Supreme Court of India

JUSTICE VINEET SARAN, JUSTICE J.K. MAHESHWARI

MAHIMA DATLA v. DR. RENUKA DATLA

CIVIL APPEAL NO. 2776 OF 2022

6th May 2022

Companies Act, 1956 Companies Act, 2013 Hindu Succession Act, 1956

HeadNote : Companies Act, 1956 – S.58, S.59, S.111-A, S.269, S.397, S.398, S.402, S.403, S.404, S.406, S.409

Companies Act, 2013 – S.10-F, S.156(6), S.196, S.241, S.242(2)(a)

Cases Cited :

1. *Para 24: V.S Krishnan v. Westfort Hi□-tech Hospital Ltd., (2008) 3 SCC 363*
2. *Paras 27, 28: Salmon v. Salmon Co. Ltd., [1897] AC 22*
3. *Para 29: Bowthorpe Holdings Ltd. v. Hills, [2002] EWHC 2331 (Ch)*
4. *Para 29: Parker and Cooper Ltd v. Reading, [1926] Ch 975, 984*
5. *Para 29: Canada v. Standard Trust, [1911] AC 498*
6. *Para 29: re Express Engineering Works, [1920] 1 Ch 466, 471*
7. *Para 29: Multinational Gas v. Multinational Services, [1983] Ch 258, 268*
8. *Para 37: Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, (2005) 11 SCC 314*
9. *Para 37: Dwarka Prasad Agarwal v. Ramesh Chander Agarwal, [(2003) 6 SCC 220]*
10. *Para 39: Hanuman Prasad Bagri v. Bagress Cereals (P) Ltd., (2001) 4 SCC 420*

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Respondent Counsel: Mr. Sanjay Kumar Tyagi, Mrs. K. Sarada Devi, Mr. S. Chakrapani, Mr. Chandan Kumar, Mr. R. Vijaynandan Reddy

JUDGEMENT

Leave granted.

2. These Civil Appeals have been preferred against the judgment dated 17.11.2017, passed by the High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh in Company Appeal No.14 of 2016, whereby the appeal filed by respondent Nos. 1 to 3 against the order dated 30.5.2006 passed by Company Law Board (hereinafter to be referred to as ‘CLB’) was allowed.

3. A brief narration of facts necessary for disposal of these appeals are that the dispute in question relates to a family feud between mother on one side and her three daughters on the other, concerning respondent No. 4Company ((Biological E. Ltd.) (hereinafter to be referred to as “the Company”) which was established by G.A. Narasimha (father of respondent No. 1) in 1953. Dr. Vijay Kumar Datla (father of the appellantMahima Datla) was inducted in the Company on 01.05.1972 and later appointed as the Chairman and Managing Director of the said Company. In the year 1998, the appellantMahima Datla joined the Company as a management trainee with her father with the intent to be groomed her as his successor. Through the years, she has acclimatized and grown with the aforesaid Company and in 2004, she was promoted as Senior Vice President (Biotechnology and Projects).

4. There is no gainsaying that on 14.02.2005, a Will was executed by (Late) Dr. Vijay Kumar Datla bequeathing his entire shareholdings in favour of appellantMahima Datla. On 20.03.2013, Dr. Vijay Kumar Datla died leaving behind respondent No. 1 and three daughters Ms. Mahima Datla, Ms. Purnima Manthena, and Dr. Indira P. Raju as his heirs. At the time of his demise, the shareholding pattern of the Company was as under:

Sl. No. Name No. of

Shares

Value in Rs. % of

shares

1. Dr. Vijay

Kumar Datla

400961 400096100 81

2. Dr. Vijay

Kumar Datla

(HUF)

4594 459400 0.93

3. Mrs.

Poornima

Mantena

4357 435700 0.88

4. Mrs. Indira

P. Raju

4357 435700 0.88

5. Miss Mahima

Datla

11205 1120500 2.26

6. Dr. Vijay

Kumar Datla

(Trustee

Poornima &

Indu Trust)

1999 199900 0.40

7. Dr. Vijay

Kumar Datla

(Trustee of

Mahima

Trust)

1685 16850

0

0.34

8. Poornima

Indira &

Mahima

187 18700 0.06

9. Dr. Vijay

Kumar

Datla & Dr.

