BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH

COMPANY PETITION NO. 01 (ND) OF 2012

IN THE MATTER OF SECTIONS 397, 398, 402, 403, 406, 235, 237 READ WITH SECTION 111 OF THE COMPANIES ACT, 1956

IN MATTER OF:

1. **SH. Kanti Prasad Agarwal**
   D-15, Kamla nagar
   Agra (U.P.)

2. **Mrs namita Agarwal**
   d-15, Kamala Nagar
   Agra (U.P)

3. **Mrs Sheela Devi Agarwal**
   D-15 Kamla Nagar
   Agra (U.P.)

4. **Sh. Sanjay Kumar Agarwal**
   D-15, Kamla Nagar
   Agra (U.P.)

5. **Sh. Mukesh Kumar Agarwal**
   D-15 Kamla Nagar
   Agra (U.P.)

6. **Mrs. Anita Agarwal**
   D-15 Kamla Nagar
   Agra (U.P.)

…. PETITIONERS

Versus

1. **Shree Kalia Devi Real Estate Limited**
   1918, Dampier Nagar,
   Mathura (U.P.)

2. **Sh. Rakesh Kumar Garg**
   G-15, maharani Bagh
   New Delhi 110065

3. **Sh. Rakesh kumar Garg (HUF).**
   G-15, Maharani Bagh
   New Delhi 110065.
4. **Ms Amita Garg.**
   G-5, Maharani Bagh
   New Delhi 110065.

5. **Sh. Kishore Kumar Agarwal**
   B-308, new Friends Colony
   New Delhi 110065.

6. **Sh. Narendra Kumar Agarwal**
   C-578, New Friends Colony
   New Delhi 110065.

7. **Sh. Ankur Mittal**
   67, Nehru Nagar
   Agra (U.P.).

8. **Federal Bank limited**
   Karal Bagh, New Delhi

9. **Punjab National Bank**
   Mahanagar
   Lucknow (U.P)

10. **Sh. Dilip Arren**
    Arren& Arren
    Chartered Accountants
    324, Model Town, Kanpur.

…..RESPONDENTS

JUDGMENT/ORDER DELIVERED ON 31.08.2018

CORAM : Sh. V.P. Singh, Hon'ble Member (Judicial)
: Ms. Saroj Rajware, Hon'ble Member (Technical)

For the Petitioner : Sh. Arun Saxena, Advocate
For the Respondents: Sh.Sarosh Bastawala, Advocate

PER SE : Sh. V.P. Singh, Hon'ble Member (Judicial)

ORDER/JUDGMENT

1. The Company Petition is filed under sections 397, 398, 402, 403, 406, 111, 235 and 237 of the Companies Act, 1956 (hereinafter called the 'Act') complaining of several act of oppression and mismanagement perpetrated by respondents in relation to affairs of the Respondent No. 1 Company i.e. Shree Kaila Devi Finance Limited. Originally the Petition was filed before the Company Law Board, New Delhi and consequent upon constitution of this Tribunal under the Companies Act, 2013 this petition has been transferred to this Tribunal.

2. Brief facts of the present matter are stated as under:

I. The Petitioners are shareholders of the Respondent No. 1 Company. The present Petition has been filed as the Petitioners are aggrieved by the acts of oppression and mismanagement of the Respondents.

II. It is stated that the Respondent No. 1 Company was incorporated on 01.04.1997 by name of Shree Kaila Devi Finance Limited. Name of the Respondent No. 1 Company changed to Shree Kaila Devi Real Estate Limited. Petitioner No. 1 to 3 were the promoters Directors of the Respondent No.1 Company.

III. Respondent No. 1 Company was incorporated to carry on business as Investment Company. Object of the Respondent No. 1 Company was after that changed to carry on the business of Real Estate.

IV. The authorised capital of the Respondent No.1 Company at the time of incorporation was Rs. 75.00 Lacs divided into 7,50,000 equity shares of Rs. 10 each which was illegally raised to Rs. 3 Crores on 11.08.2005 by the Respondents. Initial paid up capital of the Company was Rs. 120000 divided into 1200 equity shares of Rs. 10 each. The Petitioners were holding 100% shareholding of the Respondent No. 1 Company till year 2004.

V. That the Petitioner No. 1 on the request being made by the Respondent No. 2, i.e. his cousin, introduced him in the Respondent No. 1 company and also agreed to induct him as a Director and involved him in its day to day affairs. Till 15.10.2004, shareholding of the Respondent No. 1 Company was as under:

S. No.	Name	No. of shares
1	Sh. Kanta Prasad Agarwal	542000
2	Mrs. Namita Agarwal	52000
3	Mrs Sheela devi Agarwal	256500
4	Mr. Sanjay Kumar Agarwal	325000
5	Mrs. Anita Agarwal	250000
6	Mr. Mukesh Kumar Agarwal	325000
7	Mr. Moti Lal Agarwal	1500
	TOTAL	1952000

VII. The Respondent No. 2 with mala fide intentions got some blank papers and Form 32 signed from the Petitioner No. 1 on the pretext of making ROC Compliance of his appointment as Directors of the Respondent No. 1 Company. Petitioner No. 1 signed such blank documents as he had utmost faith and trust in his nephew, i.e. Respondent No. 2. After that, the Petitioner No. 1 was involved in his other businesses.

