

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 1562 / 2010

Plaintiffs: **Muhammad Arghuman Hussain & another
Through Mr. Abdul Rehman Advocate.**

Defendant: **Muhammad Suhail Shamsi through
No. 1 to 3. Mr. Mansoor Ghanghro Advocate.**

Defendant No.6: **Ryan Cornelius through Mr. Murtaza Wahab
and Mr. Jaffer Raza Advocates.**

SUIT No. 1362 / 2013

Plaintiff: **Ryan Cornelius through Mr. Murtaza Wahab
and Mr. Jaffer Raza Advocates.**

Defendant: **Muhammad Suhail Shamsi through
No. 1 to 3. Mr. Mansoor Ghanghro Advocate.**

SUIT No. 1562 / 2010
For hearing of CMA No. 10377/2010.

SUIT No. 1362/ 2013
For hearing of CMA No. 10070/2010.

Date of hearing: **03.04.2018, 26.04.2018, 10.10.2018,
25.10.2018, 04.12.2018, 22.01.2019,
13.02.2019.**

Date of order: **22.04.2019.**

ORDER

Muhammad Junaid Ghaffar, J. These are two connected Suits filed by the Sponsors / Directors of a Company i.e. *Indus Refinery Limited* (Defendant No.2) in both the Suits. The main grievance of the Plaintiffs is against Defendant No.1 *Mr. Muhammad Suhail Shamsi* as according to the Plaintiffs he has taken over the Company in question and has deprived them from their shares and the investment made by them.

2. Facts as stated in the leading Suit No.1562/2010 are that the Plaintiffs are shareholders, sponsors and promoters of Defendant No.2 an unlisted public *Company*, whereas, *Mr. Suhail Shamsi* is the Chairman

and Director of the Company. Insofar as Defendant No.3 is concerned, it is an associated Company of Defendant No.2 but the actual status and ownership of this Company is not known to the Plaintiffs; however, their case is that Defendant No.3 was illegally, and in an unauthorized manner, incorporated by Mr. Suhail Shamsi to the exclusion of the Plaintiffs; but from the funds and reserves of their Company i.e. Defendant No.2. It is their case that approximately an amount of Rs.50.0 million from Defendant No.2, has been transferred to Defendant No.3. Prior to filing of this Suit, the Plaintiffs in Suit No.1562/2010 had filed a Company Petition under Section 292 read with Section 217 of the Companies Ordinance, 1984, ("**1984 Ordinance**") being J.M. No. 53/2009; but the same was withdrawn on 26.09.2011 as subsequent to its filing certain facts were brought on record which required factual determination; hence, the Plaintiffs filed instant Suit on 12.10.2010. The other Suit No.1362/2013 has been filed by the Plaintiff Mr. Ryan Cornelius, the other Director / Sponsor of Defendant No.2, on similar grounds and has also sought the same relief against Mr. Suhail Shamsi. On 12.10.2010 in Suit No.1562/2010 an ad-interim order was passed, whereas, in Suit No.1362/2013 also on 21.9.2013 an ad-interim order was passed, directing the Defendants to maintain status-quo in respect of the Company as well as the Properties owned by the Company. Injunction applications listed in both the Suits are being decided through this common order.

3. Learned Counsel for the Plaintiffs in Suit No.1562/2010 has contended that the total number of shares owned by the Plaintiffs were to the extent of 20% jointly and when the J.M. was filed, it came on record that Mr. Suhail Shamsi had convened some meetings for issuance of right shares which resultantly diluted their shareholding in the Company, whereas, certain disputed facts surfaced, requiring withdrawal of the J.M. and filing of instant Suit. Per learned Counsel, Mr. Suhail Shamsi has consistently violated a protocol, by not holding due and requisite meetings as mandated under the law for managing the affairs of the Company in question, and was / is involved in the practice of issuing back dated notices as well as minutes of the meetings which were never held and used to obtain signatures on the attendance sheet. According to him, in this manner Mr. Suhail Shamsi has embezzled large sum of money from the Company to the exclusion

