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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**T.P. No. 3/397-398/NCLT/AHM/2016 (New)
C.P. No.61/397-398/CLB/MB/2009 (Old)**

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.05.2017**

Name of the Company: Amar Ramchand Larai
V/s
Grace Agrifields Pvt. Ltd. & Ors.

Section of the Companies Act: Section 397-398 of the Companies Act, 1956;

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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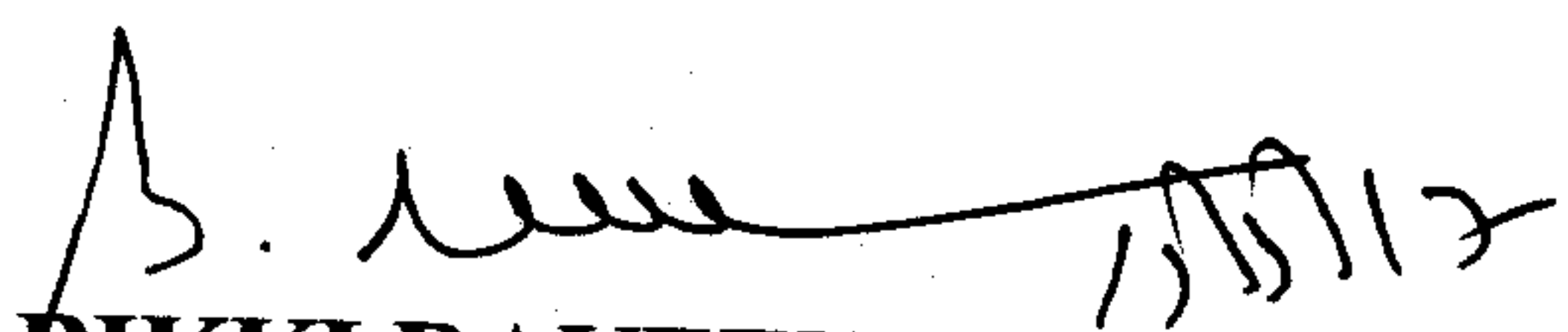
1.

2.

ORDER

None present for Both parties.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 15th day of May, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**TP No.3/397-398/NCLT/AHM 2016 (New)
C.P. No. 61/397-398/CLB/MB/2009(Old)**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 15th May, 2017

In the matter of:

Amar Ramchand Larai
B-101 Goyal Park Apartment
Opp: Lad Society
Vastrapur
Ahmedabad

: Petitioner.

Versus

1. Lalit Gurmukhadas Motwani
17, Indraprasth Bungalows
Shreyas Tekra, Ambawadi,
Ahmedabad.
2. Vinod Gurmukhadas Motwani
8, Indraprasth Bungalows
Shreyas Tekra, Ambawadi,
Ahmedabad.
3. M/s. Grace Agrifields Private Limited
36/37, Ajanta Industrial Estate
Vasna, Iyava,
Sanand, Ahmedabad.

: Respondents.

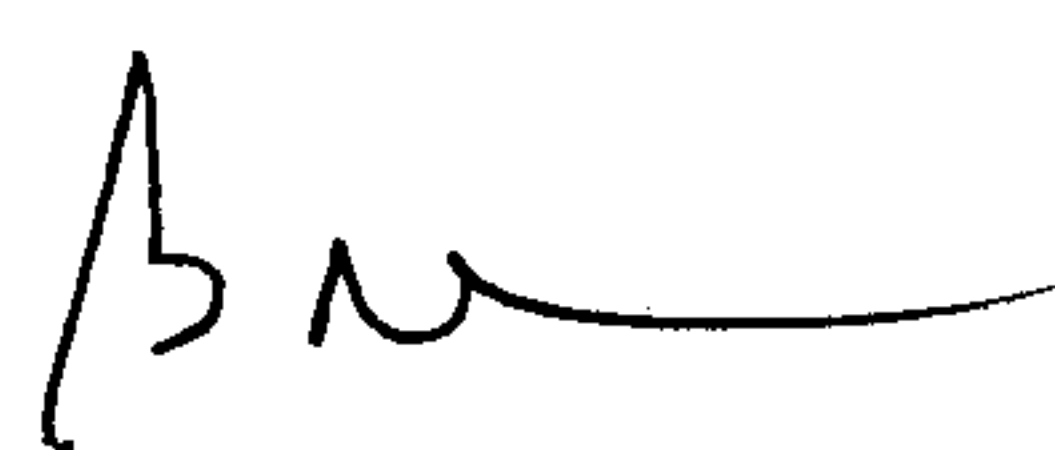
Appearance:

Shri A.R. Gupta with Ms. Neeta Pandit learned Advocates for
Petitioner.

