by the respondent Nos. 1 to 5 in writing and in absence of such transfer notice there could have arisen no question of the company Secretary sending offer letter in respect of shares to the members. Therefore, the story put up by the respondent No. 1 that the company Secretary Mr. Khade was told to inform the shareholders as per the articles of association and that even-though he prepared the letter dated 15-11-1989 (Annexure "D"), he did not deliver it to any of the members does not inspire confidence. In any event, the fact remains that no transfer notice was given to the company by the respondent Nos. 1 to 5 and the members also did not receive any intimation before 9415 shares were transferred to Indreni. The transfer documents were executed in favour of Indreni by the respondent Nos. 1 to 5 and the transfers were duly recoded in the Register of members. Therefore, if these transactions had to be undone, that could be done only by Indreni resolving to retransfer the shares to respondent Nos. 1 to 5 by executing appropriate retransfer documents. It is abundantly clear that the title in 9415 shares that had passed on to Indreni was not conveyed back in this manner. Such retransfer would again have required transfer notice as per clause 8 of the articles of association, because, Indreni''s name had already been entered in the Register of members and the other members again had pre-emption right if Indreni were to transfer the shares back. All these hurdles were conveniently crossed by resorting to the device of so-called rescission retrospectively recorded in the minutes of 9-8-1990 which is not borne out from the entries in the Register of members even up to 10-12-1990 as is clear from the certified copies taken out on that day of the register of members. Even if Indreni was a company controlled by the respondent No. 1 and his family, in the eye of law it was a separate legal entity and not an existing member of the respondent No. 6 company to whom the shares could have been transferred or by whom they could have retransferred back without a transfer notice. Therefore, transfer of shares to Indreni by the respondent Nos. 1 to 5 was not a transfer to a member. Such a transfer was therefore, clearly impermissible and in violation of the transfer rules contained in the articles of association. This aspect has significance in the present case not from the view point as to who is the owner of these 9415 shares, i.e., respondent Nos. 1 to 5 or Indreni but it has a great bearing on the conduct of the respondent Nos. 1 to 5 and shows that the provisions of articles of association were being violated by them with impugnity and that the directors respondent Nos. 1 and 2 committed breach of their fiduciary duty towards the company by keeping their self-interest paramount.

 

15.2 As per the minutes of the meeting of board of directors held on 10-12-1990, and presided over by the respondent No. 2 it was resolved to approve the minutes of 9-8-1990 which she signed. It is however, not mentioned in the minutes whether the respondent No. 2 who was authorised under those minutes had made entries in the Register of members to show that 9415 shares were transferred back from the name of Indreni to the names of respondent Nos. 1 to 5. On this very day the Civil Court had issued injunction against Indreni and inspection of the Register of members was taken and the notary public attested a copy of the register of members in which the shares stood in the name of Indreni and were not transferred back to respondent Nos. 1 to 5. Had the shares really been so transferred back the respondent Nos. 1 and 2, who were at the helm of affairs, would have carried out the change in the Register of members which was in their charge. It appears from these minutes that the respondent No. 1 Shri S.P. Gaekwad and Dr. G.M. Oza were to retire by rotation. The additional directors who were invited by the respondent Nos. 1 and 2 as aforesaid i.e., Capt. V.K. Raichand, Shri Dilip Thakkar, Shri B. Jadeja and the respondent No. 2 Smt. Asha Raje were to hold office only till the conclusion of the ensuing AGM. The matter of their reappointment was therefore approved at this meeting and it was resolved to convene the AGM on 20-12-1990 and a draft notice was approved for the purpose. The executive director-respondent No. 2 was authorised to invite Shri Rajan Chhabaria and Mrs. Estelle Cowerjee as directors of the company.