(Mrs.)

Renuka

Datla

5813 581300 1.17

10. Miss

Mahima

Datla & Dr.

(Mrs.)

Renuka

Datla

14172 1417200 2.86

11. Dr. (Mrs.)

Renuka

Datla

Miss Mahima

Datla

26995 2699500 5.45

12. M/s. V.R.

Investment

Pvt. Ltd.

18425 1842500 3.72

13. Mr. Pumedu

Gupta & Mr.

Krishna

Gupta

250 25000 0.05

Total 495000 49500000 100

5. On 20.3.2013, late Dr. Vijay Kumar Datla, Dr. Renuka Datla and one G.V Rao were Directors of the Company. It is a matter of fact that on 06.04.2013, G.V Rao submitted his resignation letter to respondent No.1 which was later withdrawn on 09.04.2013. Subsequently, in the Board Meeting dated 09.04.2013, Dr. Indira P. Raju was inducted as the Director of the Company in place of (Late) Dr. Vijay Kumar Datla to fulfil casual vacancy, which arose on the demise of Dr. Vijay Kumar Datla.

6. On 10.04.2013, another Board Meeting of Directors of the Company took place, wherein 400961 shares (81%) standing in the name of (late) Dr. Vijay Kumar Datla were transferred to appellant Mahima Datla on basis of a Will dated 14.02.2005, and also appellant Mahima Datla and respondent No.5 Purnima Manthena were appointed as additional Directors of the Company.

7. Another Board Meeting was convened on 11.04.2013, by which appellant Mahima Datla was appointed as the Managing Director of the Company and 11 shares each were transferred by appellant Mahima Datla in favour of Narendra Manthena and P. Sridhar Raju. The aforementioned Board Meetings dated 09.04.2013, 10.04.2013 and 11.04.2013 were not attended by respondent No. 1.

8. Thereafter, Annual General Meeting (AGM) of the Company was conducted on 18.12.2013 by GV Rao, Purnima and Indira wherein the appellant Mahima Datla , Purnima and Indira were duly recognised as Managing Director and Directors respectively.

9. The respondent No. 1 has alleged that neither she received any notice nor any agenda of the aforesaid meetings. Respondent No. 1 contends that holding of board meetings was illegal as an attempt was made to increase the number of members in the Company only to ensure that she doesn't have sufficient shareholding to maintain a petition under Sections 397 and 398 of the Companies Act, 1956 (hereinafter to be referred to as '1956 Act'). Further she claims that she attended the Board Meetings, which were convened on 22.08.2013 and 25.09.2013, wherein her objections to the agenda were not duly recorded.

10. The respondent No. 1 filed a suit before City Civil Court, Hyderabad being OS No. 184 of 2014, challenging the illegal transmission of shares of (Late) Dr. Vijay Kumar Datla in favour of appellant Mahima Datla and to declare that the respondent No. 1 was the absolute owner of all shares in view of Will dated 04.12.1987.

11. The respondent No. 1 also filed Company Petition No. 01 of 2013 under Section 409 of the 1956 Act before the CLB wherein she sought injunction to stop Annual General Meeting to be held on 18.12.2013. The CLB vide order 17.12.2013, rejected the plea of the

respondent No. 1 on the ground that conducting of AGM was mandatory under the law. Aforesaid interim order was challenged before the High Court in Company Appeal No. 01 of 2014, which came to be dismissed with a direction to dispose of the Company Petition, pending before the CLB, within a period of three months. Later, the respondent No. 1, for reasons best known to her, withdrew the earlier Company Petition and filed Company Petition No. 36 of 2014.

12. Without going in-depth of the details of various applications filed by the parties herein, we can only note that by order dated 30.05.2016, the Company Law Board in Company Petition No.36 of 2014 framed the following issues:

(i) Whether the petitioner has requisite qualification as contemplated under Section 399 of the Companies Act, 1956 to invoke the jurisdiction of this Bench under Section 397/398 and other provisions of the Companies Act, 1956 and whether any case has been made out even under Section 111-A of the Companies Act, 1956?

(ii) Whether the Board Meetings held on 09.04.2013, 10.04.2013 and 11.04.2013 are legal and valid?