Shri Harmish K Shah with Shri Rakesh Sharma, learned Advocates
for Respondents No.1 to 3.

FINAL ORDER

Pronounced on 15th day of May, 2017



1. This Petition is filed under Sections 397, 398 and 399 of the Companies Act, 1956 alleging acts of oppression and mismanagement in the conduct of affairs of 3rd Respondent Company.

1.1. The Paid-Up Equity Share Capital of the 3rd Respondent Company is Rs. 10,00,000/-. Petitioner is the holder of 26.75% of the equity shares in the Paid-up Share Capital of the 3rd Respondent Company. Mrs. Deepa Larai who is the wife of Petitioner is the holder of 23.25% in the Paid-up Share Capital of the 3rd Respondent Company. The Annual Return dated 29th September, 2007 showed that there were 12 members in the 3rd Respondent Company. Among them, Petitioner and his wife is having 50% of the Paid-up Share Capital of the Company. The other 10 members are holding 50% of the Paid-up Share Capital of the 3rd Respondent Company and they are all belonging to the group of Respondents No. 1 and 2. The Memorandum of Association shows that Petitioner, wife of the Petitioner, and Respondents No. 1 and 2 are the first Directors of the 3rd Respondent Company.

1.2. 3rd Respondent Company was incorporated under the provisions of the Companies Act, 1956 on 21st April, 2004 having its Registered Office in Sanand, Ahmedabad. 3rd Respondent Company is engaged in the business of edible oil seeds, cattle feeds, botanical extracts and others. The factory of the 3rd Respondent Company is also situated at the Registered Address.

2. According to the Petitioner, there was an understanding between Petitioner and Respondents No. 1 and 2 that the



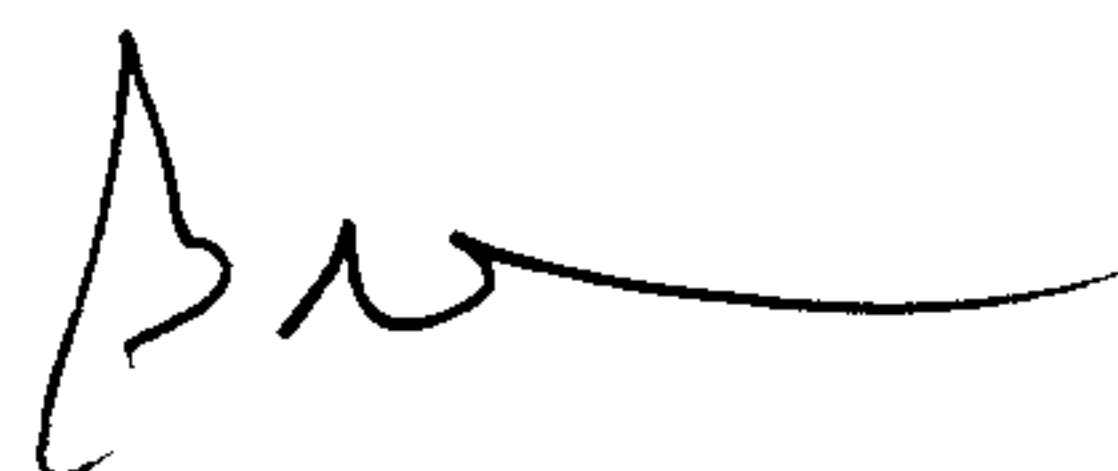
investment in the Company from both sides shall be equal and the Company shall be managed jointly.

2.1. It is alleged by the Petitioner that Respondents No. 1 and 2 started indulging in unwarranted trace practices and siphoning of funds of the Company by dubious methods of under-billing by showing false and fabricated expenses with a view to enrich themselves personally. It is also alleged by the Petitioner that Respondents No. 1 and 2 sold away the stock of the Company and pocketed the money for personal benefit. Petitioner came to know about the sale of stock of the Company without notifying the Petitioner of such sale and the Petitioner came to know of the same only in September/October 2007. Respondents No. 1 and 2 also sold some of the equipment of the Company and did not account for the same in the books of accounts. The repeated requests of the Petitioner to show the accounts did not give any result. Petitioner strongly protested against the mala fide and illegal practices of the Respondents No. 1 and 2 and thereby differences between the Petitioner and Respondents No. 1 and 2 reached to a point of no return.