VII. That the Petitioner No. 1 enquired from Respondent No. 2 many times about the compliances of the Companies Act and audited accounts but the same was ignored by the Respondent No. 1, and the same continued till September 2011 which made the Petitioners suspicious. Therefore, in November 2011, the Petitioners approached the Registrar of Companies as well as visited the website of MCA.

3. On coming to know about the illegal and oppressive acts perpetuated by the Respondents, particularly Respondent No. 2, the Petitioners filed present Petition alleging that Respondent No. 2 illegally and un-authorizedly increased Authorized Capital of the Respondent No. 1 Company on 11.08.2005 and altered MOA and AOA without knowledge and consent of Petitioners and without following prescribed procedure. There is illegal Allotment of shares to respondent no. 2 on 10.10.2005 without knowledge or consent of the Petitioners. Respondents have illegally shifted registered office of the Respondent No.1 Company from Agra to Mathura. Petitioner No. 2 & 3 have been illegally removed from the Board of Directors w.e.f. 26.04.2005 without the. Knowledge or consent of Petitioners .it is further alleged that *Respondent No. 5*, 6,7 were illegally appointed as additional directors. There is Financial Mismanagement in the Company, and that is evident from the Balance Sheets for the year 2007, 2008, 2009 & 2010. The Respondent No. 1 Company is carrying on business as an investment Company in contravention of the main object of the Company which is to carry on business of real estate and construction. The Respondents in collusion with Respondent No. 10 fudged the accounts of the Respondent No. 1 Company which is evident from following acts:

I. Purchase of land shown as fixed assets even though business of Respondent No. 1 is sale and purchase of Real Estate.
II. Closing Balance in the Balance Sheet for 2007 is 58.59 Lacs while opening Balance for the year 2008 is 248.68 Lacs.
III. In the year 2010, the value of the investment has been reduced from 252.19 to Rs. 175.29 and a sum of Rs. 80.40 Lacs has been shown as debtors for shares which proves that Respondent No. 1 is doing trading of investment by doing Book entries. It is pertinent to note that the debtors for the shares is the company owned by respondent no. 2 only.
IV. Except for Rajshree Builders & Promoters Private Limited, all the investment as shown in the Balance Sheet for the year 2010, have been

made in the Companies owned by the Respondent No. 2 or in Companies in which his relatives are interested.

V. The Respondent No. 2 illegally issued corporate guarantee in the name of of Respondent No. 1 in favour of Federal Bank (Respondent No. 8) and Punjab National Bank (Respondent No. 9) for Rs. 9 Crores & Rs. 34 Crores respectively for credit facilities availed by Galaxy Nirmaan owned by Respondent No. 2. Also, MOA & AOA of the Respondent No. 1 do not authorise to issue corporate guarantee in favour of any third party.

VI. The Respondents have illegally opened many Bank Accounts of the Company which are being operated by the Respondents only. Petitioners are not aware of transactions in these Bank Accounts.

4. Counsel for the respondent raised objections to present Petition stating that Present Petition is barred by the Law of Limitation. Petitioner No. 1 is continuing on the board of the company and has filed the petition for alleged and purported acts he now deems oppressive and acts of mismanagements in 2005, and the record also showing that he had previously accorded his full approval to the same and the same being within his knowledge,thus he would be estopped from raising the matter after six years, as the Petitioners would have acquiesced and waived their objections to the same, by allowing the time to lapse and not raising the matter prior to 2011 / 2012.

5. Having heard both the parties, issue for our consideration is:

Issue 1. Whether there is delay/ laches on the part the part of Petitioner in approaching this Tribunal and on that ground present petition is liable to dismissed?

Issue 2. Whether Respondent No. 2 illegally increased Authorized Capital of the Respondent No. 1 Company on 11.08.2005 and altered MOA and AOA.

Issue 3:_Whether there is Illegal allotment of shares to respondent no. 2 on 10.10.2005?

Issue 4. Whether Petitioner No. 2 & 3 have been illegally removed from the Board of Directors w.e.f. 26.04.2005 without their knowledge or consent?

Whether the appointment of Respondent No. 5, 6,7 as additional directors are illegal?

Issue 5: Whether the respondents have illegally shifted registered office of the Respondent No.1 Company, from Agra to Mathura, without giving any notice?
Issue 6. *Whether there is a Financial Mismanagement in the Company?*

Issue 1: Whether there is delay/ laches on the part the part of Petitioner in approaching this Tribunal and on that ground present petition is liable to dismissed?

It was argued on behalf of the Respondents that allegation in the Company Petition pertains to year 2005-06 and therefore the same is barred by Limitation. Cousel for Respondent contended that Petitioners knew everything from the beginning and have consented for same.

However, counsel of petitioner contended that they came to know of incidents alleged in the Company Petition only in November 2011, when they visited Registrar of Companies and website of Ministry of Corporate Affairs. During Rejoinder it was contended by the counsel of Petitioners that documents at Pages 72(Form 18), 88 (Form 2), 91 (Form 32) & 93 (Form 32) of the Petition were filed somewhere by the Respondents in 2005 with the ROC, and therefore they were not available at the online portal. The Petitioners got the information when inspection was done in November 2011. There after they approached ROC to find such documents and obtain their certified copies. Whereas documents at Pages 74 (Annual Return) and 95 (Form 5) were filed in 2006 and therefore the Petitioners could download the same from the portal. It was argued on behalf of the Respondents that Information Technology Act apply to proceeding under present Petition and therefore with the downloaded copies of documents at Pages 74 and 95 of the Petition receipt of payment to ROC should also have been annexed. However, during rejoinder, it was argued on behalf of petitioners that provisions of Information Technology Act applies only to the proceeding under the Companies Act, 2013 and not under Companies Act, 1956. Further present Petition has been filed in December 2011 regarding Form No. 1 of Company Law Board Regulations, 1991 which

states that Annexure(s) shall be enclosed regarding Regulation 18 and Annexure III of Company Law Board Regulations, 1991. Perusal of Regulation 18 and Annexure III of Company Law Board Regulations, 1991 nowhere states that website copy of receipt of payment has to be annexed alongwith documents downloaded from the MCA with the Petition.

