

CASE LAWS

COMPANIES ACT JUDGEMENTS

① Gurpreet Gill Vs. Pumpkin Studio (P) Ltd. [2009]

⇒ The board meeting and the General meeting held in the absence of proper and valid notice to the directors and/or shareholders shall be invalid and all the resolutions so passed are null and void. If the petitioner has been ousted as a Managing Director and the respondent has been installed in his place, it shall amount to oppression. In the absence of evidence of service of notice upon either the director or shareholders, the presumption about the minutes can not be drawn in terms of Section-195 of the Companies Act, 1956.

In case of family owned business, the principal of partnership shall be applicable and when agreed ration of directorship has been disturbed, then it shall amounts to oppression.

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(2) APSFC Vs. Union of India [2009]

⇒ The directors appointed by state financial corporation as its nominees cannot be proceeded with by the registrar of companies in the ^{case of} default being committed by the company in compliance with provisions of the Companies Act, 1956.

(3) Asia Stone S L Vs. B & G Impex (P) Ltd. [2009]

⇒ In case due to the resignation and completion of the tenure of the directors of any company, there are absolutely no director on the company, then the proper remedy would be to file a petition before Company Law Board [CLB] u/s 186(1) of the companies Act, 1956 and the C.L.B. may appoint a Chairman who may order for convening and holding of the extra-ordinary general meeting.

(4) Walnut Packaging (P) Ltd. Vs. Sirpur Paper Mills' Ltd. [2009]

⇒ The holding company is under no obligation to pay the debts of its subsidiary company. The winding up petition would be maintainable only if it is filed to claim undisputed debt and debt is not barred by time. However, after the expiry of limitation period, if there is qualified acknowledgement of debt, then it will not extend the period of limitation. The court further held that if the debt is shown in the Balance sheet, it will not amount to admission of debt and, therefore, winding up petition would not be maintainable when the party has bonafidely disputed the payability of debt.

⑤ Sachin Bansal vs. Accent Shoes (P) Ltd. [2009]

⇒ The UPC many a times are obtained without actually dispatching the documents and, therefore, are not reliable evidence of posting. However, if the dispatch register is produced along with extracts of the cash book showing expenses having been incurred, then by virtue of Section-53 of the Companies Act, 1956, presumptions can be drawn about the service of documents through UPC. In the absence of proper and valid notice of board meeting, all resolutions passed thereat are liable to be set aside and quashed.

⑥ Modi Rubber Ltd. vs. Modi Fibers Ltd. [2009]

⇒ A combined petition under section 111A of the Companies Act, seeking rectification of register of Members so as to incorporate the name of the petitioner as well as petition v/s 397 and 399 of Companies Act for oppression and mis-management would be maintainable. On question being raised about the maintainability of petition, firstly petition issue of Sec. 111A could be decided and then the issue about maintainability on the ground that the petitioner does not, minimum number of shares, could be decided.

⑦ Prem Kabra Vs. Mangalore Chemicals & Petrochemicals Ltd. [2009]

⇒ In case the share certificate have been lost during transit about 16 years back and no one, in the meantime, has lodged any claim, the person who dispatched the share certificate is entitled to issuance of share certificates.

⑧ Mrs. L. Rani Ammal Vs. Shri Shanmughananda Bus Services (P) Ltd. [2009]

⇒ In case transmission of shares has been declined in favour of legal heirs of the shareholder without any justifiable reason, the C.L.B. shall be fully justified to issue directions for registering transmission of shares and also giving benefits accrued in favour of the shareholder.

⑨ Kerala State Electricity Board Vs. Hindustan construction Co. Ltd. [2009]

⇒ The non-confirmation of minutes of the meeting by the board of directors in the subsequent meeting does not affect the validity of the decision taken in the previous board meeting.

⑩ Arvind Porwal Vs. Bharat Pandya [2009]

⇒ In case the company refused to transfer the shares, no civil suit would be maintainable before the civil court but effective alternative remedy in the form of appeal v/s 111 would be maintainable before the C.L.B.

⑪ Ashish Poly fibers Ltd. Vs. State Bank of India [2008]

⇒ The corporate veil can be lifted and the court would be fully justified the real beneficiary of the transaction where facade of corporate veil has been employed for the purpose of committing irregularity and/or defrauding the public at large.