2.2. It is also alleged by the Petitioner that Respondents No. 1 and 2 misused and misapplied the loan taken from Indian Overseas Bank (IOB) for the business of the Company. Respondents No. 1 and 2 defaulted in repayment of loan taken from the Bank deliberately. Respondents No. 1 and 2 planned to dispose of assets of the Company in order to evade and defeat the loans granted to the Company by IOB.



- 2.3. In those circumstances, Petitioner was constrained to file Civil Suit No. 48 of 2008 against the Respondents No. 1 and 2 and another before the City Civil Court at Ahmedabad on 4.1.2008 for a permanent injunction restraining Respondents No. 1 and 2 herein to have access to the premises of the 3rd Respondent Company; for a permanent injunction restraining Respondents No. 1 and 2 herein from transferring or alienating in any manner the assets of the 3rd Respondent Company herein; and for a direction to the IOB to realise its dues by acquisition under sale of assets of 3rd Respondent Company.
- 2.4. According to the Petitioner, due to filing of the said Suit, Respondents No. 1 and 2 threatened the Petitioner stating that he would be thrown out of the Company.
- 2.5. It is alleged by the Petitioner that a meeting of the Board of Directors was convened on 23.2.2008 but no notice of meeting was given to the Petitioner or his wife but Petitioner and his wife on coming to know about the meeting on 23.2.2008 at 5.00 PM went to the Registered Office of the Company but they were not allowed to participate in the meeting and in fact they denied access to the premises of the meeting. In the said Board Meeting on 23.2.2008, following Resolutions were passed;
- (a) To convene EOGM at 6.00 P.M. on 23rd February, 2008;
- (b) To authorize 1st Respondent to operate the Bank account with IOB with Account No. C.C 617 in supersession of the earlier resolution passed by the Board of Directors;



(c) To communicate to the Bank to accept the signature of the 1st Respondent in relation to the transactions of the Company, signing of cheques etc.

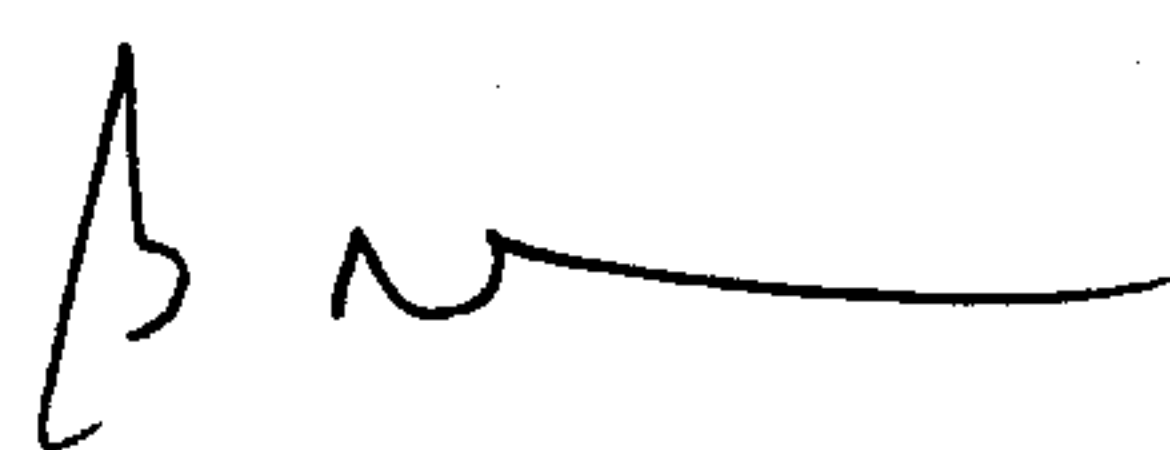
(d) 1st Respondent be appointed as 'Managing Director' of the Company with all powers of administration and management of the Company pursuant to Article 25 of the Articles of Association of the Company with effect from 23.2.2008 authorising the 1st Respondent Managing Director of the Company to sell, dispose of, or transfer the properties both movable and immovable of the Company;

(e) To authorize the 1st Respondent as Managing Director of the Company to arrive at an agreement with the lenders of the Company and to settle the matter on behalf of the Company.