It is contended on behalf Respondents that as the incidents alleged in the Company Petition pertains to year 2005-06 and Petition is not filed within three years. Therefore the petition is barred by limitation.

However, it is argued on behalf of the Petitioners that Limitation Act including Article 137 does not apply to the proceeding under Section 397 & 398 of the Companies Act, 1956 and as such specific period of Limitation has only been provided only under Companies Act, 2013. It is further argued on behalf of Petitioners that the present Petition was filed in December 2011 under Company Law Board Regulation, 1991 wherein it was stated that Petition under Section 397 & 398 of the Companies Act, 1956 is prepared in Form No. 1. The column 5 of the Form No. 1 is reproduced herein below:

5.	*Limitation* *The Petitioner further declares that the Petition is within the limitation laid down is Section ..... of the Companies Act, 1956 (or Securities Act, 1956) (where applicable)*

The said Column 5 contains the declaration that the petition is within limitation as prescribed in the Companies Act, 1956. However, no such limitation was at all provided in Companies Act, 1956 for filing Petition

Having heard the counsel for both the parties and on perusal of material on record, we don't dispute that Petition should be filed within reasonable time, and there should not be inordinate delay in filing of the Petition even though the old Companies Act don't have any express provision on application of Limitation Act. But in the present case alleged Illegal reduction of Petitioners'

shareholding from 100% to 40% and alleged illegal Removal of Petitioner No. 2 & 3 as directors and alleged illegal appointment of Respondents is a continuous wrong, having continuous effect and therefore amounts to continuous acts of oppression which started in 2005 but it was continuing till the filing of present Petition, i.e. 2011.

Hon'ble Supreme Court in the matter of *Shanti Prasad v. Kalinga Tubes Ltd., MANU/SC/0368/1965 : [1965]2SCR720). also observed as under....."*

> *".....Para 11. It is thus clear that there have to be continuous acts complained of continuing up to the date of the petition showing that the affairs of the company are being conducted in a manner oppressive to some part of the members or in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company. Examined in this view, it, Therefore, cannot be said that the events which occurred three years prior to the date of filing of the petition cannot be looked into if those events form continuous acts complained of continuing up to the date of the petition. Therefore, though I am of the view that provisions of Art, 137 of the Schedule to the Limitation Act, 1963 are applicable to a petition under S. 397 and/or S. 398 of the Act. I am in respectful disagreement with the view expressed by the aforesaid Calcutta High Court decision that the events prior to the period of three years of the date of filing of the petition cannot be looked into.*
> *....."*.

In the light of above mentioned legal and factual position, alleged actions for which relief is sought in the Petition is of continuous nature, so it is not barred by limitation. Reduction of Petitioners' shareholding from 100% to 40% in 2005 will have continuous effect. Further alleged illegal Removal of Petitioner No. 2 & 3 as directors and alleged illegal appointment of Respondents No 5, 6, 7as directors is a continuous wrong. Hence, present Petition is not barred by limitation.

Issue 2. Whether Respondent No. 2 illegally increased Authorized Capital of the Respondent No. 1 Company on 11.08.2005 and altered MOA and AOA?

Petitioner Counsel contended that the Respondent No. 2 in connivance with other Respondents, illegally and un-authorizedly raised Authorized Capital of the Respondent No. 1 Company on 11.08.2005 from Rs. 3,00,00,000.00 to Rs. 5,00,00,000.00 and altered Memorandum of Association and Article of Association without knowledge and consent of Petitioners and without following prescribed procedure and without holding any meeting of Board of Directors or shareholders. In this regard, counsel for the Petitioner referred to the judgment of the Hon'ble Supreme Court, Shri Parmeshwari Prasad Gupta Vs. The Union of India [AIR1973SC2389; (1973)2SCC543]

We will first examine whether any notice was served upon the Petitioner about the Board Meeting as held on 11.08.2005 and whether it is attended by the petitioners.

From perusal of material on record, there is no evidence to prove the service of notice of Board meeting on the petitioner. However, in the Reply filed by Respondent No.1, i.e. Shree kalia Devi Real Estate Limited, it is stated in Para 6 that the same has been done in pursuance of some alleged understanding of 2005. However, the Respondents have not placed any evidence to prove the so called understanding of 2005. Also, Form 5 which is attached with petition for raising authorised capital has been signed by the Respondent No. 5, an associate of Respondent No. 2. Further, the alleged notice dated 15.07.2005 attached with the Form 5 and annexed at *Page 98 of the Petition* has been issued by the order of Board of Bijnor Engineering Limited and not that of Respondent No. 1 Company.

From the perusal of record, we are not able to find any evidencing document to show the service of Notice of the Board meeting upon the Petitioners. Further, it has not been stated by the Respondents either in their reply or during their argument that notice dated 15.07.2005 for the alleged shareholders' meeting or notice for the Board Meeting was served to the Petitioners who were directors and shareholders of the Respondent No. 1 Company.