15.3 In the affidavit-in-reply of the respondent No. 1 filed in Company Petition No. 7 of 1992 before the CLB, in paragraph 9(5) and (y), it was alleged that Mr. Khade was asked to make entries in the register of members since it was only a clerical job but Mr. Khade did not record rescission of transfer in the register which took place on 9-8-1990, while in the minutes of the meeting said to have been held on 9-8-1990, it is recorded that it was resolved to authorise the executive director, i.e., the respondent No. 2, to make the required endorsements in the Register of members and the share certificates for this purpose on behalf of the company. There was no mention made in the minutes about any instruction to Mr. Khade to make any entries in the register. The version of Mr. Khade is that no such meeting was held on 9-8-1990 and the true copies of register shows that when it was inspected on 10-12-1990, there were no entries of rescission made therein and the shares which were transferred in favour of Indreni by the respondent Nos. 1 to 5 stood in the name of that company which was also paid dividend. In paragraph 9(y) of the affidavit-in-reply of the respondent No. 1 in company petition No. 7 of 1992, it was stated that the register of the members was rectified with retrospective effect from 9-8-1990 before the AGM of 20-12-1990. There is however, no mention of any such retrospective amendment of the register even in the minutes of the Board meeting said to have been held on 10-12-1990, in which the minutes of the previous alleged meeting of 9-8-1990 were confirmed it will be significant to note that though it was recorded in the minutes of the meeting held on 9-8-1990 that leave of absence was granted to the directors Shri P.U. Rana, Shri H.A. Shinde and Shri S.G. Shirke pursuant to requests made on their behalf, Shri P.U. Rana, Shri H.A. Shinde and Shri S.G. Shirke had in their affidavits at Annexure "5" collectively and Annexure "11" to the rejoinder of the petitioner No. 1, categorically stated that they had not received any notice of the meeting of the board of directors scheduled to be held on 9-8-1990 and that they had not sent any letter for granting leave of absence to them. The respondent No. 1 in paras 89, 99 and 101 of his sur-rejoinder has vaguely dealt with these averments and not come out with any material to show that Shri P.U. Rana, Shri H.A. Shinde and Shri S.G. Shirke were served with any notice of that meeting or that they had sought leave of absence as alleged. The true copies certified by the notary on 10-12-1990 which are on record clearly show that on 10-12-1990, no such decision in respect of 9415 shares which would have them restored in the names of the respondent Nos. 1 to 5 was recorded which now appears in the original register of the members shown to the Court by the learned counsel for the respondent Nos. 1 to 5. It therefore becomes clear that the shares which were transferred under the transfer documents to Indreni by the respondent Nos. 1 to 5 as approved by the Board meeting on 30-3-1990 remained in the name of Indreni, which was controlled by the respondent No. 1 and his family and to which "for wealth-tax purposes" 9415 shares were transferred as stated in his affidavit in reply [paragraph 9(m)] filed by the respondent No. 1 in the company petition No. 7 of 1992. It is in this background that the proceedings of the AGM of 20-12-1990 are to be viewed.

15.4 Indreni was admittedly restrained by an injunction order dated 12-12-1990 of the Civil Judge (Senior Division), Baroda, made in Civil Suit No. 867 of 1990 filed by Smt. Shubanginidevi Raje, from attending meeting of GIC or exercising any rights in respect of 9415 equity shares. Similar injunction orders dated 28-11-1990 was served in respect of these shares on the defendants of Suit No. 305/1990 filed by the shareholder Smt. Premila Raje at Rajkot. Thus, the net position which obtained just prior to the AGM of 20-12-1990 was that 9415 shares continued to be held by Indreni in the Register of the company and that there were Court injunctions preventing exercise of voting rights in respect of 9415 shares transferred to that company by the respondent Nos. 1 to 5. It is obvious from the facts on the record that the story of rescission on 9-8-1990 is thought out with a view to meet with this situation which had reduced the voting power of the respondent Nos. 1 to 5 to only 66 shares at the AGM scheduled to be held on 20-12-1990.

