

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A No.227 of 2019 in  
C.P No.13 of 2016 (T.P No.84 of 2016)  
U/R 11 of the NCLT Rules, 2016

**In the matter of:**

Mr.R.P.Trivikram  
S/o Late Prabhakar Rao,  
Aged about 68 years  
Residing at No.8, 6<sup>th</sup> Cross,  
Amarjyothi Nagar,  
Vijaynagar,  
Bangalore 560 040

- Applicant/Petitioner

**And**

**Mrs.Sudha Trivikarm,**  
W/o Mr.R.P.Trivikram  
Aged about 65 years  
Residing at No.8, 6<sup>th</sup> Cross,  
Amarjyoti Nagar,  
Vijaynagar,  
Bangalore – 560 040 and 15 Others

- Respondent/  
Petitioner/Respondent

**Date of Order: 08<sup>th</sup> August, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Applicants : Shri Pradeep Nayak  
Ms.Nitya Kalyani

For the Respondent : Shri Srivatsa, Senior Counsel  
Shri S.Vivekananda, for R-1, 2,4&8

**ORDER**



**Per:**Rajeswara Rao Vittanala, Member (J)

1. I.A No.227/2019 in C.P No. 13 of 2016 (T.P No.84 of 2016) is filed by Mr.R.P.Trivikram (Applicant) U/R 11 of the NCLT Rules, 2016, by inter alia seeking to stay the resolution passed by the Board of Directors at the Board meeting held on 08.03.2019 increasing the managerial remuneration of the Executive Directors to Rs.5,00,000 per month each and also increasing the sitting fees to Rs.50,000 per meeting per director, both w.e.f. 01.04.2019 etc.
2. Brief facts of the case, as mentioned in the Application, which relevant to the issue in question , are as follows:
  - 1) It is stated that the instant application is being moved on an urgent basis praying for ex-parte interim reliefs on account of the flagrant violation of the orders of this Tribunal dated 20<sup>th</sup> June, 2017 and 07<sup>th</sup> August, 2018, as also, the terms of the Joint Compromise Petition by the Respondents herein. This Tribunal is kindly aware that the Petitioners have hitherto filed the main CP against the Respondents under Sections 397, 398, 402 & 403 of the Companies Act, 1956 alleging oppression and mismanagement by the Respondent No.2 to 8 in respect of Respondent No.1 Company before the erstwhile CLB, Southern Bench which upon the constitution of NCLT w.e.f 1<sup>st</sup> June, 2016, was transferred to the NCLT, Bengaluru Bench.
  - 2) It is stated that, during the pendency of the main CP, the parties resolved to amicable settle the disputes between them and filed a Joint Compromise Petition dated 14.06.2019. the Tribunal vide order dated 20.06.2019

was pleased to take the Joint Compromise Petition on record and permitted the parties to proceed in accordance with the terms of compromise agreement, and intimate the Tribunal regarding stage of progress of the implementation of the Interim compromise.

- 3) It is stated that the entire substratum of the terms of the JCP was that the immovable properties of the Respondent No.1 Company, would be sold, without any objection from earlier of the parties and the proceeds of the sale shall be distributed to the shareholders of the Respondent No.1 Company. It was also agreed that the Applicant shall represent the interest of the Petitioners and be involved in the negotiations and sale transactions of the immovable properties of the Respondent No.1 Company. Further, as per the terms of the JCP, all parties agreed that the sale proceeds from the sale of schedule properties shall be distributed within 9 months among the shareholders/members of the Respondent No.1 Company after deduction of applicable taxes and legitimate expenses either directly or indirectly in relation to the sale of the scheduled properties; which inter alia shall include expenses such as commission, brokerage, consultation fee, professional fee, legal fee, expenses towards development of scheduled properties, change of scheduled properties classification, etc. Therefore, clearly establishing that such expenses shall be construed within the limited construct of the examples that followed.
- 4) In compliance with the interim order dated 20.06.2017 of this Tribunal, the Respondent No.1 Company opened

a separate bank account ("Escrow Account") with the SBI, Current Account No.36984343328, Malagala Road Branch, Nagarbhavi, Bangalore to deposit all advances, sums and sale proceeds, received in respect of sale of immovable properties of the Respondent No.1 Company. Subsequently, the Respondents in consensus with the Petitioner have sold a few of the scheduled properties of the Respondent No.1 Company. All sale proceeds along with advances received are being deposited into the aforementioned bank account by the Respondents. On the other hand, the Company has been maintaining other current accounts for crediting the revenue or receipts from proceeds other than the sale proceeds of properties and for incurring expenses other those incurred for sale of the scheduled properties.