Sec. 286 of the Companies Act, 1956 specifically deals with the mode of service of notice which is given below for ready reference.

> *Sec. 286-Notice of Meetings:*
>
> *(1) Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in and at his usual address in India to every other director.*
> *(2) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees.*

Shri Parmeshwari Prasad Gupta vs. The Union of India is the leading authority on this subject. When it was argued before the Apex Court that the meeting of the Board of Directors was not properly convened for want of notice of the meeting to all the Directors, the Court observed thus:

> "Now, it cannot be disputed that notice to all the Directors of a meeting of the Board of Directors was essential for the validity of any resolution passed at the meeting and that as, admittedly, no notice was given to Mr Khaitan, one of the Directors of the company, the resolution passed terminating the services of the appellant was invalid."

Further in the matter of Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan, (2005) 1 SCC 212 at page 224, Hon'ble Supreme Court held as under:

> "11. This is the main issue which arises for consideration in this case. As already noted, Ramanujam who was the Managing Director of the company got allotted 6865 equity shares to himself in a meeting of the Board of Directors of the company alleged to have been held on 24-10-1994. Again on 26-3-1997, he managed to get allotted further 9800 equity shares to himself. Prathapan has challenged these allotments of shares in favour of Ramanujam as acts of oppression on the part of Ramanujam, the Chairman and Managing Director of the company for which he filed a petition under Sections 397 and 398 of the Companies Act before the Company Law Board. A doubt has been cast about whether the alleged meetings in which additional equity shares were allotted to Ramanujam were held at all. In this behalf the following facts are noticeable:
> (*a*) The appellants have filed a photocopy of the minutes of the alleged meeting of the Board of Directors said to have taken place on 24-10-1994. As per the photocopy, the minutes appear to be signed by Ramanujam as Chairman. The presence of Suresh Babu as a Director of the company

> has been shown in the minutes. However, there is no evidence of the presence of Suresh Babu in the said meeting. Article 36 of the Articles of Association of the company requires that a notice convening the meetings of the Board of Directors shall be issued by the Chairman or by one of the Directors duly authorised by the Board in this behalf. Suresh Babu filed an affidavit in the proceedings before the Company Law Board wherein he has categorically stated that at no point of time was he involved in the affairs of the company and in running the business of the company. Further, he has stated in the said affidavit that at no point of time was he informed that he had been appointed as Director of the company. He had never received any notice of any Board meetings nor had he ever attended any Board meeting. In view of this categorical denial by Suresh Babu about attending any meetings of the Board of Directors of the company, it was incumbent on the part of Ramanujam, who was the Chairman and Managing Director of the company and was in possession of all the records of the company, to place on record a copy of a notice calling a meeting of the Board of Directors in terms of Article 36. No copy of the notice intimating Suresh Babu about the meeting of the Board of Directors and asking him to attend the same has been placed on record to show that Suresh Babu was informed about holding of the meeting in question.
>
> XXXXXXXXXX
>
> 24. *Further, it was held that if a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its Board of Directors mala fide, the said act must ordinarily be considered to be an act of oppression to the said member.* The member who holds the majority of shares in the company is entitled by virtue of his majority to control, manage and run the affairs of the company. This is a benefit or advantage which the member enjoys and is entitled to enjoy in accordance with the provisions of company law in the matter of administration of the affairs of the company by electing his own men to the Board of Directors of the company."

Therefore any transaction done during such Board Meeting for which notice was not served on the shareholders/directors can't be treated as validly held board meeting. The alleged shareholders' meeting is void in terms of settled law as laid down by the Hon'ble Supreme Court.

Respondents have not produced any minute of the Board Meeting and Shareholders meeting or any attendance sheet showing notice to the Petitioners or their presence wherein such authorized capital was raised.Burden of proof regarding service of notice on the shareholders/members was on the respondents, but they failed to produce any document to show that notice was

duly served on the shareholders. Proceedings of Extraordinary General Meeting purportedly held on 11.08.2005 (wherein authorised capital was raised) has been enclosed with Form 5. This is the only document which has been filed to prove that a particular resolution was passed at a meeting of the Board of Directors of a Company. The minute book of the board resolution, in which the said resolution was recorded has not been produced in the Court. However, no such minute book or even the particular minute has ever been produced by the Respondents. Hon'ble High Court of Delhi in case of Escorts Limited Vs. Sai Autos and Ors. [1991]72CompCas483(Delhi); 42 (1990)DLT446) held that:

> *"194. Minutes of meetings kept in accordance with the provisions of section 193 shall be evidence of the proceedings recorded therein."*
>
> *....."*

Therefore, we are satisfied to record a finding by drawing adverse inference, that the respondents failed to establish that notice of meeting was served on the Directors, the petitioners herein, for the meeting held on 11.08.2005. Given the submissions made herein above, the increase of authorised capital from Rs. 3,00,00,000.00 to Rs. 5,00,00,000.00 allegedly on 11.08.2005 is blatantly illegal and liable to be declared void.