(12) S.P. Nachiappan Vs. AEE Castings Ltd. [2002]

⇒ The share certificates issued by the Company are prima facie evidence of the ownership and title of such person to the shares unless the share certificate are declared illegal by any competent court of law.

(13) G. Govindaswamy Vs. PNL Nidhi Ltd. [2009]

⇒ If the C.L.B. is of the opinion that to protect the interests of the share holders, depositors and other interested parties, it may appoint govt. directors on a petition v/s 408 of the companies Act, 1956 by 115 members of the Company.

(14) T.G. Krishnamurthy Vs. AROC [2009]

⇒ The non-filing of Balance sheet of the company is a continuing offence and, therefore, a period of six month limitation prescribed under Sec. 468 of Criminal procedure code [Cr.P.C.] would not be applicable.

WINDING-UP CASES

(15) Mysore Cements Ltd [2009]

⇒ If the scheme of Merger/Amalgamation does not adversely affect the right of the creditors in any manner nor there is any compromise or arrangement with the Creditor, then the application for dispensing with the meeting of creditors is liable to be allowed.

(16) GE Capital Transportation Financial Services Ltd. [2009]

⇒ The meeting of the Creditors could be dispensed if the party gives an undertaking to the Court that it shall issue to the secured and unsecured creditors notice inviting their objections to the scheme.

(17) German Homeopathic Distributors Pvt. Ltd.

Vs.

Deutsche Homeopathic [2009]

⇒ In the winding up proceedings u/s 433(e) of the companies Act, 1956, on the ground that inability to pay debts, the company court is not required to examine and investigate the counter claim of the respondent company in a minute detail so as to find out as to whether the counter claim is baseless or excessive. Assessment of the counter claim is ~~baseless or~~ the prerogative of the civil judge who would examine the same when a civil suit is filed.

(18) Ratna Commercial Industries Ltd.

Vs.

Vasu Tech Ltd. [2009]

⇒ The winding up petition is liable to be admitted where the Respondent company has taken loan and has issued cheques towards repayment and later on the Respondent Company contended that loan has been converted into equity shares without placing any evidence or material on record to suggest such conversion of loan into equity.

(19) Mrs. Rupinder Kaur Vs. SFL Industries Ltd. [2009]

⇒ If the company is in liquidation, no proceedings, either criminal or civil, can be initiated against such Company without the permission of the company court as required v/s 446 of the companies Act, 1956.

(20) Pushpa Synthetics Pvt. Ltd.

⇒ The ex-director of the company can be prosecuted v/s 454 of the companies Act for their failure to give correct answer before OL, deliberate conduct to defraud creditors and for disposing off the assets of the company.

(21) ⇒ In case the debts are undisputed and confirmed one, the petition v/s 433 (i)(e) of the companies Act, 1956, though being discretionary, yet, is the perfect legal remedy for realisation of payment of just debts wrongfully withheld by the debtor.

(22) ⇒ It is mandatory that a notice v/s 433 of the companies Act, 1956 must be served only at the registered office of the company against whom the winding up petition is sought to be filed before High Court, failing which the petition would not be allowed/maintainable and would be liable to be rejected on this short ground alone.

Oppression and Mismanagement Cases

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②3. Kishan Khariwal Vs. Ganganagar Industries Ltd. [2009]

⇒ In case the holding of petitioner has come down to below 10% due to issue of further shares and such issuance of shares have been challenged by the petitioner before the Company Law Board [C.L.B.] in a petition under Sec-397 for oppression and mis-management, it can not be said that the petition is not maintainable and the petition is not liable to be dismissed.

②4. Ashok Jain Vs. Naprod Life Science (P) Ltd. [2009]

⇒ If the members of the family has executed memorandum of family settlement which is challenged before the Civil suit, the C.L.B., in a petition u/s 397, would not entertain a petition covering the very same issue which are subject matter of civil suit. The issue of shares to meet financial needs of the company, cannot be challenged to be an act of oppression and mis-management.

②5. → The C.L.B. dismissed a petition u/s 397 holding that they failed to make out a case of oppression and mis-management, yet in view of the fact that the Company was in the nature of quasi-partnership, granted a relief that the petitioner be allowed representation in the management of the Company.