- 5) It may be noted that the very purport and intent of opening of the Escrow Account was to protect and preserve proceeds of sale of immovable properties of Respondent No.1 Company and enable the distribution of sale proceeds to the shareholders and to obliterate any instance of any kind of diversion of funds by the authorized signatories of the said Escrow Account. The attention of the Bench is invited to the fact that none of the Petitioners is a signatory to the Escrow Account and for that matter, to any of the Bank Account of the R1 Company. It is only Mr.Rajeev Ramahalli and Mr.H.N Shivananjaiah i.e., Respondent No.3 and 8 who are signatories to the Escrow account as well as to the other Bank Accounts.

- 6) Subsequently, a there were several instances of contravention of the terms of the JCP, the Petitioners filed various IAs before this Tribunal. Thereafter, the Tribunal vide its order dated 07.08.2018 in C.P No.13/2016(TP No.84/2016) disposed of the CP with inter alia directions that the JCP is legally valid and binding on all the parties, providing for appointment of Mr.B.N.Harish, Retired Regional Director, MCA as Executor/observer to execute the terms and conditions of the JCP; the executor was also directed to assess the financial requirements of the Company and also for implementation of the terms and conditions contained in the Joint Compromise Petition, and that the parties including Executor/Observer were given the liberty to file Miscellaneous Applications, if any, seeking any directions of the Tribunal, in implementation of terms and conditions of the JCP.
- 7) It is stated that as per the financial statements for the FY 2017-18, the managerial remuneration paid to the Respondent No.3 &8 (Executive Directors of the Respondent No.1 Company) was INR 7,20,000 each p.a i.e INR 60,000 Per month. However, after the executor was appointed by this Tribunal, it was proposed by the Board of R1 Company, in which the Petitioners have zero representation, to increase the remuneration of the Executive Directors from INR 60,000 per month to INR 1,10,000 per month and increase of sitting fees of each director from INR 3,000 per meeting to INR 20,000 per meeting. The executor had agreed for the increase of the remuneration as well as sitting fee and same was

allowed to be paid from the Escrow Account. The reasons for approval of the aforesaid remuneration by the Executor were stated in the proceedings of the meeting held on 26.10.2018. Thereafter, the Petitioners had objected to the increase in the remuneration as well as the sitting fee stating that the same were not directly attributable to the sale of the scheduled properties of the Respondent No.1 Company. The kind attention of this Bench is also invited to the fact that, admittedly R1 Company has ceased to carry on its operations and not even a rupee of revenue is being generated from the operations of the Company. As such, the current state of affairs of the R1 Company neither necessitate nor warrant payment of such high managerial remuneration to the executive directors of Respondent No.1 Company.

- 8) Subsequently, in the proceedings held on 28.11.2018 before the Executor, the Executor had agreed that 50% of the sitting fee shall be incurred from the Escrow Account and the balance 50% shall be incurred from other current accounts. The Petitioners had objected to the decision made by the Executor and also stated that there was an increase in salary recently and that such an increase was not necessary, in violation of the JCP dated 14.06.2017, in defeat of the purpose of JCP, resulting in oppression of minority, as there were no activities in the Respondent No.1 Company. However, the Executor held that the arrangement of 50% of the sitting fee be incurred from Escrow Account and balance 50% from other current Accounts shall continue up to 31.03.2019. It would be apt to bring to the attention of

this Tribunal that the Respondents are leaving no stone unturned in their attempts to siphon away the funds of the R1 Company be it under the guise of unwarranted salaries to the directors or, on one pretext or the other.

- 9) Even while Respondent No.1 Company is grappling with a nil revenue situation, to the utter shock and dismay of the Petitioners, and the applicant, the Respondents who alone comprise the Board of the Respondent No.1 Company at the purported board meeting held on 08.03.2019, unilaterally, decided to further increase the remuneration of the Executive Directors from INR 1,10,000 per month to INR 5,00,000 per month, for each of the 2 executive directors and the sitting fees of the directors be increased from INR 20,000 per meeting to INR 50,000 per meeting per director. A meeting with the executor was also held on 22.03.2019. However, the Respondents deliberately with oblique motives did not inform the executor or the Petitioner regarding the said increase in remuneration as well as the sitting fee. Although the alleged resolutions indicated that they would take effect from 01.04.2019, the resolutions were circulated to the applicants only on 26.04.2019. It may also be noted that these board resolutions were passed without the sanction of the executor, although earlier proposals of increase in salary and sitting fees were part of the proceedings before the Executor. The series of unabated and unfettered shenanigans of grave nature of the Respondents clearly expose their avaricious intents to siphon away not only the funds lying in the other current accounts of the Respondent No.1 Company but