Issue 3: Whether there is Illegal allotment of shares to respondent no. 2 on 10.10.2005

Petitioners contended that the Respondent No. 2 in connivance with other Respondents illegally and un-authorizedly allotted 2928000 equity shares to himself on 10.10.2005 without knowledge or consent of the Petitioners. Further 2928000 equity shares were allotted to Respondent No. 2 is in contravention of Section 81 of the Companies Act, 1956 and the same was done only with the mala fide intentions to dilute the shareholding of the Petitioners illegally and to reduce their shareholding in the Respondent No. 1 Company from 100% to 40%.

However, Counsel for the Respondents during reply argued that the above mentioned allotment was done with the consent of the Petitioners, as they have

given Respondent No.1 Company to the Respondents, and therefore the petitioner had no interest left therein.

From the perusal of record, it is clear that Respondent No. 2 allotted 2928000 equity shares to himself, without giving any notice to the Petitioner. In their reply, respondents have not produced minutes or proof of service of notice of the board resolution by which 29,28,000 shares were allotted to the petitioner . Further Respondents also contravened the provisions of Section 81 of Companies Act, 1956, which states as under:

> *Section 81 in The Companies Act, 1956*
>
> *81. Further issue of capital.*
>
> *(1) Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then,-]*
>
> > *(a) such [3] further] shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid up on those shares at that date;*
> >
> > *(b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined;*
> >
> > *(c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercis- able by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (b) shall contain a statement of this right;*
> >
> > *(d) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company.*

Explanation.- In this sub- section," equity share capital" and equity shares" have the same meaning as in section 85.

(1A) Notwithstanding anything contained in sub- section (1), the further shares aforesaid may be offered to any persons [whether or not those persons include the persons referred to in clause (a) of subsection (1)] in any manner whatsoever-

(a) if a special resolution to that effect is passed by the company in general meeting, or

(b) where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the Chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting and the Central Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company.]

(2) Nothing in clause (c) of sub- section (1) shall be deemed-

(a) to extend the time within which the offer should be accepted, or

(b) to authorize any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation.

[(3) Nothing in this section shall apply-

(a) to a private company; or

(b) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company-

(i) to convert such debentures or loans into shares in the company, or

(ii) to subscribe for shares in the company: [2]

Before making allotment to Respondent No. 2, no shares were ever offered to the Petitioners who admittedly at the relevant time were 100% shareholders of

the Respondent No. 1 Company. Therefore, the allotment of shares to Respondent No. 1 was in blatant violation of Section 81 of the Companies Act, 1956. Further out of the fund of Rs. 292.80 Lacs received for the allotment made on 10.10.2005, a sum of Rs. 190.40 was invested in the Companies owned by the Respondent No. 2 and was not utilized by the Respondent No. 1 Company.

In the matter of *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212 at page 224, Hon'ble Supreme Court has held allotment of additional shares just to take control of the company with intention to dilute the shareholding amounts to an act of oppression. Relevant Portion of the Judgement is quoted herein under:

> *Validity of allotment of equity shares*
> XXXXXXXXX
> (*c*) For considering this point let us assume that a meeting of the Board of Directors of the company did take place as alleged by Ramanujam. *First question that arises is whether the company required additional funds for which the shares were issued. We have already referred to balance sheets of the company, copies whereof have been placed on record. Till 31-3-1993 the balance sheets did not show any investment of substantial amounts of money in the company. It is the balance sheet for the year ending 31-3-1994 which for the first time shows an advance of Rs 6,86,500 towards share capital pending allotment. Nothing has been placed on record to show that during the financial year 1993-94 i.e. 1-4-1993 to 31-3-1994 why suddenly need had arisen for a substantial investment. The company was running a hotel, the property whereof was owned by the company. No particular reason for making a major investment has been shown. Nothing has been shown as to how the amount of Rs 6,86,500 was utilised. It appears that Ramanujam who was managing the affairs of the company single-handedly, realised that the company had turned around and the hotel property had appreciated in terms of its market value. He started working on a strategy to get controlling shares in the company. It was in furtherance of this objective that Ramanujam managed to show the entry regarding advance against shares in the balance sheet as on 31-3-1994. For this amount, he allotted equity shares to himself to gain control of the company. In these facts it is difficult for us to appreciate that the additional funds were required by the company. In our view the finding of the High Court that no funds were needed by the company is fully justified. The only purpose was to allot additional shares in the company to himself to gain control of the company and to achieve this objective, the books of the company appear to have been manipulated. The High Court was right in holding that the entire manipulation of records of the company by Ramanujam was an act of fraud on his part.*
> (*d*) We may also test the alleged act of allotment of equity shares in favour of Ramanujam from a legal angle. Could it be said to be a bona fide act in the interest of the company on the part of Directors of the