2.6. It is stated by the Petitioner that he was illegally removed from the Directorship of the Company under the provisions of Section 284 of the Act by making an unsigned resolution dated 5.6.2008 in the EGM held on 5.6.2008 and submitted to the ROC. It is further stated by the Petitioner that Respondents No. 1 and 2 with a mala fide design removed the Petitioner from the Directorship of the Company while allowing his wife as Director who is only a housewife and who is not able to actively participate in the affairs of the Company.

2.7. It is further stated that Petitioner and his wife were not allowed to enter the premises where the EGM was held on 5.6.2008.

2.8. Petitioner further alleged that Respondents No. 1 and 2 are mismanaging the affairs of the Company and siphoning of the funds of the Company by selling the



stocks of the Company and assets of the Company which includes moveable and immoveable.

2.9. Petitioner also alleged that Respondents No. 1 and 2 are preventing the Petitioner from participating in the affairs of the Company and they are denying access to the records and registers of the Company. Petitioner was denied entry into the factory premises on 10.5.2008 by Respondents No. 1 and 2 who directed the Petitioner to leave the premises immediately.

2.10. According to the Petitioner, the following are the value of assets of the Company;

Particulars	Value (Rs.)
Approximate market value of Assets of the Company	As under:
Land	336 lacs
Building	120 lacs
Plant and Machinery	320 lacs
Total	776 lacs

3. Petitioner prays for the following reliefs;

- (a) To restore the Petitioner as 'Director' of the Respondent Company in accordance with law;
- (b) To direct the Respondents No. 1 and 2 to appoint the Petitioner as 'Director' of the Respondent Company;
- (c) To direct the Respondents No. 1 and 2 to serve notices of all meetings and to hold all meetings in the Registered Office of the Company;
- (d) To direct the Respondents No. 1 and 2 not to dispose of any moveable and immoveable assets of the Company;
- (e) To direct the Respondents No. 1 and 2 to operate the Bank accounts jointly with Petitioner and another Director;



(f) To restrain Respondents No. 1 and 2 from passing any Resolution or from selling, transferring, disposing, alienating or in any way dealing in the moveable and immovable assets of the 3rd Respondent Company;

(g) To restrain Respondents No. 1 and 2 from causing obstruction to the Petitioner from having access to records of the Company including minutes, books of accounts, etc.

4. Respondents No. 1 to 3 filed Reply stating that it is the Petitioner who was looking after the affairs of the Company and due to his mismanagement only the financial position of the Company had weakened and as a result the 3rd Respondent Company closed all its operations from May 2007.

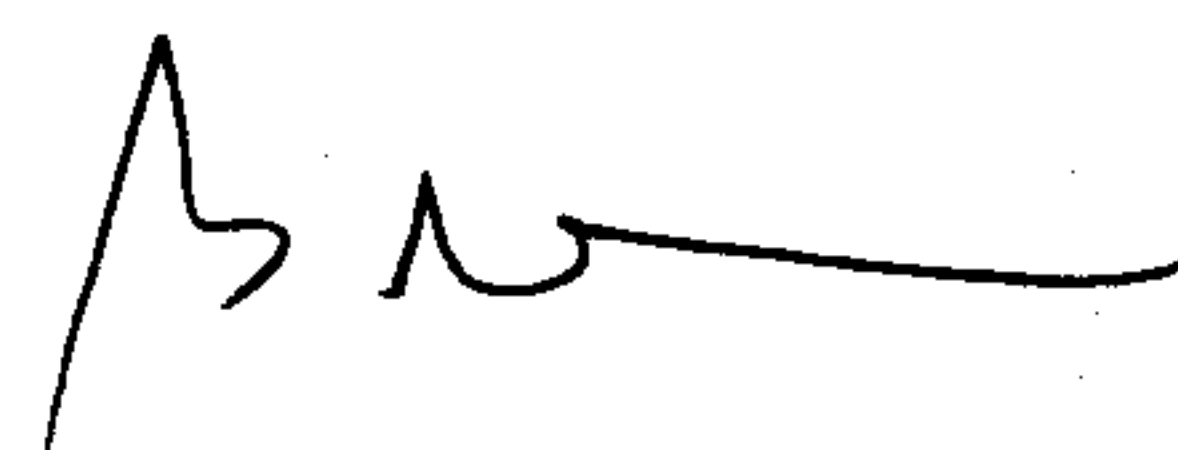
4.1. 3rd Respondent Company took a loan of Rs. 310 Lacs as Working Capital from IOB against hypothecation of stocks, plant and machineries and Book Debts. The said loan facility was secured by mortgage of factory, land and building. Respondents No. 1 and 2 also provided their personal properties as collateral security to the said loan. Respondents also managed to take unsecured loan of Rs. 110 Lacs from friends and relatives. According to the Respondents it is they who infused huge funds into the 3rd Respondent Company for its business.