of the Plaintiffs. He submits that on 31.08.2005 a new shareholding was agreed upon by virtue of which Plaintiff No.1 owns 2.66% shares and Plaintiff No.2 has 4% and in support thereof he has referred to Form-A dated 12.06.2008 and according to him till that time there was no dispute as to the shareholding. He has next referred to Form-A dated 23.12.2008 which suddenly reflects that the total number of paid up shares is 21,410,863 and the entire pattern of the shareholding has been changed inasmuch as Mr. Suhail Shamsi now has 81.34% shares. According to him, by this act the entire shareholding of the then majority shareholding i.e. Mr. Ryan Cornelius Defendant No.6 in this matter and Plaintiff in the connected Suit was completely wiped out and it is the case of the Plaintiffs in both the Suits that the purported meeting was never held; nor attended by the Plaintiffs and they were never offered any chance to purchase the purported right shares by virtue of which now Mr. Suhail Shamsi owns more than 81% shareholding. He has also referred to Section 2(36) of the 1984 Ordinance, as well as Section 158 and 159 ibid and submits that the meetings purportedly were never called and held in accordance with law, whereas, his clients were never in the country when the meeting was held and he has referred to copies of the Passports and travel documents. Per learned Counsel, the quorum of the meeting was also incomplete as no meeting could ever be held without presence of Mr. Ryan Cornelius who at the relevant time was holding 160,000 shares i.e. 80% of the paid up capital, whereas, the proxy being relied upon is a forged document and even there are no signatures of the proxy allegedly on behalf of Mr. Ryan Cornelius. He has further contended that the entire exercise is a sham and has been conducted only to exclude other shareholders and Directors on the basis of a meeting which was never held. Per learned Counsel in this manner, huge funds of the Company in question were transferred in violation of Section 208 ibid to Defendant No.3 and without any special resolution being passed for such purposes. Learned Counsel has next contended that not only this but an employment contract was also purportedly signed and given by the Company to Mr. Suhail Shamsi for drawing huge salary and benefits, which was never agreed upon by the other Directors and shareholders, and in this manner huge funds of the Company have been withdrawn by Mr. Suhail Shamsi. According to him, the Plaintiffs are left with no other remedy and since grave violations have taken

place; hence they have approached this Court, as the remedy, if any, under the 1984 Ordinance, cannot resolve the present dispute. In support he has relied upon ***Messrs Kazmia Trust (Regd.) V. Messrs Kaz International (Pvt.) Ltd and 5 others (2009 C L D 1713), Naveed Textile Mills Ltd. Karachi and 3 others V. Central Cotton Mills Limited, S.I.T.E. Kotri, District Dadu and 2 others (P L D 1997 Karachi 432), M. Shahid Saigol and 16 others V. M/s Kohinoor Mills Ltd. and 7 others (P L D 1995 Lahore 264) and Messrs G. M. Pfaff A. G. V. Sartaj Engineering Co. Ltd. and 3 others (P L D 1971 SC 564)***. He lastly submits that the Plaintiffs have come before this Court seeking a restraining order against the Defendants from creating any further third party interest in respect of the assets of the Company pending final adjudication of this Suit.

4. Learned Counsel for Mr. Ryan Cornelius (Plaintiff in Suit No.1362/2013) has contended that in addition to adopting the arguments of Plaintiffs in Suit No.1562/2010, it is the case of his client that Mr. Suhail Shamsi, in an organized manner, has diluted the shareholding of other Directors and has amended the Articles and Memorandum of the Company on its own, and has managed issuance of right shares without notice to any other Director(s); hence, the entire exercise is unlawful and without due process. He has contended that admittedly prior to 28.5.2008, Mr. Ryan Cornelius was holding 80% shares in the Company and such fact was not disputed by the Company in the counter affidavit filed in J. M. No. 53/2009. He has further contended that the quorum of the meeting as per Clause 10 of the Articles of Association was a minimum 51% shareholding, and therefore, no meeting could ever be conducted without presence of his client. Learned Counsel has referred to the notice of the meeting dated 28.05.2008 purportedly in respect of an Extra Ordinary General Meeting and has contended that in the said notice, no time of the meeting has been notified, which is against the law, whereas, his client never received any such notice. Per learned Counsel, when the minutes of the said meeting purportedly held on 28.5.2008 are looked into, it transpires that the meeting was held on 09:00 A:M but the notice of such meeting was silent about this. He further submits that the attendance sheet of the said meeting discloses the time as 10:00 A.M, whereas, admittedly no one is present on behalf of Mr. Ryan Cornelius; though, at the relevant time he was holding 80% shares. According to him, the Plaintiff in the