company? At this stage it may be appropriate to consider the legal position of Directors of companies registered under the Companies Act. A company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors. An individual Director has no power to act on behalf of a company of which he is a Director unless by some resolution of the Board of Directors of the company specific power is given to him/her. Whatever decisions are taken regarding running the affairs of the company, they are taken by the Board of Directors. The Directors of companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors act on behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company. They are agents of the company to the extent they have been authorised to perform certain acts on behalf of the company. In a limited sense they are also trustees for the shareholders of the company. To the extent the power of the Directors are delineated in the Memorandum and Articles of Association of the company, the Directors are bound to act accordingly. As agents of the company they must act within the scope of their authority and must disclose that they are acting on behalf of the company. The fiduciary capacity within which the Directors have to act enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent. They have a duty to make full and honest disclosure to the shareholders regarding all important matters relating to the company. It follows that in the matter of issue of additional shares, the Directors owe a fiduciary duty to issue shares for a proper purpose. This duty is owed by them to the shareholders of the company. Therefore, even though Section 81 of the Companies Act, 1956 which contains certain requirements in the matter of issue of further share capital by a company does not apply to private limited companies, the Directors in a private limited company are expected to make a disclosure to the shareholders of such a company when further shares are being issued. This requirement flows from their duty to act in good faith and make full disclosure to the shareholders regarding affairs of a company. The acts of Directors in a private limited company are required to be tested on a much finer scale in order to rule out any misuse of power for personal gains or ulterior motives. Non-applicability of Section 81 of the Companies Act in case of private limited companies casts a heavier burden on its Directors. Private limited companies are normally closely held i.e. the share capital is held within members of a family or within a close-knit group of friends. This brings in considerations akin to those applied in cases of partnership where the partners owe a duty to act with utmost good faith towards each other. Non-applicability of Section 81 of the Act to private companies does not mean that the Directors have absolute freedom in the matter of management of affairs of the company. In the present case Article 4(*iii*) of the Articles of Association prohibits any invitation to the public for subscription of shares or debentures of the company. The intention from this appears to be that the share capital of the company remains within a close-knit group. Therefore, if the Directors fail to act in the manner prescribed above they can in the sense indicated by us earlier be held liable for breach of trust for misapplying funds of the company and for misappropriating its assets."

From the facts of the present case, it is clear that there was no need of funds in the company. It is on record that the company allotted additional shares the money obtained from allotment of shares was invested in the company owned by the Respondent number 2. It is thus clear that the

allotment of additional shares was with ulterior motive to value the shareholding of the petitioner in the company and take control of the company from the petitioners. As per law laid down by animals Supreme Court in the case of Dale and Carrington allotment of additional shares just to take control of the company with intention to dialute the shareholding amounts to an act of oppression"

In this case, respondents has failed to prove that the company was actually in the need of funds for which share capital was increased. But on the contrary, in this case, the amount raised by the company by increasing the share capital was re-invested in the company owned by respondent No 2.

From the above discussion, it is clear that the said allotment of shares was also blatantly illegal as there was no requirement of funds in the Respondent No.1 Company. Out of the fund of Rs. 292.80 Lacs received for the illegal allotment made on 10.10.2005, a sum of Rs. 190.40 was invested in the Companies owned by the Respondent No. 2 and was not utilised by the Respondent No. 1 Company. This proves that the share capital of the company was raised intentionally to dialute the shareholding of the petitioner in the company and taking control of the company permanently. Thus it is proved that only purpose of alleged allotment of shares was to take control of the company from the petitioners and reduce them to the minority which is an act of oppression.

Issue 4. Whether Petitioner No. 2 & 3 have been illegally removed from the Board of Directors w.e.f. 26.04.2005 without their knowledge or consent and Whether the appointment of_Respondent No. 5, 6,7 as additional directors are illegal?

Counsel for Petitioners contended that_the Petitioner No. 2 & 3 have been illegally removed from the Board of Directors of Respondent No. 1 w.e.f. 26.04.2005 without their knowledge or consent. Further Board Meeting in which resignation letters of Petitioner No. 2 & 3 was allegedly accepted was not

attended by the Petitioners as they never received any notice for the same Further it was contended by counsel for Petitioners that Respondent No. 2 got last page of blank Form 32 signed by the Petitioner No. 1 on the pretext that the same shall be utilized for giving intimation to ROC for appointment of Respondent No. 2 as director as was agreed by the Petitioner No. 1. It is pertinent to note that Respondent No. 2 being the nephew of Petitioner No. 1 and Respondent No. 1 being a family company, the Petitioner No. 1 had utmost faith and trust in Respondent No. 2 and therefore the Petitioner No. 1 signed the blank Form 32. However, the Respondent No. 2 instead of showing his appointment on the said Form 32, has shown appointment of Respondent No. 5 & 6 as additional director and has shown resignation of Petitioner No. 2 & 3 from the directorship of the Respondent No. 1 Company.

However, Respondent during their reply argued that the Petitioners in their Petition have only averred that Petitioner No. 1 has signed blank papers. However, it is nowhere mentioned that Petitioner No. 2 & 3 have also signed blank papers and therefore it has to be assumed that Petitioner No. 2 & 3 have signed the resignation letters. With respect to Petitioner No.1's signature on last page of Form 32, Ld. Counsel for the Respondents relied on the doctrine of *'non est factum'* and legal precedence relating to same which according to the Respondents states that when a person sign any documents, he cannot at the later stage plead that the same was not used for the purpose for which it was signed. Judgments relied in the said regard by the Respondents are:

a) Foster Vs. Mackinnon
b) Saunders (Executrix of the will of Rose Maud Gallie) Vs. Anglia Building Society [House of Lords]
c) Smt. Bismillah Vs. Janeshwar Prasad & Ors. (1990) 1 Supreme Court Cases 207

However, during rejoinder, it was argued on behalf of the Petitioners that the Petitioner No. 1 signed the blank Form 32 only with the intention that the same shall be used to intimate ROC about the appointment of Respondent No. 2 as director in Respondent No. 1. Petitioner No. 1 signed

such Form only because he had utmost faith and trust in his nephew, i.e. Respondent No. 2.

From the perusal of record, it is clear that Respondent never brought on record resignation letters of Petitioner 2 and 3 to prove they have voluntarily resigned.