also the proceeds of sale lying in the Escrow Account, which if permitted to continue would cause irreparable loss and grave injury to the minority shareholders i.e., the Applicants/Applicants herein. Hence there is imperative need of urgent and immediate intervention by this Bench to put a check on the continuing misconduct of the Respondents.

- 10) It is stated that the decision of the Executor in the meeting held on 28.11.2018 with respect to the payment of sitting fees of the directors is only up to 31.03.2019 and not any time thereafter. The Respondents have with oblique motives and avaricious intents passed the resolution on 08.03.2019 and increased the remuneration of executive directors as well as the sitting fees of all the directors. It is stated that the sole intention of the JCP was to resolve the dispute among the parties by sale of all the properties of the Respondent No.1 Company and distribution of proceeds among the shareholders. The Respondents have surreptitiously passed resolutions at the meeting held on 08.03.2019 and with an oblique motive are diverting the proceeds of sale of immovable properties for their personal needs which is in complete violation of the terms of JCP. It is pertinent to note that the remuneration of the Executive Directors as per the financial statements for the FY 2017-18, was INR 7,20,000 each per annum i.e INR 60,000 per month and the sitting fees of directors was INR 3,000 per meeting. The Respondents have within a span of one year increased the salary from INR 60,000 per month to INR 5,00,000 per meeting. It is clear that

the intention of the Respondents is to siphon off as much monies as possible from the Respondent No.1 Company and deplete the fund balance to such abysmally low level so that the share of the Petitioners comes down significantly. It is stated that the proceeds from the sale of properties have to be distributed among all the shareholders in proportion to their shareholding. Exorbitant payments towards, remuneration of the executive Directors and sitting fees defeats the purpose of JCP and deprives the fair share of the Petitioners in the proceeds of the sale from immovable properties.

- 11) It is stated that the applicant genuinely apprehend that funds may have already been misappropriated in furtherance of the illegally passed board resolutions. Although the board resolutions were passed on 08.03.2019 and said to take effect from 01<sup>st</sup> April, 2019, they were not intimated to the executor or any of the other parties until 26.04.2019. Given the past conduct of the Respondents and the purposeful omission of intimating the said board resolutions to the parties, there is a bona fide apprehension that these sums have already been illegally withdrawn from the escrow/current accounts of the Company.
- 12) The Respondents have resorted to all means fathomable to take funds out of the escrow account all the while maintaining complete secrecy with respect to the current account of the Company. The Respondents repeatedly seek release of funds from the escrow account by booking fictitious expenses and also continually falsify accounts with the sole motive of depriving the

Petitioners their legitimate dues under the JCP. Some instances of their conduct are highlighted herein below:

13) Alleged sale of Plant, Machinery, Inventory against the set off of a non-existence liability to a Third party:

a) The Respondents claimed to have entered into a Settlement Deed with one Mr.Puttabairappa (production Contractor) on 29.03.2018 and the same was entered into without any evaluation of the Plant & Machinery by a certified valuer. The values of the Plant & Machinery were arbitrarily determined by the Respondents and the said third party.

b) The investment value of plant, machinery and building stood at INR 9,85,56,285 with Written Down Value of INR 2,34,74,882 as on 31<sup>st</sup> March 2018. The accounting consequence of the same, as is evident from the provisions financial results furnished by the Respondents for the 6 month period as on 30.09.2018, would be falsifying the Books of Account of Respondent No.1 Company by recording substantial loss so that eventually, no distributable profits would be available for payment of dividend. The Ploy of the Respondents is that, while, the Books of Account on account of alleged non availability of distributable profits do not permit payment of dividend, the Respondents can continue to siphon away the funds of R1 Company under the guise of highly inflated salaries and cooked up expenditure/payments. The alleged settlement deed and consequent

falsification of books of accounts constitute oppression of minority shareholders, mismanagement of affairs of the Company and misappropriation of assets of the Company. The alleged settlement deed, provisions financial results for the 6 month period as on 30.09.2018. The Petitioners' detailed objection statement to the alleged settlement deed and the provisional financial results as on 30.09.2018.