(iii) Whether the transmission of shares to an extent of 4,00,961 equity shares held by (Late) Dr. Vijay Kumar Datla in favour of the 2nd respondent is in accordance with the Articles and Law?

(iv) Whether the A.G.M conducted on 18.12.2013 is legal and valid?

(v) Whether the acts of respondents are oppressive to the petitioner and whether the respondents have committed any acts of mismanagement in the affairs of the R1 Company?

(vi) To what extent (family relationship in a company, whether the respondent Company failed to adhere to the request of the petitioner regarding furnishing the documents and inspection of bocks and accounts of the R1 Company)?

13. By judgment dated 30.05.2016 passed in CP No. 36 of 2014, CLB in para 100 concluded as under:

"100. As I already held that the petition is not maintainable and the same is dismissed. Even otherwise and in view of the foregoing reasons, the petitioner has not made out any case either on oppression or on mismanagement in the affairs of the Company: The Petition is miserably failed and liable to be dismissed. Accordingly, the C.P. No. 36/2014 is dismissed. In view of the dismissal of the CP, the undertaking recorded by this Bench in its Order dated 06.08.2014 will not bind on the respondents. Any other interim orders operating as on this date stand vacated. All the unnumbered applications pending as on this date stand disposed of. No order as to costs."

14. On issue No. (i), CLB observed that the respondent No. 1 had filed O.S. No. 184 of 2014 in the Civil Court to declare that she was the absolute owner of 4,00,961 shares belonging

to (Late) Dr. Vijay Kumar Datla. The said suit was filed prior to filing the Company Petition and this Court vide order dated 06.10.2015 also directed to dispose of the civil suit pertaining to the disputed shares. Thereafter, CLB rejected the relief relating to Sections 111A, 58 and 59 of 1956 Act and held that the petition would be treated as having been filed only under Sections 397/398, 402, 403, 404, and 406 of the 1956 Act. Further, CLB held that the respondent No. 1 could not have acted as a trustee of the two trusts i.e., appellant Nos. 2 & 3 before it, thus, the respondent No. 1 had no locus standi to file the Company Petition on behalf of aforesaid two trusts. Moreover, it was held that respondent No.1 did not have support of 1/10 of the total shareholders to maintain a petition under Section 397, as prescribed under Section 399 of the 1956 Act, therefore, the Company Petition was liable to be dismissed as not maintainable.

15. On issue No. (ii), CLB validated the Board Meetings dated 09.04.2013, 10.04.2013 and 11.04.2013 for the reason that appellantMahima Datla was appointed as the Managing Director of the respondent No.4Company under Article 145 of Articles of Association read with Section 269 of 1956 Act. It was contended before CLB that respondent No.1 was not physically present in these Board Meetings, however, she was aware of the action taken in those meetings wherein her daughters were appointed to the Board of Directors. Approval of appointment of her daughters by respondent No, 1 is evident from her announcement letter dated 15.04.2013 addressed to all the employees of the respondent No.4Company. The CLB was of the view that the respondent No.1 being acquiesced in all the events is estopped from raising the said grievance.

16. With regard to the issue No. (iii) relating to validity of transmission of 4,00,961 (81%) shares in favour of the appellantMahima Datla, it was observed that the transfer took place in the Board Meeting dated 10.04.2013 and the respondent No. 1 had already filed O.S. No. 184 of 2014 challenging the said transmission of shares. It was further held that the issue relating to inheritance of shares being of civil nature, CLB cannot deal with the same.

17. On issue No. (iv), CLB observed that AGM was held on 18.12.2013, wherein decisions taken in Board Meetings dated 9th, 10th & 11th April, 2013 were ratified by the General Body. The respondent No. 1 was also a part of the aforesaid AGM, wherein her renumeration was approved. It was held that the appointment of appellant Mahima Datla, Purnima Manthena, and Indira Pusapati as Directors which was ratified in AGM, became final and is binding on the Company and its members.

18. With regard to issue No. (v), CLB observed that the Company was a profitable Company and it could not be said that its affairs were being conducted in a manner prejudicial to the interests of shareholders and public at large. It was held that no evidence was placed on record by the respondent No. 1 to show that the affairs of the Company were being conducted in a manner prejudicial to her interest as a shareholder. Insofar as the allegation pertaining to mismanagement by the officials of the Company was concerned, the CLB relied upon the balance sheets of the Company and held that there was no evidence of mismanagement. Finally, it was held that the situation did not warrant winding up of the Company and unless such a situation exists, no relief could be granted under Sections 397

and 398 of 1956 Act.