4.2. According to the Respondents No. 1 and 2, due to mismanagement of Petitioner, Company had defaulted in repayment of the loan obtained from IOB. A Demand Notice was issued by the IOB under Section 13(2) of Securitisation and Financial Reconstruction Act, 2002 to the Company, its Directors and Guarantors on 13.2.2008.



4.3. Since the Company was not in position to repay the amount of loan, Special Civil Application No. 9818 of 2008 was filed before the Hon'ble High Court of Gujarat challenging the demand notice. Petitioner never cared to give reply to the notice issued under the Securitisation Act. During the course of hearing, an undertaking was given to the Hon'ble High Court of Gujarat and the Hon'ble High Court accepted the undertaking and passed orders on 9.9.2008 in terms of the undertaking. As per the said order, Respondents shall pay entire amount by 9.3.2009. In terms of the direction given by the Hon'ble High Court, the moveable assets of the Company with the consent of the Bank were disposed of and the amount realised of Rs. 83 Lacs was paid to the Bank. Respondents were unable to secure better price for land and building of the Company which had to be disposed in terms of the order of the Hon'ble High Court by 9.3.2009. Therefore, Respondents again approached the Hon'ble High Court and the Hon'ble Court granted time up to 15.6.2009 by its order dated 6.3.2009. On the basis of the said order of the Hon'ble High Court, the Hon'ble DRT has disposed of the application filed by the Bank for recovery of the dues by its order dated 23.9.2008. It is stated that Petitioner withdrawn the Suit on 2.6.2009, i.e., just before filing of the Petition.

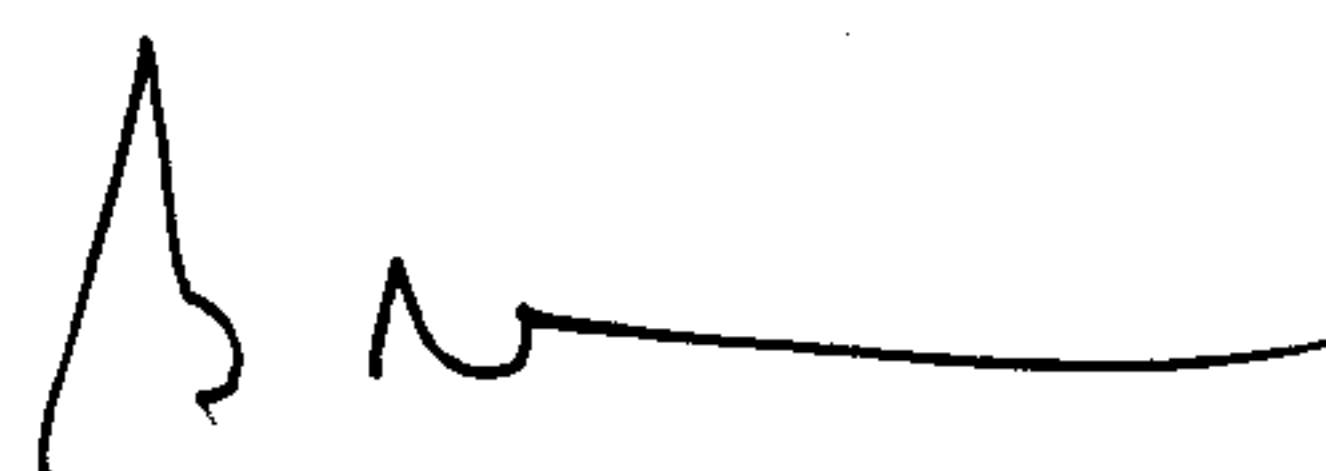
4.4. It is stated by the Respondents that Company ceased to function after 2007 and its plant has been disposed of as directed by the Hon'ble High Court. The factory, land and building were being sold as directed by the Hon'ble High Court. The Company would be able to discharge the loan which came to Rs. 311 Lacs and to liquidate other liabilities proportionately if there is surplus out of realization value of the assets. According to the



Respondents the substratum of the Company has gone and it does not intent to carry on or to take any activity. Further it is the case of the Respondents that the only option is to get the Company dissolved in accordance with the provisions of the Companies Act, 1956.