14) Several Unauthorized payments have been made by the Respondents since signing of the JCP:

- a) Payment of INR 64,03,765 to one M/s.Agroavenues Pvt. Ltd., inter alia towards commission for identification of M/s.Emlak Ventures Pvt. Ltd., in relation to sale of R1 Company's factory land measuring 12 Acres to Emlak Ventures Pvt. Ltd. Out of the total payment of Rs.64,03,765, Rs.43,12,000 for alleged debris clearance were paid on 13.08.2018, in violation of the final NCLT order dated 07.08.2018. The Respondents have also claimed that in total an amount of INR 98 lakhs is payable to Agro avenues Private Limited for alleged debris clearance from the same factory land. In fact, on 05.10.2018, an email communication was sent by the Respondents to the Executor that the Executor forwarded to the applicants on 08.10.2018, wherein, the Petitioners have informed the Executor that the balance Rs.54 Lakhs payable to Agro avenues Private Limited will be paid by them

out of the current bank account and after confirmation from the Executor, the same shall be reimbursed from the Escrow Account. Till today, the Petitioners have no clue as to whether the payment to Agro avenues that the Respondents claimed to be making out of current Bank account was actually not implemented by them. The last that the Petitioners were informed of the current account balances was as on 03.09.2018 and it was Rs.1.98 Crores as per the respondents' statement as on 03.09.2018. Subsequently, and as of today, the Petitioners are not aware of the actual balance in the current accounts. The Petitioners have made repeated requests for the current account bank statements, but, in vain. In the meeting held on 27.10.2018, the issue of payments to Agroavenues Pvt. Ltd on 13.08.2018 was taken up. The Executor has recorded the arguments made by both parties and commented that 'payment is one thing and genuineness of arrangement is another' and also has directed the Respondents to submit further documents on the arrangement with Agroavanues Pvt. Ltd. Some documents like completion certificate, supposedly issued by a Civil Engineer certifying the completion of debris clearance work by Agroavaenues Pvt. Ltd, were furnished by the Respondents and the Applicant have filed vehement objections again to the alleged completion certificate, to which the respondents have not responded.



b) Huge payments have been made from both the escrow and other Bank accounts of the Company, right from April, 2018, in violation of JCP, in violation of the order of the NCLT dated 13.03.2018 (Prohibiting withdrawal of any major amount without the NCLT's permission) and in violation of the order of the NCLT dated 07.08.2018. The details of all the illegal/unauthorized payments which have been made by the Respondent No.1 Company in violation of the terms of the JCP, and in violation of the NCLT have been filed by way of an objection statement to the income and expenditure statement before the Executor on 06.12.2018

c) A list of some of the unauthorized payments made by the Respondents in violation of the NCLT final order dated 07.08.2018 are:

- INR 67,45,253 paid to Puttabairappa.
- INR 3,01,500 paid to C.Venkatesha.
- INR 5,04,000 paid to Sri Krishnamurthy
- INR 43,12,000 transferred to '0037046009213' (Agroavenues Private Limited) vide cheque No.'033700'
- INR 21,06,729 paid to Mr.Natesh K (Company Secretary of R1 Company).

15) It is submitted that as on 31.03.2018, the sale proceeds had amounted to a total of INR 7,38,06,411 however, only a meager sum of INR 1,77,12,071 had been declared as dividend by the Respondent No.1

Company. As on 30.09.2018, out of the realized property sale proceeds of INR 2,62,48,150 for the 6 months period between April 2018 and September, 2018, only an amount of INR 51,74,000 were distributed as interim dividend as on 30.09.2018 based on the falsified provisional financial results for the 6 month period ended as on 30.09.2019. As on date, the total sale proceeds stand at approx. INR 10,00,00,000. Moreover, the Respondents are resorting to unauthorized, unwarranted and unnecessary operational expenses which are being made with the sole oblique motive of depleting the profits of R1 Company.

- 16) As per clause 5(c) of the JCP dated 14.06.2017, the Respondent had agreed and confirmed to involve Petitioner No.1, Mr.RP Trivikram, in all sale negotiations and transactions for sale of schedule property. But, in violation of clause 5(c) of the JCP, the Respondents have unilaterally, without the consent/knowledge/involvement of the applicant, sold 9 sites in Achit Nagar Layout forming part of schedule properties of the JCP, taken advances in respect of 7 sites in Achit Nagar Layout forming part of schedule properties of the JCP and registered an 'Agreement to Sell' in favour of the party Ernlak Ventures Private Limited in respect of 12 acres of the property of the Respondent Company forming part of schedule property of the JCP. Such acts of the respondents are bound to affect the interests of the Petitioners, all the shareholders of the Respondent Company and also third party buyers.