16. It will be seen from the minutes of the AGM convened on 20-12-1990 that the petitioner Nos. 1,4, 5 and their supporting respondent Nos. 12 and 13 were present at the meeting with Mr. Ajit Gaekwad. Two of the directors Shri P.U. Rana and Shri H.A. Shinde, who according to the respondent No. 1 supported them were also present. The proxy holders of other members supporting that group were allowed to exercise their rights as stated in the minutes. The opposition against the resolutions for electing respondent No. 1 Shri Sangramsinh Gaekwad

 

as the director, proposed by the respondent No. 2 Smt. Asha Raje and seconded by their son (Resolution No. 3), Shri P.S. Gaekwad, for electing Dr. G.M. Oza as a director (Resolution No. 4), for electing respondent No. 2 Asha Raje as director (Resolution No. 5), for electing Dilip Thakkar, Shri Bhupatsinh Jadeja and Shri V.K. Raichand as directors (Resolution Nos. 6, 7 and 8) as proposed by the respondent No. 2 were all opposed by Shri Ajitsinh Gaekwad who spoke on behalf of his group as recorded in the minutes. The resolution seeking confirmation of the respondent No. 2 as the executive director was also opposed by that group. The proceedings thereafter as recorded in the minutes make a curious reading. As per the minutes, ballots were distributed amongst shareholders and the proxies present, who were required to exercise their vote on Resolution Nos. 3 to 10. The ballot box was shown to them to indicate that it was empty. It was noticed that the majority of persons present had not cast their vote by ballot. After the process of voting came to an end, Shri Ajitsinh Gaekwad and Shri Bipin Shah were requested to compile the report on the poll and bring the poll result to the Chairman. Shri Bipin Shah reported to the Chairman that Shri Ajitsinh Gaekwad refused to sign the poll register to witness his consent as a scrutiniser on the polling. Thereafter, the Chairman substituted Shri P.S. Gaekwad as the second scrutiniser. Thereafter, Mr. Bipin Shah and Mr. P.S. Gaekwad submitted a report on the poll to the Chairman who declared the result and stated that resolution Nos. 3 to 10 were passed without any opposition "as shareholders holding 9481 equity shares had cast their votes in favour and none against". This outcome recorded in the minutes does not stand to reason. The opposition to these resolution was itemwise expressed by Shri Ajitsinh Gaekwad for his group as recorded in the minutes and there was no reason why the same group should shy away from the same view been expressed by them and their proxies in the ballots which were distributed to them. In the minutes it is stated that the ballots were distributed to the shareholders and proxies who were present. If the group had decided not to vote by ballot that fact would have been recorded in the minutes. No. opposition to voting by ballot was recorded in the minutes. Moreover, as recorded in the minutes "after the process of voting came to an end the scrutiniser were requested to compile the report on poll". This means the group of which Shri Ajitsinh Gaekwad was the spokesman had not walked away before the poll and they were in fact present. It is therefore impossible to believe that his group that had meticulously opposed the resolution Nos. 3 to 10 and whose members had accepted the ballot papers would, for no apparent reason, refrain from voting so as to bring about a resounding victory for the respondents'' group by enabling that group to get the resolutions passed without any opposition. The affidavits of the directors and shareholders who were present at that meeting state that they had all voted at the meeting and the resolution Nos. 3 to 10 were defeated by 1122 to 66 votes. The minutes however, record that shareholders holding 9481 equity shares had cast their votes in favour and none against which is obviously wrong. This means that despite the Court injunctions preventing participation in respect of 9415 shares which stood in the name of Indreni, there was a purported exercise of votes in respect of that shareholding also. The entire exercise reflected from these minutes smacks of a desperate attempt on the part of the respondent Nos. 1 to 5 to tilt the power in their favour in total disregard of the fiduciary nature of the directors powers and to serve their self-interest.