connected Suit was out of country; but he has been shown as present in the said meeting. Per learned Counsel, in the said meeting purportedly it was resolved that right shares would be issued; however, even the courier receipts purportedly addressed to the Directors regarding the offer of right shares dated 10.6.2008 does not reflect that any such notice or offer was sent to Mr. Ryan Cornelius. Per learned Counsel, in this manner the right shares of the Plaintiff went unsubscribed i.e. to the extent of 80% and then Mr. Suhail Shamsi issued such unsubscribed shares in his name. Learned Counsel has then referred to the signatures of Mr. Ryan Cornelius on the purported proxy and submits that firstly his client was under arrest from 20.05.2008, whereas, a bare perusal of these signatures clearly reflects that they do not tally; hence, the purported meeting never took place. He has then referred to the documents filed with SECP and submits that such record reflects that in fact two Annual General Meetings were conducted within the same year and this also supports the Plaintiff's case that all these documents were generated in back dates, whereas, the impugned meeting was never held. Per learned Counsel as soon as Mr. Ryan Cornelius was arrested who was the major sponsor of 80% shares, Mr. Suhail Shamsi maneuvered the record and took advantage and benefit of his absence by issuing right shares in such large numbers and then purportedly subscribed the unclaimed shares in his name. Per learned Counsel, in the counter affidavit evasive replies have been given to the allegations without any supporting material which establishes a prima facie case in favour of the Plaintiff; hence, injunction may be granted. According to him after taking over the Company, Mr. Suhail Shamsi has entered into various business transactions relating to the properties of the Company and has siphoned off huge funds which belong to the Sponsors / Directors. Per learned Counsel various assets of the Company, are now valued many times, and to take over such assets of the Company, this entire exercise has been managed by Mr. Suhail Shamsi. In these circumstances, he has prayed for confirming the ad-interim orders passed in both Suits.

5. Mr. Mansoor Ghanghro appearing on behalf of Mr. Suhail Shamsi as well as the Company in both the Suits has disputed the allegations of the Plaintiffs and has contended that the meeting was held with proper quorum, whereas, all Directors were present either by

themselves, or through proxies; hence, they cannot claim that they were not on notice. Learned Counsel has referred to Power of Attorney(s) of Plaintiffs No.1 & 2 in Suit No.1562/2010 and submits that they were represented, whereas, a unanimous resolution was passed and shares were transferred. According to him, the right shares went unsubscribed and therefore, his client was entitled to subscribe to such shares in accordance with the Articles and Memorandum of Association; hence, no illegality has been committed. Learned Counsel has referred to the attendance sheet and has contended that the signatures clearly reflect that the Plaintiffs were represented properly, in person, or on the basis of proxies and Power of Attorney(s); therefore, the allegation of not on notice and being unrepresented is false. He has shown the original Power of Attorney of Mr. Ryan Cornelius dated 9.7.2008 to the Court. He has further contended that Mr. Ryan Cornelius had confidence in Peter Hammil (Defendant No.5 in Suit No.1562/2010 as well as a Director / CEO of the Company) and therefore, he has given proxy / Power of Attorney on his behalf who has attended such meeting; therefore, no case is made out. Per learned Counsel, since Mr. Ryan Cornelius was the majority shareholder and once his presence was marked through a proxy, the case of other minor shareholders has no material effect on issuance of right shares or otherwise. According to him, all remaining Directors subscribed to the right shares except one, and now Mr. Suhail Shamsi is the lawful owner of more than 80% shareholding; therefore, there is no substance in the allegations of the Plaintiffs. As to the employment contract he has contended that the same has been approved in the Meeting held on 19.2.2009, whereas, Mr. Suhail Shamsi is performing his job according to the contract and is being paid the remuneration as agreed; therefore, no illegality has been committed. According to him insofar as Plaintiff No.1 in Suit No.1562/2010 is concerned, he was represented by his proxy Mr. Mudassir Hussain at the time of issuance of right shares, whereas, Plaintiff No.2 was present in person and their acceptance is on record, hence no case is made out. In view of these submissions he has prayed for dismissal of the listed applications.