3. The Application is opposed by Respondent No.1 by filing Statement of Objection dated 17.05.2019, by inter alia contending as follows:

- 1) The main reliefs for appointment of Administrator is not legally maintainable under the given set of facts and circumstances. The Joint Compromise Petition was executed on 14.06.2017 for the purpose of sale of properties of the Company without any obstruction of any of the party and thus Executor was appointed as per order dated 07.08.2018, the understanding has been that the Board of Directors of the R1 Company has to exist and the control and management of the affairs of the Company.
- 2) The role of the Observer/Executor is to ensure that the Board of Directors of the Company complies with the JCP. It is not for the Observer/Executor to run the R-1 Company.
- 3) The Petitioner No.2, who is the wife of the Applicant, is in unauthorized occupation of a portion measuring 1 Acre 31 Guntas in the land bearing SY No. 79, belonging to the Respondent No.1 Company. The Respondent No.1 Company agreed to sell the entire land bearing SY No.79 measuring 12 Acres to M/s. Emlak Ventures Pvt. Ltd., though the Petitioner No.2 is a party to the JCP, the Petitioner No.2 is not willing to quit and deliver vacant possession of the land for executing the sale in favour of the Purchaser. With an intention to scuttle the sale of the Purchaser, this application has been filed by the Applicant to deviate and skirt the real issue.

- 4) In compliance with the Interim Order dated 20.06.2017 of this Tribunal, the R1 Company opened a separate bank account ('Escrow Account') with SBI, Current Account No. 36984343328, Malagala Road Branch, Nagarbhavi, Bangalore to deposit all advances sums and sale proceeds received in respect of sale of immovable properties of the R-1 Company. Subsequently, the Respondents in consensus with the Petitioner have sold a few of the scheduled properties of the R1 Company. All sale proceeds along with advances received are being deposited into the aforementioned bank account by the Respondents. On the other hand, the Company has been maintaining other current accounts for crediting the revenue or receipts from proceeds other than the sale proceeds of properties and for incurring expenses other those incurred for sale of the scheduled properties" is a matter of record and the Applicant can be put to strict proof of the same.
- 5) The JCP was executed in order to have smooth settling of the issue facing the affairs of the Company. Since the majority of Shareholders of the Company did not have faith either in the Applicant or his group, the Applicant was removed from the Directorship of the Company. The averments of the several instances of contravention of the terms of the JCP are denied as false and baseless.
- 6) The Respondent No.1 Company had 188 acres of land and the Applicant had during his tenure as the Managing Director sold 153 acres of the land and the



R1 Company had made profits. There are at least 20 cases pending before various Courts, Judicial and quasi-judicial authorities. The Lokayukta has also initiated proceedings against the Respondent No.1 Company for the alleged illegal mining during the period in which the Applicant was the Managing Director of the R1 Company.

- 7) The allegation with regard to enhanced salary, sitting fees in question, it is stated that it is well within the permissible limits of the Companies Act, 2013 and the decision to increase the salary sitting fees of the Director was taken in order to get full cooperation from the Directors.
- 8) The Respondent No.3 herein has done his Engineering in Electronics & Communication and has worked in Crompton Greaves Ltd., for several years as Application Engineer and has worked in Samsung Electronics for 18 months before starting his own business. Presently, the R3 has his own business which supplies materials to HAL and various divisions of ISRO. He also supplies materials to Labs of DRDO and his materials are being used Jaguar Aircraft, Light Combat Aircraft, Hawk Aircraft, Mirage Aircraft. Further, the materials and electronics modules supplied by him have been used in space programmes such as Chandrayaan -1, GSAT- 11, GSLV- F11 and more than 50 satellite launch missions. It is submitted that the remuneration initially was fixed by the R1 Company being under the impression that the lands of the Company could be disposed of in short span and



without much effort. However, it became clear later that the R3 & 8 would be required to put in their efforts, use their experience, coordinate for closure of more than 20 cases and legal proceedings before various judicial and quasi-judicial authorities. To ensure that their opportunity cost is compensated, the remuneration to the R3 & 8 was revised with the majority decision of the Board.