19. On the last issue No. (vi), the CLB held that no act of oppression and mismanagement was made out by the respondent No. 1. The acts complained by her were in the nature of directorial complaints, which did not make out a case for winding up of the Company.

20. Aggrieved by the aforesaid order, respondent No. 1 filed an appeal before the High Court being C.A. No. 14 of 2016. The High Court, by impugned order dated 17.11.2017, while allowing the appeal held as under:

a. Acts of Respondent. Nos. 2 to 7 are oppressive; b. The meetings of the Board of Directors held on 09□04□2013, 10□ 04□2013 and 11□04□2013 are null and void and all resolutions passed therein as well as forms/returns filed therein are set aside;

c. Resolutions passed at the Annual General Meeting of the Company held on 18□12□2013 are null and void and forms filed by respondents with regard to resolutions passed at the said AGM are set aside;

d. The Board of Directors of the Company as existing as on today shall stand superseded and respondent Nos.2 to 7 are removed from the Directorship of the Company, and all forms□32 filed for their appointment as Managing Director/Director/Whole Time Director of the Company are declared as null and void ab initio;

e. The transmission of 4,00,691 equity shares held by late Dr. Vijay Kumar Datla to respondent No.2 is illegal, null and void;

f. The register of members shall stand rectified by transmission of 1/4th of the 4,00,691 equity shares to appellant No.1, pending decision on the validity of the Will dt.04□12□1987 propounded by appellant No.1 and Will dt.14□2□2005 propounded by respondent No.2 by the competent Civil Court and subject to its decision.

21. Based on the findings stated in the preceding paragraph, the High Court directed as under:

a. Article 128 of the Article of Association of the Company be substituted as under:

“The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of a Boar, the continuing director or directors may act for the purpose of increasing the number of directors to that fixed for the quorum or of summoning a general meeting of the company, but for no other purpose.”

b. In exercise of the powers conferred under Section 241 and 242(2)(a) of the Companies Act, 2013 to regulate the conduct of the affairs of Respondent No. 1 Company in future, the appellant no. 1 is authorized to increase number of directors in the Board of the said Company to 3:

c. Part I of Schedule V of the Companies Act, 2013 which prescribes maximum age of 70 years to be a director, shall not apply to appellant no. 1;

d. The appellant no. 1 and the directors nominated by her to the Board shall hold the office for a period of 3 years from the date of their assuming charge notwithstanding anything contained in Section 152(6) of the Companies Act, 2013;

e. It is open to appellant no. 1 to appoint a committee of advisors to advise the board for the future management of the Company;

f. after the expiry of 3 years period referred to above, fresh Board of directors may be constituted as provided in the Act and Articles of Association of the Company.

22. Questioning the validity of the order of the High Court, present appeals have been filed.

23. We have heard learned senior counsels for the appellants and counsel appearing for the respondent No. 1 and have also perused the record.

24. At the outset, the High Court's approach in entertaining the Company Appeal under Section 10F of 1956 Act and setting-aside the order dated 30.05.2016 passed by CLB thereunder is contrary to the scope of the aforesaid Section. The High Court conducted an elaborate factual analysis in its order which is ex facie over and above the appellate purview of Section 10F of 1956 Act. Instead of restricting its determination to the purported questions of law arising from the order of CLB, the High Court reappreciated the entire evidence and other materials on record to give its own factual findings, which runs contrary to the judgment of this Court in the case of V.S Krishnan v. Westfort Hitech Hospital Ltd. (2008) 3 SCC 363 wherein it was laid down that "it is ordinarily not open to the Appellate Court to substitute its own discretion for that of Company Law Board". Thus, reappraisal of entire evidence by the High Court is not permissible.