6. I have heard all the learned Counsel and perused the record. The facts have been briefly stated hereinabove, and need not be repeated for the sake of brevity. Though very extensive arguments have been made on behalf of all learned Counsel; however, in my view the present

applications are only to be dealt with and decided as to whether a prima facie case is made out by the Plaintiffs and whether balance of convenience lies in their favor and if injunction is not granted, irreparable loss would be caused to them or not. For the present purposes their grievance is only to the extent that till pending finalization and decision of the Suits, the Defendants be restrained from creating any third party interest in respect of the Company, its assets and any sale thereof. It is not that the Plaintiffs at this injunctive stage are seeking any other relief including the relief to reverse or set aside the transaction purportedly already entered into by issuance of right shares to the Sponsors / Directors, nor in my view the same can even otherwise be granted at this injunctive stage; therefore, it is only to this extent that I will examine the material referred to and give my findings. The dispute in nutshell is that Mr. Suhail Shamsi has managed to call a meeting and in that meeting right shares were offered to all Sponsors / Directors, which went unsubscribed by them, and this allowed him to subscribe the said right shares, which he has done, and is now the owner of the Company with majority shareholding of more than 80%. This is the crux of the matter, whereas, through listed application under consideration, an injunctive order is being sought to the extent, that pending this Suit, the Company as well as Mr. Suhail Shamsi, be restrained from creating third party interest in respect of the properties and assets of the Company. The dispute revolves around as to the issue of Right Shares, and the fact that whether, a proper meeting was convened for such purposes, including the issuance of notice(s) for the said meeting. For that it would be advantageous to refer to the provisions of Section 86 of the erstwhile 1984, Ordinance, which deals with issuance of Right Shares and reads as under;

86. Further issue of capital.---(1) Where the directors decide to increase the capital of the company by the issue of further shares, such shares shall be offered to the members in proportion to the existing shares held by each member, irrespective of class, **and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined:**

Provided that the Federal Government may, on an application made by any public company on the basis of a special resolution passed by it, allow such company to raise its further capital without issue of right shares:

Provided further that a public company may reserve a certain percentage of further issue of its employees under "Employees Stock Option Scheme" to be approved by the Commission in accordance with the rules made under this Ordinance.

(2) The offer of new shares shall be strictly in proportion to the number of existing shares held:

Provided that fractional shares shall not be offered and all fractions less than a share shall be consolidated and disposed of by the company and the proceeds from such disposition shall be paid to such of the entitled shareholders as may have accepted such offer.

(3) The offer of new shares shall be accompanied by a circular duly signed by the directors or an officer of the company authorised by them in this behalf in the form prescribed by the Commission containing material information about the affairs of the company, latest statement of the accounts and setting forth the necessity for issue of further capital.

(4) A copy of the circular referred to in subsection (3) duly signed by the directors or an officer authorised as aforesaid shall be filed with the registrar before the circular is sent to the shareholders.

(5) The circular referred to in subsection (3) shall specify a date by which the offer, if not accepted, will be deemed to be declined.

(6) [Omitted].

(7) If the whole or any part of the shares offered under subsection (1) is declined or is not subscribed, the directors may allot and issue such shares in such manner as they may deem fit."