- 9) Due to the pendency of ongoing legal issues and issues in implementation of the terms of JCP, the Board of Directors were required to frequently meet to discuss and resolve these issues. Pending litigations also necessitated that all Directors were required to be actively involved in resolution of disputes, spending their substantial time in discussion with Board Members at the meetings. Hence, it was considered prudent to increase the sitting fees to Rs.50,000/- per director per meeting; at the Board meeting held on 08.03.2019. Further, at the Board meeting held on 08.03.2019, the Board had also passed resolution for increase of managerial remuneration payable to its two Whole-time Directors Mr.Rajiv H.Ramuhalli and Mr.H.N.Shivananjaiah, to Rs.5,00,000/- inclusive of allowances and perquisites, per month, per director, effective from 1<sup>st</sup> April, 2019. This is in accordance with schedule V of the Companies Act, 2013, which prescribes that:

*“Where in any financial year during the currency of tenure of a managerial person, a Company has no profits or its profits are inadequate, it may, pay*

*remuneration to the managerial person not exceeding, the limits under (A) and (B) given below:*

<i>(1)</i>	<i>(2)</i>
<i>Where the effective capital is</i>	<i>Limited of yearly remuneration payable shall not exceed (Rupees)</i>
<i>(i) Negative or less than 5 Crores</i>	<i>60 Lakhs</i>
<i>(ii) 5 Crores and above but less than 100 crores</i>	<i>84 lakhs</i>
<i>(iii) 100 Crores and above but less than 250 Crores</i>	<i>120 Lakhs</i>
<i>(iv) 250 Crores and above</i>	<i>120 lakhs plus 0.01% of the effective capital in excess of Rs.250 Crores.</i>

*Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution”*

The effective capital of the Company is approx. Rs.7 Crores; hence Company can pay managerial remuneration up to Rs.84 lakhs. The proposed remuneration is within the prescribed limits and is subject to shareholders approval.

4. B.N.Harish, Retd. Regional Director, Executor/Observer, appointed in this case, has filed a Memo dated 12.06.2019, by inter alia stating as follows:

- 1) It is stated that the main contentious issue as seen from IA No.227 of 2019 is on the payment made on 13.08.2018 to the extent of Rs.1,31,63,982/- from escrow account after the order dated 07.08.2018 but before receipt of the Order by the Executor/Observer from NCLT. The Executor/Observer already took the decision that said payments are not with the approval



of the NCLT or Executor/Observer and therefore matter need to be placed before the NCLT for appropriate order after ascertaining the genuineness or otherwise of the transaction. The audited financial statement as at 31.03.2019 is not yet out to examine the genuineness or otherwise of these transactions. Therefore, NCLT may pass appropriate order(s) in the matter.

- 2) It is stated that in order to enable the Company to sell the land, the Company has disposed/dismantled its factory plant and machineries and factory premises before appointment of Executor/Observer. The Company has no other business activities except selling its entire land properties and distribute it among shareholders as per JCP. Implementation of Joint Compromise Petition leads to the Company to a no assets position and also an inactive Company to a state of winding up/closure. Therefore, in the interest of the creditors, govt. due and liabilities, if any, needs to be protected and Company has to comply with provisions of the Companies Act.
- 3) It is stated that 37 Acres and 37 Guntas of land out of about 40 Acres land contained in the JCP for sale and distribution are having serious litigations in the Court of law even before entering JCP. Entire these 37 Acres and 37 Guntas land are now in the litigation before Hon'ble High Court also. One case called as "Jagadambha case" which involves 15 Acres land; the records of land are in the name of Jagadambh since 2010, physical possession is also with Jagadabha since 2016. Jagadambha spent substantial amount of money



for development of this land and structures and boundaries are also built by Jagadamba. Records are now rectified in the name of the Company by an order dated 14.12.2018 of Court of Dy.Commissioner. But the order of Dy.Commissioner's is now under appeal before Hon'ble High Court by Jagadamba. Another case called as "Radhakrishna Case", City Civil & Session court has passed an order on 31.01.2019 not to alienate, sell, mortgage etc, of 37 acres and 37 Guntas of land included in JCP. The said case was filed by Radhakrishna, as a result of private Share Purchase Agreement entered by Petitioner No.1, Respondent No.3 & 8 with Radhakrishna and a MOU entered by Petitioner No.1 as seller and Radhakrishna as acquirer entered during 2013-14. Said MOU further stipulated that seller (petitioner No.1) agreed to sell to the acquirer the shares of the parties for a consideration of Rs.79,22,00,000/- with a further commitment by the seller to the acquirer that seller agreed to handover the control and management of the Company together with all assets and liabilities of the company (including land contained in the JCP) to Radhakrishna. Further Radhakrishna alleged that he has a claim against Company for Rs.27 Crores for alleged service arrangements during 2013-14 connected to Company's properties (which are part of JCP). On appeal filed by the Company before the Hon'ble High Court, order of the City Civil Court and Session Court has been stayed by Hon'ble High Court on 21.03.2019 till next hearing. Another case called "supra Export" owned by Petitioner