16.1 The minutes of the AGM dated 20-12-1990 record on agenda item No. 4 that a resolution was proposed for reappointing Dr. G.M. Oza as a director and that it was opposed and therefore the respondent No. 1 as Chairman directed that that resolution also be put to vote. It is recorded in the minutes that even this resolution was passed without any opposition. This is obviously wrong, because. Dr. G.M. Oza had by his letter dated 17-12-1990 informed the company that he had not offered himself for re-election nor did he wish to be re-elected as a director of the company. Dr. Oza had affirmed in his letter dated 1-3-1991 at Annexure "D'' Collectively to the sur-rejoinder of the respondent No. 1, in reply to the letter dated 28-2-1991 of the respondent No. 2 that he had left the original letter of 17-12-1990 and copies addressed to other directors (also at Annexure "E" to the petition) on the table of the Secretary Mr. M. N. Khade at the office of the company and that he had no intention to be re-elected as a director. Mr. P.U. Rana has in his affidavit at Annexure "5" collectively to the rejoinder of petitioner No. 1, stated that the events took place as narrated in his letter of 30-1 -1990 at Annexure "N" to the petition. In that letter it was stated that it was pointed out by Shri Ajitsinh Gaekwad at the meeting that Dr. Oza had informed him that he had already written to the company and its directors that he did not want to be reappointed as a director of the company and several directors present had confirmed having received the said letter from Dr. Oza and that therefore that item was dropped. It was stated that the voting took place by ballot separately but simultaneously on each item of the agenda and that he and Shri Ajitsinh were appointed as scrutiniser. The fact that though Dr. Oza had written on 17-12-1990 that he did not offer himself as director there is stated in the minutes that the resolution proposing him was passed without opposition exposes the falsity of the minutes of the AGM held on 20-12-1990.

16.2 According to the version of Shri P.U. Rana was reflected in his letter dated 30-1-1991, which gains support for the affidavits of the shareholders at Annexure "5 collectively" to the rejoinder of the petitioner No. 1, when the voting was completed, while counting the number of votes each member/proxy holder was entitled to, the register of members was taken out from the cupboard and the number of shares standing against each Member''s name who were present personally or by proxy were taken to be the number of his votes, the particulars of which are mentioned therein. It was stated that all the resolutions put to vote, except the resolution in respect of re-appointment of Dr. Oza, which was dropped, were defeated by a majority of 1122 votes. It was further stated that on finding that all these resolutions including re-appointment of various directors including the respondent Nos. 1 and 2 were defeated by majority, the respondent No. 1 took in his possession the register of members proxy register, the appeal papers, proxy forms, attendance register, etc. and threatened others of dire consequences, if he was prevented. It was also stated by Shri P.U. Rana in that letter that he had done nothing wrong in supplying copies of various documents to the shareholders. This letter dated 30-1-1991 was preceded by special notice dated 5-1-1991 convening the Extraordinary General Meeting of 14-1-1991 for removal of Mr. P.U. Rana and Mr. H.A. Shinde.

16.3 In the meeting of the board of directors held on 5-1-1991, as per the minutes the respondent No. 4 Pratapsinh''s notice of his intention to move a resolution in the General Meeting for removing the two directors Mr. P.U. Rana and Mr. H.A. Shinde was also considered. At that meeting it was resolved that the respondent No. 1 Shri Sangramsinh Gaekwad be made a permanent director of the company and its permanent Chairman, subject to the approval by the shareholders and to the compliance of the provisions of the Companies Act. It was also resolved to give consent to the shifting of the registered office of the company to Surat from Baroda and the executive director was authorised to take necessary action for shifting the office records and gave intimation to the Registrar of Companies. It was also resolved, subject to the approval of the shareholders and compliance of the Companies Act, to consent to the alteration to article 14 of the articles of association of the company as formulated. As per the alteration so formulated it was provided therein for transfer of share by a member to a company incorporated under the Companies Act, provided such company continued to be owned, managed and controlled by the existing member of the company. It would be recalled here that the respondent Nos. 1 to 5''s transfer of 9415 equity shares in favour of Indreni which was controlled by them had boomaranged and their holding stood reduced to 66 shares in face of the challenge against the voting rights of Indreni company to whom the shares were transferred by them, which transfer on a legal opinion obtained by them was tried to be retracted by the respondent Nos. 1 to 5. The alteration formulated in article 14 of the articles of association was therefore obviously an exercise in the interest of the group of the respondent Nos. 1 to 5 that had attempted such transfer to a non-member company and does not appear to have been done in the larger interest of the respondent No. 6 company. It was further resolved in view of the Board deciding to remove the two directors Mr. P.U. Rana and Mr. H.A. Shinde, to change the Bank accounts, operating instructions by authorising respondent Nos. 1 and 2 to operate the Banking accounts of the company. It was also resolved to give consent to the removal of Shri P.U. Rana and Smt. Mrunalinidevi Puar as directors of Alaukik Tradings and to appoint Shri Rohit Amin and Shri S.P. Gaekwad in their place.