7. Perusal of the above provision reflects that this is a mechanism, whereby, a Company can raise its Capital, and right shares are offered to the members in proportion to the existing shares held by each member, and in case the whole or any part of the shares offered under subsection (1) is declined or is not subscribed, the directors may issue such shares in such manner as they may deem fit. Therefore, the intention clearly is to increase the capital of the company by subscription of shares and offering them to existing shareholders. Section 86 encapsulates two things: firstly; it enumerates one of the methods by which the company may increase its share capital; secondly, it confers preemptive rights on the existing shareholders. Section 86 deals in Rights issue and is a species of pre-emption rights. It gives a way out for the Company to raise new money. Insofar as issuance of a notice for any such meeting as above is concerned, the relevant provision is Section 160 of the 1984 Ordinance and relevant portions reads as under;

160. Provisions as to meetings and votes.---(1) The following provisions shall apply to the general meetings of a company or meetings of a class of members of the company, namely:-

(a) notice of the meeting specifying the place **and the day and hour** of the meeting along with a statement of the business to be transacted at the meeting shall be given-

(i) to every member of the company;

(ii) to any person entitled to a share in consequence of death of a member if the interest of such person is known to the company; and

(iii) to the auditor or auditors of the company; in the manner in which notices are required to be served by section 50, but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;

(b) where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement;

8. A bare reading of the aforesaid provision reflects that it applies to General Meetings of a Company and it can't be disputed that that Extra Ordinary General Meeting in question was such a meeting, whereas, sub-section (1) (a) of Section 160 requires that notice of the meeting specifying *the place and the day and hour* of the meeting along with a statement of the business to be transacted at the meeting shall be given. By virtue of clause (b) of subsection (1), it has been specified that where any special business is to be transacted at a General Meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time and the place where the document may be inspected shall also be specified in the statement. The same clause (b) gives an indication of what special business means. Special business, according to this clause, is business other than consideration of accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors. Therefore, any business apart from those incorporated in the clause shall be a special business. It therefore, means that the increase in the authorized capital of the Company by issuance of Right Shares is a special business within the meaning of section 160(b) and thus, under ordinary

circumstances a statement ought to have been annexed to the notice of the meeting. However, it has been noted with concern that firstly, nothing is on record to repel the contentions of the Plaintiff in the shape of supporting documents. Here in this matter it is to be noted that in respect of the allegations of the Plaintiffs, Mr. Suhail Shamsi has not annexed any documents with the Counter Affidavit, except a few, in Suit No.1362/2013 and has rather placed reliance on the counter affidavit filed in J.M.53/2009, and for this file of J.M. No.53/2009 was also summoned from the record branch of this Court. It further appears that in Suit No.1562/2010 a voluminous written statement has been filed, wherein several documents have been placed on record. SECP has also placed on record certain documents, and one such document in JM-53/2009 is Annexure "H" at pg. 87, which is purportedly a Circular in terms of s. 86(3) of the 1984 Ordinance filed by the Company with SECP. However, on perusal of the same it reflects that amount of proposed issue of right shares was for Rs.3,500,000,000/- divided into 350,000,000 shares of Rs.10/each. In fact this is what the Company had resolved through the purported Board Resolution and so also amendment of the Articles of Association including Article 10 thereof. However, there is nothing on record to justify as to why all the said shares were not subscribed and only 21,210,863 number of shares were subscribed (See Form-3 Annexure "G" at pg:79 of the J.M.). The first and foremost question which arises is to the effect that even if right shares were offered to the Plaintiffs and they never subscribed to the same, and by virtue of Articles and Memorandum of Association, the unsubscribed shares were then offered to the remaining sponsors and Directors who have subscribed to that, then what happened to the remaining unsubscribed shares from the original resolution and the amendment of the Articles of Association. Why the remaining shares weren't subscribed by them. And if not, then what happened to those shares. It is also not informed that on such subscription of the right shares, in what manner, the amount was paid to the Company. Nothing has been brought on record by the Defendants especially Mr. Suhail Shamsi that how and in what manner he has paid the amount of right shares to the Company. Admittedly, a huge number of shares i.e. 21,210,863 were subscribed by him and other Directors as right shares for increasing his/ their shareholding to more than 80% and for that naturally the amount of such right shares must have been paid in the