No.2, who is in Possession Company's land of 1 Acres and 31 guntas since 1992 (as per lease deed 27738 Sq. Ft.) which is also part of JCP.

- 4) The Petitioners and Respondents do hereby agree and confirm that the 1<sup>st</sup> Respondent Company's properties, as described and detailed in the Schedule hereto, and hereinafter referred to as "Schedule Properties", shall be disposed of without any objection from either of the Parties. One of the properties consisting of 1 Acres and 31 Guntas is in possession of Petitioner No.2 since 1992 as per Respondents, but as per lease agreement land measuring 27738 Sq ft. in possession of Petitioner No.2. A decision was taken the said property need to be sold as per JCP. However, since property is in possession of P-2 since 1992 for an amicable settlement between Company and Petitioners for sale, above small group was authorized to arrive a settlement. As explained above due to litigations and legal cases which are also pending before the Hon'ble High Court properties could not be sold.
- 5) Final dividend for the FY 31.03.2018 was declared on 30.08.2018 at 200%, thereafter interim dividend was declared in November/December at 70%. To explore higher rate of dividend a Technical Experts consisting of one Senior Chartered Accountant and once Senior Company Secretary Views are already sought. For the purpose of implementation of JCP Tribunal in its order dated 20.06.2017 directed to keep the amount realized from sale proceeds in a separate bank account (called Escrow Account). Expenses shall be deducted from the

said escrow account. Statement of details of receipts and payments from escrow account in the format of (i) date (ii) name of the party, (iii) Amount and (iv) Nature/purpose, are directed to be supplied by the Company in writing to the parties from the commencement of JCP by a decision dated 10.11.2018 of the Executor/Observer and directed the Company to clarify to the parties' grievances if any on those payments and Company confirmed of supplied the statement up to 30.04.2019 along with facility for inspection of Bank statement of escrow a/c for those periods. Escrow account details are provided to the Petitioner up to 30.04.2019. As regards other than escrow accounts which are not forming part of JCP and Petitioners are only the members; in view of the contention taken by the Company that U/s 128(3) of the Act it is not available for the members, The Company has to place request with Executor/observer for release of funds.

5. Heard Shri Pradeep Nayak, Ms. Nitya Kalyani, Shri Rajaram Hegde, learned Counsels for Applicant/Petitioner and Shri Srivatsa, learned Senior Counsel along with Shri S. Vivekanda, learned Counsels for Respondent No.1, 2, 4 and 8. We have carefully perused the pleadings of both the parties and extant provisions of the Companies Act, 1956/2013 and the law on the issue.
6. The Main Company Petition bearing CP No.13 of 2016 (TP No.84 of 2016) is filed by Sri. R.P. Trivikram and 6 others against the Mysore Stoneware Pipes and Potteries Ltd and 9

others, U/s 397, 398, 402 & 403 of the Companies Act, 1956 R/w Regulation 14 of the CLB Regulations, 1991, by inter alia seeking to direct the Respondent Company to transfer to the Petitioners the proportionate extent of Schedule property owned by the Company and consequentially order the reduction of share capital and cancellation of Petitioners shares; to direct the Respondent Company to pay to the Petitioners the proportionate amount equal to their shares capital of the extent of other liquid assets of the Company and its plant and machinery, or alternatively, direct the valuation of the shares by the Company's statutory auditor and the payment thereof each of the Petitioners by the Respondents etc. The Petitioners claims to hold 28.76% of the paid up share capital of the Company.