4.5. According to the Respondents No. 1 and 2, Petitioner has always been acting against the interests of the members, creditors and against the interests of the Company. Respondents apprehend that petitioner may create further liabilities by borrowing loans from known parties for his personal use in the name and on behalf of the Company. Therefore, a decision was taken to call EGM which was held on 19.5.2008 and notice was sent to Petitioner by Registered Post. The said notice was acknowledged by the Petitioner. The notice of General Meeting was also given to the Petitioner; and Petitioner was given an opportunity of being heard. But Petitioner and his wife did not choose to attend the meeting. According to the Respondents, Petitioner was legally removed from the directorship by following due process of law and for the reasons given in the Resolution.

5. In the Rejoinder, Petitioner reiterated what is stated in the Petition. According to the Petitioner, there is no direction or order from the Hon'ble High Court to dispose of moveable and immoveable properties of the 3rd Respondent Company and it is the Respondents who voluntarily gave consent letter and under the guise of the High Court's order they have disposed of the valuable assets of the 3rd Respondent Company.



6. In the Additional Affidavit filed as Reply to the Rejoinder, Respondents reiterated the same facts which they have stated in the Reply.

7. Petitioner filed Written Arguments. Respondents also filed Written arguments.

8. Basing on the said pleadings, the following points are framed for consideration;

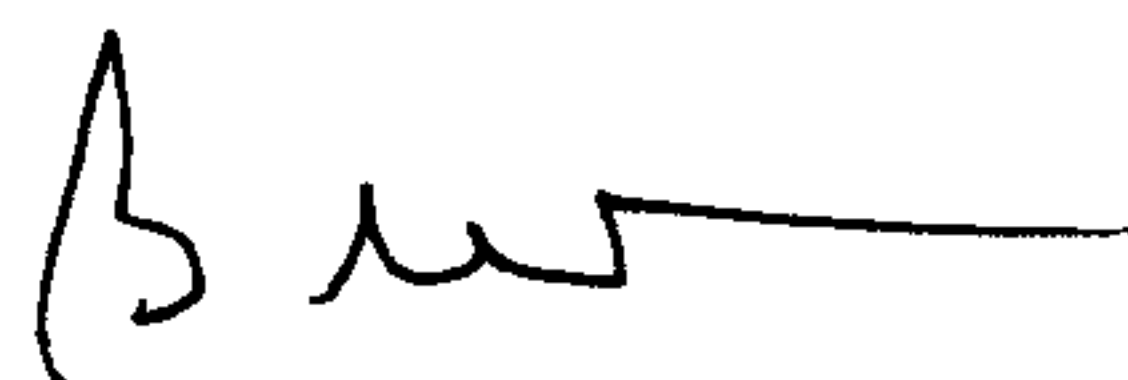
- (i) Whether the Resolutions passed in the Meeting held on 23.2.2008 amounts to acts of oppression or mismanagement;
- (ii) Whether the removal of 1st Petitioner from the directorship of 3rd Respondent Company in the Board Meeting held on 5.3.2008 is invalid or not;
- (iii) Whether Respondents involved in siphoning of funds of 3rd Respondent Company for their benefits and to the detriment of interests of the Company and Petitioner;

9.(Point (i) It is the case of the Petitioner that Board of Directors Meeting was held on 23.2.2008 and without giving notice for the same, several Resolutions which affect the interests of the Petitioner were passed. By virtue of those Resolution authority was conferred on the 1st Respondent to take over the entire management of the 3rd Respondent Company.