account of the Company. This is crucial for the fact that the Plaintiffs have seriously disputed holding of any such meeting, as they were never served either with the notices of the meetings, nor the offer of right shares. Secondly, it has not been explained, neither in the reply nor in the arguments, that how come the entire right shares (350,000,000) though offered as per record of SECP were not subscribed. In fact this goes against the very Resolution, amendment of Articles of Association and so also amounts to violation of filing an untrue statement or Form with SECP. Having said this, again there is nothing on record to explain that whether this was clarified and amended in record of SECP subsequently or not. Moreover, neither the Company nor for that matter, Mr. Suhail Shamsi have placed on record any material to suggest that; firstly, any proper notice of the purported meeting was ever issued and served upon the Plaintiffs; and secondly, and more importantly, no offer letter requesting the Plaintiffs to subscribe to the Right Shares as agreed upon by the Directors has been placed on record. What is available in one of the Suits is some courier receipts. But they are only courier receipts without any tracking or acknowledgement of the same. It is also pertinent to mention that even these courier receipts do not mention the name of Mr. Ryan Cornelius who admittedly at the relevant time owned 80% shareholding in the Company. In fact, he at that point of time, was the actual owner and a person to be affected or benefitted with the issue of Right Shares, and unfortunately, there appears to be no effort on the part of the Company to ensure that he is properly served and has knowledge of the said meeting, considering the fact that he is a foreign national and at the relevant time in custody abroad. This all seems akin to some maneuvering and deceitfulness on the part of Mr. Shamsi and the Company as well as other Directors siding with him. At least to the extent of Mr. Ryan Cornelius compliance of section 50 (2) of the 1984 Ordinance is also lacking, and when considered that he was the majority shareholder at the relevant time, this makes it a more serious lapse on the part of contesting Defendants. It may also be noted that the courier receipts (though not addressed to Mr. Ryan Cornelius) are dated 10.6.2008, and if it is assumed that he was also sent such offer, even then how is it possible for a man outside the Country to give his consent or otherwise in respect of subscription of right shares by 13.6.2008? It is practically impossible and seems to have been

conceived in this manner so as to deprive him of this opportunity, otherwise there appears to be no occasion to give such a short time to subscribe to the right shares as the meeting was purportedly held on 28.5.2008, whereas, the offer was dispatched on 10.6.2008. Lastly Section 86(4) *ibid* requires that a copy of circular referred to in subsection (3) duly signed by the Directors or an officer authorized shall be filed with the Registrar before the circular is sent to the shareholders. Admittedly as per record the said Circular in terms of this provision was filed with SECP on 10.6.2008, and if it was dispatched to the members and directors on the same date as reflected from the courier receipts i.e. 10.6.2008, then again it is in violation of law. At the most the offer could have been dispatched at the earliest by 11.6.2008, and then it would have further reduced the time for subscription to only 2 days, which in reality is again an impossibility for a person who is out of the Country. As to the Power of Attorney being relied upon by the Counsel for the Defendants is concerned, the same was issued on 09.07.2008, whereas, the meeting in question took place on 28.5.2008. Even otherwise execution of this Power of Attorney has not been disputed; but for the present purposes it is irrelevant as it was executed much after the meeting and may have been done so for any other purpose than the meeting in question. Notwithstanding this, it has been further pleaded that a Proxy was issued by Mr. Ryan Cornelius in favor of Peter Hammil. However, on a bare perusal of the same it appears that the signatures on this document do not tally with the admitted signatures of Mr. Ryan Cornelius at Page 63 of the Counter Affidavit (Employment Contract dated 10.3.2007). It is also a matter of fact that this proxy has been witnessed by Mr. Suhail Shamsi along with another person and has been given in favor of Mr. Peter Hammil, whereas, case of Mr./ Ryan Cornelius is against both these gentlemen. Therefore, it is a highly doubtful document for this Court to consider at this stage of the proceedings. Moreover, the date of signing of this Proxy is shown as 20.5.2008, on which date, as contended and not denied specifically, Mr. Ryan was under custody abroad, whereas, his presence is also admitted prior to this date on 17.5.2008 in Pakistan. If that had been the case then he would have signed the said Proxy on the date when he was in Pakistan and not on a date when he is purportedly under custody in Dubai, and if he was in Dubai, then any proxy of such nature without any notarization or attestation from the Embassy or Foreign Office is