16.4 On the basis of the meeting of the board of directors held on 5-1 -1991, notice dated 5-1-1991 for convening the Extraordinary General Meeting on 14-1-1991 was issued which proposed the resolutions for (1) appointment of respondent No. 1 Shri Sangramsinh Gaekwad as a permanent director and Chairman of the company, (2) shifting the Registered office of the company from Baroda to Surat, (3) amending article 14 of the articles of association to enable a member of the company to transfer any share to a company owned, managed and controlled by the existing member of the company or by himself together with members of his family, (4) removal of Shri P.U. Rana as a director of the company, and (5) removal of Shri H.A. Shinde as a director of the company. At the said Extraordinary General Meeting held on 14-1-1991, the respondent No. 1 was the Chairman and the executive director as well as other directors Shri Bhupatsinh Jadeja, Shri P.H. Chinoy, Shri Dilip Thakkar were present. Respondent No. 4 Shri P.S. Gaekwad was also present. No other member was present. At that meeting, as per its minutes, all the above resolutions were passed. This Extraordinary General Meeting was convened on 14-1-1991 by notice dated 5-1-1991 without giving a clear fourteen days notice.

17. It will thus be seen from the above discussion that the respondent No. 1 and his group adopted the following calculated course of conduct to achieve their personal interest:-

(i) The respondent No. 1 abusing his position as a director converted his group into a majority by allowing 9475 shares (6475 + 3000) to himself and his family members respondent Nos. 2 to 5 without there being any valid decision to that effect by the Managing Committee or the board of directors;

(ii) Though the allotments of new shares were not made to the respondent Nos. 1 to 5, their names were entered in the Register of members prior to 10-12-1988 in respect of 9475 shares;

(iii) Allotment of shares were made in favour of non-members, i.e., the HUF of the respondent No. 1 - 1475 shares, his minor son (2750 shares), his minor daughter Priyadarshini (1750 shares), which was not permissible under the articles of association of the company or any Resolutions of the AGM of 17-12-1987 or the board of directors on 8-1-1988;

(iv) Allotments were made beyond 10-3-1988 which was the last date for receiving requisitions as per the letter of 12-2-1988 endorsed at the Board meeting of 13-2-1988 though there was no extension given by the Board or even by the Managing Committee;

(v) Even though no renunciation or decline letter was addressed by Shrimant Fatehsinhrao Gaekwad in favour of respondent Nos. 1, 4 and 5,3000 shares were appropriated on that footing by the respondent No. 1 by allotting them to his minor children the respondent Nos. 4 and 5;

(vi) The Managing Committee was removed with immediate effect from 30-3-1990 and the respondent No. 2 Smt. Asharaje, wife of the respondent No. 1 was made executive director to exercise all the powers of the Managing Committee;

(vii) Transfer of 9414 shares by the respondent Nos. 1 to 5 was sanctioned at the behest of the respondent Nos. 1 and 2 in favour of a non-member company Indreni without issuing transfer notice and its name was entered in the Register as member contrary to the articles of association;

 

(viii) Though the name of Indreni continued in the Register of members even on 10-12-1990, as per the notarised copies of the Register folios, and shares were not retransferred to the respondent Nos. 1 to 5, minutes of a meeting alleged to have taken place on 9-8-1990 were manipulated by the respondent Nos. 1 and 2 and their group to show as if those shares were transferred back to respondent Nos. 1 to 5 though no such transfer notice was given as per the articles of association nor was it recorded in the Register;

(ix) The right of pre-emption guaranteed by the articles of association to the shareholders was thrown to wins by the group of respondent Nos. 1 to 5 and they effected transfers to Indreni without offering the shares to the members first or even without giving a transfer notice to the company which was a must;