9.1. Petitioner in the Petition itself stated that although he did not receive any notice for the meeting held on 23.2.2008 he came to know about the said meeting and he went to attend the meeting along with his wife and he

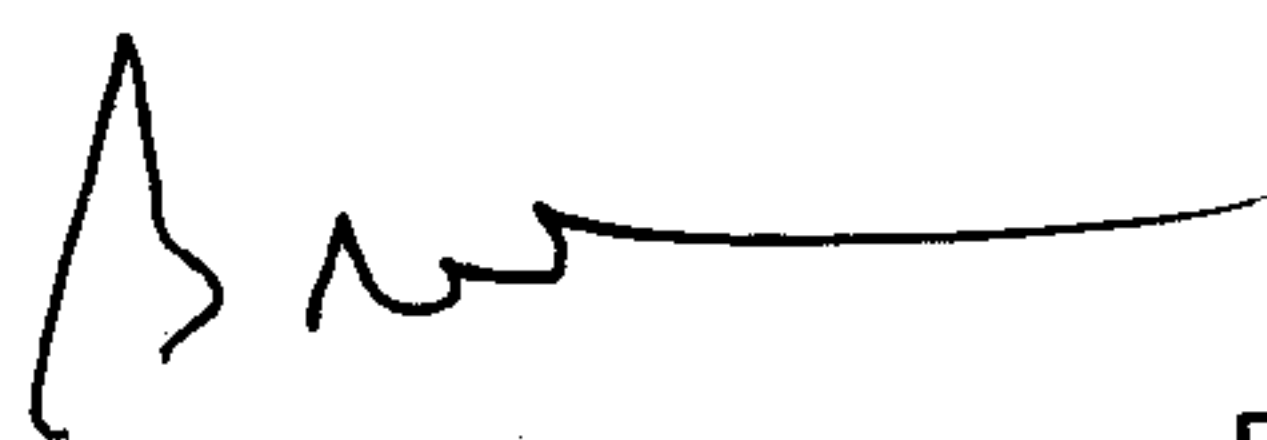
was prevented from participating in the said meeting. Petitioner himself filed the notice addressed to wife of Petitioner, Respondent No.1 and Respondent No.2, as Annexure A-6 at Page 60 of the Petition. It shows that the notice is not addressed to the Petitioner although he was a Director by that date. But the Minutes of the Board of Directors meeting of 3rd Respondent Company held on 23rd February, 2008 shows that Petitioner was present in the meeting.

- 9.2. Even by his own saying Petitioner got knowledge about the Board of Directors Meeting on 23.2.2008. Therefore, the assertion of the Petitioner that he had not received notice of the Board Meeting dated 23.2.2008 is highly improbable. The plea of the Petitioner is that he was prevented by Respondents No. 1 and 2 from attending the Board Meeting whereas the Minutes show that he was present in the Board Meeting. No doubt, the Resolutions were passed in the Board Meeting held on 23.2.2008 giving authority to the 1st Respondent to operate the Bank account and 1st Respondent was appointed as Managing Director of the Company. In the said Board Meeting, authority was also given to the 1st Respondent Managing Director of the Company to sell and dispose of the properties of the Respondent Company in order to settle with the lenders of the Company. Simply because 1st Respondent was appointed as 'Managing Director' and he was authorised to negotiate with the lenders and dispose of the properties of the 3rd Respondent Company, it cannot be said that the Resolutions passed in the Board Meeting dated 23rd February, 2008 are against the interests of Petitioner or against the interests of the Company. Therefore, the Resolutions passed in the Board Meeting



held on 23rd February, 2008 cannot be taken as acts of oppression or mismanagement.

10.(Point (ii) Removal of Petitioner as 'Director' took place in the EGM held on 5.6.2008. From the material available on record, it appears that Reenadevi H. Motwani who is having 50000 shares and Shyam D. Motwani who is having 60000 shares gave a requisition dated 30th April, 2008 to the Board of Directors of the 3rd Respondent Company to pass a Resolution under Section 284 of the Companies Act to remove the Petitioner from directorship of 3rd Respondent Company. Basing on the said Resolution, the Chairman of the Company issued a notice dated 15.5.2008 for the Board Meeting to be held on 19th May, 2008. The Meeting of the said notice was sent to all the 4 Directors including the Petitioner by Speed Post. It is the say of Petitioner that he was not allowed to enter into the premises where the Board Meeting was held on 5.6.2008. Therefore, if it is true, it is for the Petitioner to immediately issue a notice to the Company and the Registrar of Companies to inform that he (Petitioner) and his wife were not allowed to participate in the meeting on 5.6.2008, but no such correspondence had been made by the Petitioner complaining about not allowing the Petitioner and his wife to participate in the Board Meeting held on 5.6.2008. Therefore, there is no substance in the plea of Petitioner that they were not allowed to attend the Board Meeting on 19.5.2008. Therefore, on 24.5.2008, a notice was issued to all the shareholders for the EGM scheduled to be held on 5th June, 2008. The notice of the said meeting was sent to all the shareholders by Certificate of Posting. It is the case of Petitioner that himself and his wife were not allowed to attend the EOGM on 5.6.2008. It