25. The first question which is required to be answered is whether the withdrawal of resignation by G.V. Rao was valid or not. There is no doubt that on 06.04.2013, G.V. Rao addressed a letter to the Board resigning from the post of Directorship. The letter explicitly indicated that his resignation should be acknowledged and Form32 be filed with the Registrar of Companies. Further, on 09.04.2013, G.V. Rao himself wrote a letter seeking withdrawal of his resignation, which was placed in the meeting of the Board on 09.04.2013. In the resolution passed therein, there is no protest by the respondent No.1 regarding attendance of Mr. G.V. Rao. Moreover, Dr. Renuka Datla, by letter dated 15.04.2013, which was addressed to the employees of the Company, welcomed the appointment of appellantMahima Datla as its Managing Director and appointment of others as Directors. Further, there are numerous letters such as letter dated 24.05.2013, 22.08.2013, 07.10.2013, 19.10.2013, and 20.10.2013, which clearly acknowledge Mr. G.V. Rao in the capacity of the Director of the Company. Respondent No. 1 also participated in the Board Meetings dated 22.08.2013 and 25.09.2013, without any protest for continuation of Mr. G.V. Rao as its Director. In this context, the appellants herein have invoked the Duomatic Principle to state that the issue of resignation of the Director had lapsed and Mr. G.V. Rao continued to carry on as the Director in view of the acquiescence by the respondent No. 1.

26. The Duomatic Principle can be briefly stated as “anything the members of a company can do by formal resolution in a general meeting, they can also do informally, if all of them assent to it.” Palmer’s Company Law, 25th Ed. (2020) Paras 7.434 – 7.449. This Principle was derived from the decision In Re: Duomatic Ltd., [1969] 2 Ch. 365, wherein Buckley, J. held as under:

“where it can be shown that all shareholders who have a right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into effect, that assent is as binding as a resolution in general meeting would be.”

27. The enunciation of the aforesaid principle, in the abovementioned case can be traced back to the decision of Lord Devey in Salmon v. Salmon Co. Ltd., [1897] AC 22, (hereinafter referred as “Salmon’s case”) wherein it was held that “a company is bound in a matter intra vires by the unanimous agreement of its members”.

28. The aforesaid Principle emanating from Salmon’ Case (supra) has found its utility across various aspects of company law such as Duomatic Principle, Doctrine of Indoor Management, etc. This Principle having its origin in common law, is applicable even in the Indian context.

29. It is, in this context, we must note that application of Duomatic Principle is only applicable in those cases wherein bona fide transactions are involved. Fraud is a clear exception to application of these principles, be it Duomatic Principle or Doctrine of Indoor Management. In this context, we may refer to observations in Bowthorpe Holdings Ltd. v. Hills, [2002] EWHC 2331 (Ch), wherein Sir Andrew Morritt V□C, observed as under:

“… the transaction must be bona fide or honest. This, in my view, is demonstrated by the qualification of Viscount Haldane in AG for Canada v Standard Trust [1911] AC 498, 505 that ‘the case was not … a cloak under which a conspiracy to defraud was concealed’, by Younger LJ in In re Express Engineering Works [1920] 1 Ch 466, 471 that ‘no fraud is alleged in respect of this transaction’, and by Lawton LJ in Multinational Gas v Multinational Services [1983] Ch 258, 268 that the members must act in good faith. Thus, in In re Duomatic Ltd [1969] 2 Ch 365, 372 Buckley J cited with approval the view of Astbury J in Parker and Cooper Ltd v. Reading [1926] Ch 975, 984 that the transaction must be both intra vires and honest.”

30. In the case at hand, the respondent No. 1 has not proved that the transfer of shares based on the Will dated 14.02.2005 was a fraud played on her as well as the Company. From the narration of the circumstances, wherein appellant□Mahima Datla was groomed by her father to carry the operations of the Company clearly points out to his intention to make such Will. In light of the fact that no allegation of fraud or dishonesty is noticeable in this case, there is no way to ignore the application of this well-settled principle.

31. The thrust of the Duomatic Principle is that strict adherence to a statutory requirement may be dispensed with if it is demonstrated otherwise on facts, if the same is consented by all members. In this case at hand, there is overwhelming evidence to show that respondent

No. 1 had accepted Mr. G.V. Rao back into the Board and her conduct clearly shows that the resignation dated 06.04.2013 was clearly not accepted.