Regarding the above, reference has been made of the the judgment of Hon'ble Punjab & Haryana High Court in case of Harmesh Kumar and Ors. Vs. Maya Bai and Anr. AIR2006P&H1:

".....

Para 22. However the House of Lords in Saunders v. Angila Building Society (1971) AC 1004 reviewed the law and held that the essential features and the doctrine, as expressed by Byles, J. in Foster v. Mackinon, had been correctly stated. Lord Raid, however, observed:

> *"The plea of non est factum could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was*
> *signing."*

23. However, the distinction based on the character of the document and the contents of the document was considered unsatisfactory. The distinction based on the character and contents of a document is not without its difficulties in its practical application; for, inconceivable cases the 'Character' of the document may itself depend on its contents. <u>The difficulty is to be resolved on a case by case-basis on the facts of each case and not by appealing to any principle of general validity to cases</u>. Chitty on contracts (General

Principles, 25th Edition, Para has this observation to make on Saunder's decision:

> *".... It was stressed that the defence of non est factum was not lightly to be allowed where a person of full age and capacity had signed a written document embodying contractual terms. But it was nevertheless held that i.e. exceptional circumstances the plea was available so long as the person signing the document had made a fundamental mistake as to the character or effect of the document. Their Lordships appear to have concentrated on the disparity between the effect of the document actually signed, and the document as it was believed to be (rather than on the nature of the mistake) stressing that the disparity must be "radical", "essential", fundamental", or "very substantial"," (p. 194)*

It was also argued by the Petitioners that Respondent No. 1 being a family Company, utmost good faith and fair play is essential, and any action that goes against those principles and hurting the interest of other family member have to be considered as acts of oppression. In this regard, reference be made to the judgment of Hon'ble Company Law Board, Principle Bench which order was passed in Vijay R. Kirloskar and Kirloskar Electric Co. Ltd. Vs. Kirloskar Proprietary Ltd. and Ors. [2006]130CompCas139(CLB)

".....

Para 41. I would now like to discuss two major judgments which have been relied by both the parties namely, Needle Industries Case and Sangram Singh Gaekward case (Supra). In para 44 of the Needle Industries case clearly indicates oppression as "burdensome, harsh and wrongful". Similarly, it is mentioned that Section 210 now Section 397

"warrants the court in looking at the business realities of the situation and does not confined them to a narrow legalistic view. "It is also mentioned that which is common to a partnership, that there should be the utmost good faith between the constituent members and finally it was held that the court ought not to allow technical pleas to defeat the beneficent provisions of Section 210 (now Section 397) of the Companies Act. Para 46 indicates just and equitable jurisdiction as under:-

> *"...Lord Willbram said that a company, however small, however domestic, is a company not partnership or even, a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in."*

Para 49 of judgment of Needle industries lays down that the decision of the courts indicate that conduct which is technically legal, and correct may nevertheless be such as to justify the application of other just and equitable jurisdiction. Where the just and equitable jurisdiction has been applied the inference that there has been, atleast, an unfair abuse of powers and impairment of confidence in. The probity with which the

companies affairs are being conducted, as distinguished from mere resentment on the part of a minority. It also mentions that the true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the interference that the law was violated with a malafide intention or that such violation was burdensome, harsh and wrongful. Para 52 of this judgment relying on the case of Kalinga Tubes it is held that it. must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of consecutive story. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between

the majority shareholders and the minority shareholders would not be enough unless the lack of confidence brings oppression on a minority by majority in the management of the companies affairs and such oppression must involve atleast an element of lack of probity or fair dealing as a member in the matter of his proprietary rights as a shareholder. It is clearly laid down that the person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as a shareholder.

....."

Reference be also made to the judgment of Hon'ble High Court of Madras, which order was passed in K. Balasundaram and Ors. Vs. G.K. Alloy Steel Private Limited & Ors. [2016]:

"Para 46. It is not even necessary that such a transaction was fraudulent. Even in cases where there was breach of duty without fraud, the court cannot close its eyes. In Daniels v. Daniels [(1977) 2 W.L.R. 73], the Chancery Division pointed out that where without fraud, the Directors and majority shareholders are guilty of a breach of duty, which they owe to the company, that breach of duty not only harms the company, but benefits the Directors. In such cases, different considerations would apply. Since fraud is very hard to plead and to prove, the minority shareholders are entitled to plead in such cases that some benefit accrued to the Directors. The Chancery Division made an interesting observation that to put up with foolish Directors is different from putting up with Directors who are so foolish as to make profit out of the deal.

47. In so far as companies run by families are concerned, the test may have to be even more rigorous as pointed by the Company Law Board in Prabhu Dayal Chitlangia v. Trinity Combine Associates Pvt. Ltd.

> *[MANU/CL/0001/2000 : (2000) 99 Comp. Cases 21 (CLB)]. It was held therein that the decision taken by a company without the participation of the family Directors was an act of grave oppression. In a family company, utmost good faith and fair play is absolutely essential and any action that goes against those principles and having an adverse effect on the interests of the other family members, have to be considered as acts of oppression."*

In absence of any proof for resignation by the Petitioner No. 2 and 3 and no notices were served to the Petitioners regarding the alleged Board Meeting dated 26.04.2005 in which resignation of Petitioner 2 and 3 were accepted we are inclined to hold that the Petitioner No. 2 & 3 were removed from the directorship illegally as it is well settled by Hon'ble Supreme Court in the matter of *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212 *and* Shri Parmeshwari Prasad Gupta Vs. The Union of India [AIR1973SC2389; (1973)2SCC543] that notice to all the Directors of a meeting of the Board of Directors was essential for the validity of any resolution passed at the meeting.Therefore, in absence of proof of resignation and absence of notice we hold resignation of the 2 and 3 is illegal and void .