is again for the Petitioner to establish the said fact at least by way of probability.

- 10.1. Therefore, the procedure followed for removal of Petitioner as 'Director' of 3rd Respondent Company is in accordance with Section 284 of the Companies Act, 1956. Moreover, the grounds for removal is annexed to the requisition dated 30.4.2008 issued by the shareholders. In the said Annexure, it is clearly mentioned that there was negligence and mismanagement on the part of Petitioner in managing the financial aspects of the Company. It is also alleged that Petitioner fabricated and manipulated the books of accounts. It is also stated that because of the acts of the Petitioner only, the IOB has issued a Demand Notice under the Securitization Act. It is further stated that Petitioner with a view to ruin the Company attempted to transfer the entire shareholding in favour of the bankers of the Company. Therefore, removal of Petitioner from the directorship of 3rd Respondent Company is justified in the facts and circumstances of the case. Therefore, on the ground of removal of Petitioner from the directorship of 3rd Respondent Company, it cannot be said that Respondents acted in an oppressive manner as against the Petitioner.
- 11.(Point (iii). Petitioner alleged that Respondents No. 1 and 2 siphoned funds of Respondent Company under the guise of repayment of Bank loans. The material on record clearly show that the IOB which sanctioned credit limits to the 3rd Respondent Company issued a notice under Section 13(2) of the of Securitisation and Financial Reconstruction Act, 2002 on 13.2.2008. The said notice was issued to 3rd Respondent Company and to all the four Directors. After the issuance of such notice, Respondents moved the Hon'ble High Court of


Gujarat by filing Special Civil Application No. 9818 of 2008. During the pendency of the said Petition, Petitioner gave an Undertaking. Based on the said Undertaking, the Hon'ble High Court disposed of the said Petition.

11.1. It is contended by the learned counsel for the Petitioner that without anybody's asking, Petitioner gave the said Undertaking before the Hon'ble High Court only to dispose of the moveable and immoveable properties of the 3rd Respondent Company under the guise of payment to the Bank. The fact remains that a notice under Section 13(2) of the Securitisation and Financial Reconstruction Act, 2002 is hanging on the neck of the Company. Instead of Banker straightway taking action against the assets of the Company under the of Securitisation and Financial Reconstruction Act, 2002, it is always better for the Company to sell the properties of the Company and pay off the Bank. Therefore, the Undertaking given by the Respondents before the Hon'ble High Court has to be looked into in that perspective but not in a negative perspective. In the Undertaking, the Petitioner agreed to deposit Rs. 10 Lacs within one week and accordingly the Petitioner made the said payment. In the said Undertaking, the Respondents stated that they would pay the entire dues within six months. After the filing of Undertaking, the Petitioner sold the plant and machinery for Rs. 83 Lacs and paid the entire Rs. 83 Lacs to the IOB on 7.4.2009, 10.4.2009, 13.4.2009 and 17.4.2009. Thereafter, again Petitioner moved an application before the Hon'ble High Court seeking extension of time. Hon'ble High Court granted extension of time till 15.6.2009. Therefore, the sale of moveable or immoveable properties of the 3rd Respondent by the Respondents No. 1 and 2 was only with an intent to pay the amount due to the IOB.



12. From the material on record, it is clear that the substratum of the Company has already been lost and the Company has stopped doing operations from 2007. According to the Respondents, the only course left open to the Company is to wind up itself. In the facts and circumstances of this case, and more so in the absence of acts of oppression and mismanagement, this Tribunal is of the view that no relief could be granted in this Petition

13. In the result, this Petition is dismissed. No order as to costs.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

*Pronounced by me in open Court
on this the 15th day of May, 2017.*

RMR, PS.