32. The High Court has clearly fallen into error by not considering the aspect of application of Duomatic Principle. The interpretation ascribed by the High Court to Article 129 of the Articles of Association of the Company is too formalistic and does not take into consideration inclusion of such well-settled common law principles. There is no scope left for equitable considerations to be read into the aforesaid provision, which, in our view, is a patent illegality committed by the High Court without taking into considerations aforesaid principles. We, therefore, hold that G.V. Rao never seized to be a Director of the Company in view of the acquiescence by respondent No. 1, and he had withdrawn his resignation prior to its acceptance.

33. The second aspect which we are called upon to answer is the validity of the Board Meetings dated 09.04.2013, 10.04.2013, and 11.04.2013. The High Court has dealt with the aforesaid question in two ways. The first reasoning is that G.V. Rao, who had resigned as Director with effect from 06.04.2014, had no authority in law to convene aforesaid meetings. In view of the same, the said meetings were not called as per the terms of law. The aforesaid reasoning cannot stand the scrutiny of this Court as this Court has already noted that G.V. Rao continued to be a Director and his resignation cannot be considered as elucidated in the earlier discussion.

34. The second line of reasoning taken by the High Court is that "assuming for the sake of argument without conceding that he continued as Director and that his resignation was validly withdrawn, still being the only Director present at the meeting of 09.04.2013, and in absence of minimum coram of 2 as mandated in the articles of associations, it could not have held the meeting". It must be noted that the aforesaid meetings were ratified in the 60th AGM which was called on 18.12.2013. The High Court has again erred in not accepting the ratification in the AGM on the footing that G.V. Rao had resigned and could not have called the AGM or validly conducted the aforesaid Board Meetings. When the mother had accepted the decisions taken in the aforesaid Board Meetings, this Court cannot appreciate the contradictory stand taken by the respondent No. 1 challenging the same before the CLB. A party cannot be allowed to wax and wane as the contradictory decision tend to take judicial proceedings to ad nauseam.

35. Lastly, we hold that the directions passed by the High Court in para 323 of the impugned order are illegal and contrary to the provisions of Company Act, 2013 (for short "2013 Act"). The High Court has held that respondent No. 1 will continue to be the Director of the Company even though she is over 70 years of age. However, the bare perusal of Section 196 of 2013 Act and Part-I of Schedule V infers that such a direction is non-est in law, which are reproduced as under:

"196. Appointment of Managing Director, whole-time director or manager

(1) No company shall appoint or employ at the same time a managing director and a manager.

(2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

(3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

(b) is an undischarged insolvent or has at any time been adjudged as an insolvent;

(c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or

(d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

(5) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

Part-I of Schedule V deals with Appointments-

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(c) he has completed the age of twenty-one years and has not attained the age of seventy years:

Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

Upon the composite reading of the aforementioned provisions and the Schedule, the relief as granted by the High Court is contrary to Section 196 of 2013 read with Schedule V of 2013 Act (appointment of Managing Director, whole-time Director or Manager) which lucidly provides that no person shall be eligible to be a whole-time Director of a Company after attaining the age of 70 years unless such appointment is approved by a special resolution of the Company. In absence of any such special resolution, the finding rendered by the High Court holding that such provision would not apply, is against the statutory provisions of law.

36. Further, the High Court held that the respondent No. 1 and the directors appointed by her to the Board shall continue to hold office for a period of three years. This direction of the High Court is non-est in law for being contrary to the provision under Section 152(6) of 2013 Act and Articles 135 and 136 of Articles of Association of respondent No.4-Company.

"152. Appointment of directors

(6) (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—

(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting. (c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.—For the purposes of this sub□section, total number — of directors shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company."

Article 135 of the AoA: Two□thirds of the Directors liable to retire by rotation

"135. Not less then two thirds of the total number of directors of the Company for the being shall be person whose period of office is liable to determination by retirement of directors by rotation."

Article 136 of the AoA: Retirement and Rotation of Directors "136. At every annual general meeting of the Company one third of such of the directors for the time being as are liable to retire by rotation or if their number is not three or multiple of three the number nearest to one third shall retire from office. The ex□officio director and debenture director if any shall not be subject to retirement under this clause and shall not be taken into account in determining the rotation of retirement or the number of directors to retire"

(Emphasis Supplied)

Upon the conjoint reading of Section 152(6) along with Articles 135 and 136 of the Articles of Association of respondent No.4□ Company, it is inferred that one□third of the Directors amongst the total Directors on the Board mandatorily retire by rotation every year. The direction of the High Court enabling the respondent No.1 (Dr. Renuka Datla) and the Directors nominated by her to continue to hold office for three years is in violation of the said provisions relating to appointment and retirement of Directors.