(x) The respondent No. 1 tried to adopt an ingeneous device for nullifying the effect of the decision to issue 51 per cent of the new shares to Shrimant Fatehsinhrao P. Gaekwad, taken at the Managing Committee meeting of 21-3-1988 which decision was also referred in the minutes of the meeting held on 10-12-1988, were chaired by the respondent No. 1, by creating a story that Shrimant Fatehsinhrao Gaekwad had renounced his allotment in favour of the respondent No. 1 and his children and on that footing managed to allot 3,000 shares to his minor children on 10-12-1988;

(xi) The minutes of the meeting of AGM held on 20-12-1990 prepared under the signature of respondent No. 1 as Chairman, did not disclose the correct state of affairs about the outcome of voting by the shareholders and proxies present and voting (even in the pursis filed by the respondents in the Suit at 3 p.m. on 20-12-1990, it was not disclosed by them that the resolution were passed but it was only generally stated that the voting was done);

(xii) The respondent No. 1 was made a permanent director and Chairman though there was no such provision for a permanent director under the articles of association;

(xiii) Mr. P.U. Rana and Mr. H.A. Shinde were removed as directors and Mr. Khadc as the Company Secretary because they did not to the line of the respondent Nos. 1 to 5;

(xiv) The Registered office of the respondent No. 6 company was resolved to be removed from Vadodara to Surat after the AGM of 20-12-1990; and

(xv) The Registers and other records of the company were authorised to be removed from the Registered office by the respondent No. 2.

18. It is at once clear from the above course of conduct of the respondent Nos. 1 to 5 that they have acted in a high-handed manner and in gross breach of the fiduciary duty of the respondent Nos. 1 and 2 as the directors of the company, treating the company as their private affair and trying to gain a total control over it by improper means to the detriment of the interests of other shareholders including the petitioners and the respondent Nos. 12 and 13. Such engineered

 

takeover of the respondent No. 6 company by the respondent Nos. 1 to 5 and their group cannot be recognised. A director of a company is precluded from dealing on behalf of the company, with himself, and from entering into engagements or arrangements in which he has a personal interest conflicting, or which possibly may conflict, with the interests of those whom he is bound by fiduciary duty to protect, and this rule is as applicable to the case of one of the several directors as to a managing or sole director and any affirmance or adoption by the company of any such dealing, engagement or arrangement, brought about by unfair or improper means which is illegal, fraudulent or oppressive towards the shareholders who oppose it, cannot be recognised. Power of the directors to issue shares to the members of the company is a fiduciary power to be exercised by them bona fide for the general advantage of the company and the directors are not entitled to use their power of issuing shares merely for the purpose of maintaining their control over the affairs of the company or merely for the purpose of altering a majority shareholding. Breaches of fiduciary duty by the controlling directors would entitle a minority shareholder to bring an action against them and the Court would be justified in redressing the wrong. If the persons in control of the company have acted in their own interest by allotting shares to themselves or to their associates so as to enable themselves to control the voting at the General Meetings or to enhance their power or position, the members who are unfairly prejudiced by such conduct would become entitled to have the affairs of the company properly conducted according to law. The Court''s reluctance to examine business decisions would disappear if it were shown that the directors or controlling shareholders concerned did not make the decision in good faith in the interest of the members of the company as a whole. The Court has ample powers to make such order as it thinks fit to give relief in respect of the matters complained of, and can fashion the remedy to suit the circumstances of a particular case. The Court''s jurisdiction in such matters is equitable in character although originating in a statutory provision. In a matter of this type, the Civil Courts would be wholly ill-equipped in power to deal with this gross case of oppression and mis-management by the contesting respondents. There is also no substance in the contention that the relief against allotment of 6475 shares to respondent Nos. 1 to 5 was not initially prayed and should therefore not be countenanced. The contest from the entire record shows that the parties were at issue even on this relief which was prayed for by an amendment.

19. In view of what we have said hereinabove, we are, with respect, unable to accept the findings of the learned single Judge or the contentions which have been raised on behalf of the contesting respondents in these appeals in support of that decision.