7. Since the matter is pending for a long time, and in order to end the litigation between themselves as raised in the Company petition, the parties have come to an understanding, and thus executed a Joint Compromise Petition (referred to as JCP) dated 14.06.2017, Under Order 23 Rule 3 of the Code of Civil Procedure 1908 R/w Rule 11 of the NCLT Rules, 2016, executed by the parties, which inter alia contains the following clauses:

- a) All the Petitioners do hereby authorize Petitioner No.1, Mr.R.P.Trivikram, to represent their interests in negotiations with the Respondents. It is agreed that all acts of Mr.R.P.Trivikram shall be binding on all the Petitioners as if they were personally acted out by each individual Petitioner.
- b) The Petitioners and Respondents do hereby agree and confirm that the 1<sup>st</sup> Respondent Company's properties,



as described and detailed in the Schedule hereto, and hereinafter referred to as 'Schedule Properties', shall be disposed of without any objection from either of the parties.

- c) The Respondents do hereby agree and confirm to involve Petitioner No.1 , Mr.R.P.Trivikram, in all sale negotiations and transactions for the sale of the Schedule Properties
  - d) All the parties do hereby agree and confirm that sale proceeds from the sale of Scheduled properties shall be distributed within 9 months among the Shareholders/Members of 1<sup>st</sup> Respondent Company after deduction of applicable taxes and legitimate expenses incurred either directly or indirectly in relation to the sale of the Schedule Properties; which inter alia shall include expenses such as commission, brokerage, consultation fee, professional fee, legal fee, expenses towards development of Schedule properties, change of Schedule Properties' classification, etc.
8. By taking into consideration the above Joint Compromise Petition, the Tribunal disposed of the main Company Petition by an order dated 07<sup>th</sup> August, 2018, by inter alia referring IA Nos. 67/2018, 93/2018, 94/2018, 174/2018 & 226/2018 filed by parties before the Tribunal by seeking various directions, appointed Shri B.N.Harish, Retired Regional Director, Ministry of Corporate Affairs as Executor/Observer to execute the terms and conditions of the JCP dated 14.06.2017.

9. The various allegations/contentions as made by the Applicant/Petitioner, the Reply filed by the Respondent and the Report given by the Executor, as briefly stated supra, is prima facie established that the Respondents are resorting to various acts contrary to the terms and conditions of JCP as mentioned supra. As per terms of JCP, Applicant/Petitioner, as representative of all the Petitioners, should be involved in all the negotiations and sale transactions for the sale of Schedule Properties in question and it is all bounden duty of the Executor to see that terms and conditions of JCP should not permitted to be violated by the Respondent(s) as they are holding majority shareholding, and they are at helm affairs of the Company. The Executor is having every power and control over the actions of Respondent Company and its Directors to see that there should be no deviation to the terms of JCP by the Respondent Company and its Directors. Since there are several ligations are pending against the properties of the Company, it would naturally take considerable time and in the meanwhile, the Executor is directed to restrain unnecessary expenditure for realization of value of properties of the Company as there is no business activity in the Company and also see that substantial dividend should be declared to stake holders out receipts of sale of Property of the Company, as it is alleged that very nominal dividend is being declared to the stake holders and at same time there is so much expenditure is spent.
10. As stated supra, out of more than Rs.10 Crores proceedings the Company profit, only paltry amount of around Rs.2 Crores were stated to have been distributed as dividend among the

stake holders. At the same time, the remuneration and sitting fees of the Directors are being increased marginally, even though there is no business activity of the Company. Therefore, we are of the considered opinion that the terms and conditions of Joint Compromise Petition dated 14.06.2017 is not being properly implemented and thus it is necessary to direct the Executor to involve the Applicant/Petitioner in all the negotiations and sale transactions etc., for the sale of Schedule Property and the Respondents are should extend full co-operation the Executor.


11. In the result, IA No.227/2019 in C.P No. 13 of 2016 (TP No.84 of 2016) is disposed of with the following directions:

- 1) The Respondents are hereby directed to involve the Applicant/Petitioner (Shri R.P.Trivikram) in all the affairs of the R-1 Company which include negotiations and sale transactions for the sale of Schedule Property as per the *Clause 5(c)* of the Joint Compromise Petition dated 14.06.2017, and take him into confidence all those transactions.
- 2) The Executor is hereby directed to ensure the representation of the Applicant in all the transactions as per the above terms and conditions of JCP without fail, and also directed to maximize the expenditure for realization of value of the properties of Respondent No.1 Company, and should avoid unnecessary expenditure.
- 3) The Respondents are hereby directed to extend full co-operation to the Executor to ensure the implementation



of the terms and conditions as mentioned in the Joint  
Compromise Petition in letter and spirit.

  
**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**

  
**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**

Raushan