37. Insofar as the transfer of disputed shares is concerned, the High Court applied the rule of succession of a Hindu male, as per Section 8 of Hindu Succession Act,1956 and granted the exclusive benefit of transmission of one□fourth of disputed shares in favour of respondent No.1 (Dr. Renuka Datla) without ordering the corresponding transmission of the remaining three-fourth shares in favour of appellants/daughters pending the outcome of the Original Suit No.184 of 2014. The High Court's intervention in a question relating to inheritance of shares, claimed on the basis of the Will dated 04.12.1987, which was the subject matter of Civil Suit No. 184 of 2014 before Civil Court, is untenable in Law. Respondent No. 1 is challenging transmission of 81% shares in O.S. No. 184/2014 before the City Civil Court, Hyderabad by contending that she has inherited the same vide Will dated 14.12.1987 executed by Dr. Vijay Kumar Datla. In given scenario, the High Court should not have dwelled into the issue of inheritance and granted ¼ of 4,00,96 shares in favour of respondent No. 1. In the case of Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, (2005) 11 SCC 314 this Court emphasized upon the same issue in following words:

"143. It is also not in dispute that the matter relating to her claim to succeed FRG as his Class I heir is pending adjudication in Civil Suit No. 725 of 1991 in the Baroda Civil Court.

She claimed title in respect of 8000 shares by inheritance in terms of the Hindu Succession Act. Indisputably, in terms of Section 15 of the said Act she is a Class I heir but the appellants herein contend that the said provision has no application having regard to Section 5(2) thereof as inheritance in the family is governed by the rule of primogeniture. A pure question of title is alien to an application under Section 397 of the Companies Act wherefor the lack of probity is the only test. Furthermore, it is now well settled that the jurisdiction of the civil court is not completely ousted by the provisions of the Companies Act, 1956. (See Dwarka Prasad Agarwal v. Ramesh Chander Agarwal [(2003) 6 SCC 220])

144. A dispute as regards right of inheritance between the parties is eminently a civil dispute and cannot be said to be a dispute as regards oppression of minority shareholders by the majority shareholders and/or mismanagement."

A perusal of the same makes it clear that the High Court while dealing with the question under Sections 397 and 398 of 1956 Act ought not to have invoked principle under Hindu Succession Act to determine the shares of the respondent No. 1 which she claims to be inherited through the Will dated 14.12.1987 which was subject matter of OS No. 184/2014.

38. Assuming that on the ground of equity, the High Court decided to grant benefit to respondent No. 1 mother, the same stands against the principles of succession under Section 8 of the Hindu Succession Act as well. It is well recorded that appellant (Ms. Mahima Datla), respondent No.5 (Purnima Manthena), respondent No.6 (Indira Pusapati) and respondent No.1 (Dr. Renuka Datla) being class□I legal heirs of the deceased Hindu male are equally entitled to the assets of late Dr. Vijay Kumar Datla. Hence, the division of disputed shares was inequitable on the touchstone of the Hindu Succession Act also.

39. The High Court erred in ascertaining that the actions of respondents therein, who hold office in the Company, are oppressive. Under Section 397 of 1956 Act, an application for relief can be brought by any member who complain that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. The intention of the legislature is that majority shareholders who oppress the minority shareholders and conduct the affairs of the company prejudicial to public interest may invoke the jurisdiction of CLB under Section 397 of 1956 Act. Section 397 reads as under:

"397. Application to Company Law Board for relief in cases of oppression.

(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Company Law board] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub□ section (1), the Company Law Board] is of opinion□

(a) that the company' s affairs are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up; the Company Law Board] may with a view to bringing to an end the matters complained of, make such order as it thinks fit."