otherwise not an admissible document, as mere signatures are not sufficient enough to accept the same as an authority. Though it is a matter of evidence, but for the present purpose any reliance on this document cannot be considered as a forceful argument insofar as the Defendants case is concerned. It needs to be appreciated that by virtue of this entire exercise the majority shareholder of a Company is being virtually thrown out. Lastly, it may also be noted that admittedly in the attendance sheet of the meeting held on 28.5.2008 (which is an admitted document), there is no marking of attendance of Mr. Ryan Cornelius and it is left blank. Now the moot question would be that if any Proxy was given by him as contended in favor of Mr. Peter Hammil, then why he did not signed on his behalf in the attendance sheet when he was present in the meeting on his own behalf. Learned Counsel for Defendants was confronted to this, but he had no satisfactory response and conceded that it is a matter of record that there are no signatures or attendance marked on behalf of Mr. Ryan Cornelius.

9. It is also a matter of record and as rightly pointed out by the learned Counsel for Mr. Ryan Cornelius that in the notices of the meetings no time is mentioned, whereas, in the minutes the time is shown as 09:00 A:M and in the attendance sheet of the same meeting the time is shown as 10:00 A:M. How this has happened goes unexplained and creates serious doubts on the contention of the Defendants. The law provides that (See Section 160 *ibid* as above) the time of the Meeting is also to be mentioned and disclosed in the notice, whereas, even otherwise its mentioning is vital as well as crucial for other Directors to attend the same. There is another aspect of the matter regarding the quorum of the purported meeting. Insofar as Mr. Ryan Cornelius is concerned, in the attendance sheet of the meeting held on 28.05.2008 his presence is not marked, even though it is claimed that his Proxy was there, whereas, at the relevant time and before holding such meeting, he owned 1,60,000 shares i.e. 80%. Now if he was not present in the meeting as per attendance sheet placed on record then how the meeting could be conducted for want of quorum as provided in Article 63 of the Articles and Memorandum of the Company. In that situation, it is immaterial at this point of time that whether the other Directors were there or not, since admittedly the majority shareholder is not there. If the quorum is below 51% shareholding

(notwithstanding presence of 3 or more Directors / Members,) which is the case here, then it lacks quorum for the meeting, and therefore, any decision taken in the meeting was meaningless. In fact the requirement of quorum for the meeting as provided in Section 160 (2) (b) *ibid* is also not met, as admittedly, (minus Mr. Ryan Cornelius), all other members of the Company only hold 20% shareholding. Even otherwise, one has to appreciate the fact that a person who holds 80% shares is absent or prevented for some reason and no one appears on his behalf, then such a meeting was otherwise not appropriate and in the interest of the Company. The only inference which could be drawn is that by conducting such meeting his shareholding was intentionally diluted and from being an owner of 80% shares, he is out of the Company and now Mr. Susohail Shamsi is the owner of the Company to the extent of more than 80%. This intention clearly shows that the meeting was called for only this purpose and not otherwise.

10. In view of hereinabove facts and circumstances of the case as well the prevalent law, it appears that the plaintiffs have made out a prima facie case and balance of convenience lies in their favor, whereas, irreparable loss would be caused to them if the injunctive relief is denied. Accordingly, listed applications in both the Suits are allowed in the terms that the ad-interim orders dated 12.10.2010 in Suit No.1562/2010 and 21.9.2013 in Suit No.1362/2013 are hereby confirmed till final disposal of these Suits.

11. Listed applications for injunction are allowed in the above terms.

Dated: **22.04.2019**

J U D G E

ARSHAD/