20. As a result, the appeals are allowed and the impugned order passed by the learned single Judge on 17-4-1995 in Company Petition No. 51 of 1991 is hereby set aside and the Company Petition is allowed with the following reliefs:-

 

1. It is hereby declared and ordered that all the allotments of shares from the additional share capital increased pursuant to the resolution of the Extraordinary General Meeting held on 17-12-1987 and the resolution of the board of directors dated 8-1-1988 and the decisions for such allotments, of the Managing Committee be treated as invalid and ineffective for all purposes and the shareholdings of all the members of the respondent No. 6 company hereby stand restored to the original 425 shares held by the members ignoring such subsequent allotments. The Register of members and other record of the company will stand rectified accordingly.

2. The Registered office of the respondent No. 6 company is hereby declared to be continuing at the same place, i.e., "Indumati Mahal" at Baroda, irrespective of the resolution to shift it to Surat and the respondent Nos. 1 and 2 are directed to forthwith restore the entire record of the company to its Registered Office at Baroda.

3. All the directors or purported directors of the respondent No. 6 company stand removed forthwith. They will from today, not deal with the affairs of the company in any manner

4. An Extraordinary General Meeting of the shareholders of the company will be convened on 14-10-2000 at 11.00 a.m. at the Registered office of the company at Baroda, for appointing directors of the company on the basis of the existing shareholding of 425 shares of the members of the company, in accordance with the articles of association.

5. The aforesaid meeting scheduled to be held on 14-10-2000 will be conducted under the Chairmanship of the Additional Registrar of the High Court Shri V.B. Gandhi. All the shareholders of 425 shares including the petitioner No. 1 as the sole heir of the deceased Shrimant Fatehsinhrao P. Gaekwad in respect of the shares which stood in his name in the register of the members of the company at the time of his demise out of the said 425 shares in respect of which he had voting rights, will be entitled to vote by themselves or through their proxies at the said meeting for appointing the directors of the company. No outsider will be allowed to remain present at the meeting except the Additional Registrar who will Chair and conduct the meeting with his official assistants. The Additional Registrar will be assisted by a Section Officer of the High Court of his choice in the said work.

6. All the shareholders who are parties to the present proceedings are hereby put to notice about the date of the said Extraordinary General Meeting to be held on 14-10-2000 at 11.00 a.m. at the Registered Office of the respondent No. 6 company at ''Indumati Mahal'', Baroda. The Additional Registrar will however, get published the notice of the meeting in one English daily and one Gujarati daily having circulation in the area. The Additional Registrar will also immediately issue individual notices of the said meeting to the shareholders. The Additional Registrar is authorised to seek assistance for conducting the meeting from all or

 

any of the parties to these proceedings and/or the officials of the company who shall be bound to assist him in that regard. No adjournment motion will be entertained at the said meeting.

7. The Additional Registrar will on completion of the said meeting, prepare and sign the minutes of the meeting recording its outcome and declare in writing the names of persons who are appointed by the shareholders as the directors of the respondent No. 6 company at the said meeting, and thereupon such directors shall assume the management of the company on such declaration being made.

8. The remuneration of the Additional Registrar is fixed at Rs. 10,000 and the remuneration of the Section Officer will be Rs. 3,000, for the said purpose. The respondent No. 6 is permitted to withdraw the said amount and also a further amount towards the expenses for publishing notice etc. totalling Rupees 30,000 from its Bank/s for the purpose of depositing it in the registry. The learned Counsel for the respondent No. 6 company states that the respondent No. 6 will deposit the amount of Rs. 30,000 in the Registry of this Court within 15 days.

9. The learned Counsel for the respondent No. 6 company has agreed to supply the names and present addresses of all the shareholders of the 425 shares of the company, to the Additional Registrar on or before 19-8-2000.

10. There shall be no order as to costs.

The learned Counsel of the respondent No. 6 company prays for the respondent No. 6 company as well as for the respondent Nos. 1 to 5 that this order be stayed for three months to enable the contesting respondents to approach Hon''ble the Supreme Court in the matter. In the facts and circumstances of this case, this request cannot be acceded to and is therefore, rejected.