As per the aforesaid provision, an order could be made on application made under sub-section (1), if the Court is of the opinion that (i) the Company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members, and; (ii) the facts would justify the making of a winding up order on the ground that it was just and equitable that the Company should be wound up, and; (iii) the winding up order would unfairly prejudice the Petitioners. This Court has reiterated this principle time and again in various judgments and also in the judgment of this Court in Hanuman Prasad Bagri v. Bagress Cereals (P) Ltd., (2001) 4 SCC 420, the same principle has been reiterated in following words:

3. Section 397(2) of the Act provides that an order could be made on an application made under sub-section (1) if the court is of the opinion — (1) that the Company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members; (2) that the facts would justify the making of a winding-up order on the ground that it was just and equitable that the Company should be wound up; and (3) that the winding-up order would unfairly prejudice the applicants. No case appears to have been made out that the Company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members. Therefore, we have to pay our attention only to the aspect that the winding up of the Company would unfairly prejudice the members of the Company who have a grievance and are the applicants before the court and that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the Company should be wound up. In order to be successful on this ground, the petitioners have to make out a case for winding up of the Company on just and equitable grounds. If the facts fall short of the case set out for winding up on just and equitable grounds no relief can be granted to the petitioners. On the other hand the party resisting the winding up can demonstrate that there are neither just nor equitable grounds for winding up and an order for winding up would be unjust and unfair to them. On these tests, the Division Bench examined the matter before it."

In the present case, there is no iota of evidence placed by respondent No.1 that the affairs of the Company were being conducted in a manner prejudicial to the public interest. From the Memorandum and Articles of Association it is seen that the Company is in the business of manufacturing vaccines with profitability and even did good business during Covid pandemic.

40. The respondent No. 1 has contended that she was not allowed to register her protest in any of the meetings which flies in the face of her letter dated 15.04.2013, addressed to the employees of the Company, welcoming the appointment of appellant-Mahima Datla as its Managing Director and other appointments. The High Court has erred by ignoring the

impact of letter dated 15.04.2013 signifying consent of respondent No. 1 to the appointments made to the Board of the Company.

41. During the course of hearing, the counsel representing the respondent No. 1, though contested the case, but on the other hand, the three daughters present in the Court also shown gesture to maintain the respondent No. 1, aged about 75 years by offering to pay her the salary more than that of the Managing Director along with all emoluments. They have also offered to pay a lump sum amount with a view that the Company, which was started by late father of their mother and flourished by the hard labour of their father, should not go into losses, as being daughters they owe duty to run the Company with full of skill and to achieve more heights. It is in this context that we do not propose to take the above discussion to its logical conclusion. Rather we feel that this litigation should conclude on an amicable note. Such harsh conclusions may not be advisable when we are concerned with a healthy Company manufacturing vaccines, which are the need of the hour in these days.

42. In view of the forgoing, the impugned order passed by the High Court on 17.11.2017 is hereby set aside being contrary to the provisions of the 1956 and 2013 Acts and the order of the CLB dated 30.05.2016 is restored with modifications and by adding the following conditions

(1) Dr. Renuka Datla shall be appointed as Emeritus Consultant of the Company.

(2) Dr. Renuka Datla will be paid a sum of Rs.65 lakhs per month w.e.f. 01.04.2022 regularly month by month on or before 7th of each month. The payment for current month (April, 2022) may be made by 30th of this month.

(3) A further lump sum payment of Rs.10 Crore shall be made to Dr. Renuka Datla by 31.05.2022, which shall be in lieu of all payments, if any, that may be due to her till date and also in lieu of any further increase in monthly payments.

(4) Other facilities to Dr. Renuka Datla will also be provided to her, which include her medical expenses, security, residence, maintenance of cars, club memberships etc., the expenses for which shall also be borne by the Company.

(5) The learned counsel for the appellants in these three appeals have undertaken that they shall get a resolution passed to the above effect by the Board of Directors of the Company and the General Body of shareholders, within one month.

(6) Ms. Sarada Devi, learned counsel for the respondent no.1 Dr. Renuka Datla has stated that Dr. Renuka Datla is present today whom she has consulted, and in lieu of the aforesaid payments to be made and facilities to be provided by the Company, Dr. Renuka Datla as well as the appellants, undertake to put a quietus to the entire litigation between them, which is pending and also undertake not to initiate any further civil or criminal proceedings against each other.

43. Accordingly, the appeals are disposed of.