Further Respondent *No. 5, 6, 7 was* appointed as Additional Director of the Respondent No. 1 without knowledge and consent of the Petitioners. As Petitioners did not receive any notice of Board Meeting nor attended any meeting in which such appointment was made, therefore such appointments cannot be treated as valid.

Issue 5: Whether the respondents have illegally shifted registered office of the Respondent No.1 Company, from Agra to Mathura, without giving any notice?

Petitioner contended that the Respondents have illegally shifted registered office of the Respondent No. 1 Company from C-55, Kamla Nagar, Agra to 1918, Dampier Nagar, Mathura without giving any notice to the Petitioners and the Petitioners came to know of the same from the Balance Sheets of Respondent No. 1 filed by Respondents with ROC. No Form 18 for such illegal shifting was available on the MCA website at the time of filing of Petition nor such Form or any other relevant document about shifting of registered office has ever been

placed by the Respondents before this Hon'ble Tribunal. No Board Meeting was held for the said purpose of shifting of registered office as the Petitioners never received such notice nor attended the same.

The Respondents during their reply argued that all the provisions of Companies Act, 1956 were complied for the shifting of registered office. Further, it was argued on behalf of Respondents that Petitioners have Complaint belatedly about such change and also that change of registered office does not amount to oppression and relied on judgment of Hon'ble Supreme Court in Hanuman Prasad Bagri and Others Vs. Bagress Cereals Pvt. Ltd. (2001) 4 Supreme Court Cases 420.

It is contended on behalf of the Petitioners that shifting of registered office has been done alongwith other acts complained of in the Petition only to usurp the control of Respondent No. 1 by the Respondents illegally, fraudulently and in clandenstine manner for ousting the Petitioners control from the company. Ratio of judgment of Hanuman Prasad (supra) is also that act of shifting of registered office by itself may not be a reason or ground to file Petition under Section 397 or Section 398 of the Companies Act, 1956 unless a case is made out to show that such exercise was undertaken to put an oppressive pressure and pain upon the Petitioners.

It is trite law that an isolated act even if it is contrary to law may not necessarily and by itself support inference that the same amount to oppression but a series of illegal acts following one upon another will lead to the conclusion that the same are part of the transaction of which object is to oppress a person against whom such acts are directed. Reliance in the said regard may be place on judgment of Hon'ble Supreme Court of India in Needle Industries (India) Ltd. and Ors. Vs. Needle Industries Newey (India) Holding Ltd. and Ors. (1981) 3SCC333 wherein Hon'ble Supreme Court has held that:

> *Para 51. The question sometimes arises as to whether an action in contravention of law is per se oppressive. It is said, as was done by one of us, N.H. Bhagwati J. in a decision of the Gujarat High Court in*

S.M. Ganpatram v. Sayaji Jubilee Cotton & Jute Mills Co. [1964] 34 Company Cases 830-31 that "a resolution passed by the directors may be perfectly legal and yet oppressive, and conversely a resolution which is in contravention of the law may be in the interests of the shareholders and the company". On this question, Lord President Cooper observed in Elder v. Elder [1952] S.C. 49:

The decisions indicate that conduct which is technically legal and correct may nevertheless be such as to justify the application of the 'just and equitable' jurisdiction, and, conversely, that conduct involving illegality and contravention of the Act may not suffice to warrant the remedy of winding up, especially where alternative remedies are available. Where the 'just and equitable' jurisdiction has been applied in cases of this type, the circumstances have always, I think, been such as to warrant the inference that there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy.

Neither the judgment of Bhagwati J. nor the observations in Elder are capable of the construction that every illegality is per se oppressive or that the illegality of an action does not bear upon its oppressiveness. In Elder a complaint was made that Elder had not received the notice of the Board meeting. It was held that since it was not shown that any prejudice was occasioned thereby or that Elder could have bought the shares had he been present, no complaint of oppression could be entertained merely on the ground that the failure to give notice of the Board meeting was an act of illegality. <u>The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a mala fide</u>

intention or that such violation was burdensome, harsh and wrongful. But a series of illegal acts following upon one another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed. This may usefully be illustrated by reference to a familiar jurisdiction in which a litigant asks for the transfer of his case from one Judge to another. An isolated order passed by a Judge which is

contrary to law will not normally support the inference that he is biassed; but a series of wrong or illegal orders to the prejudice of a party are generally accepted as supporting the inference of a reasonable apprehension that the Judge is biassed and that the party complaining of the orders will not get justice at his hands.

.....”

From the above stated factual and legal position although act of shifting of registered office by itself may not be a reason or ground to file Petition under Section 397 or Section 398 of the Companies Act, 1956 but change of registered office of Respondent No. 1 by the Respondents is only one of the series of acts which has been done without following proper procedure prescribed under the Act. As in the present case there is a series of illegal acts following upon one another and change in the registered office without giving notice to the Petitioners is also one of them, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression. Thus this issue is also decided in favour of the petitioner.

Issue 6 : Whether there is financial mismanagement?

It is mentioned in the Petition that as is evident from the Balance Sheets for the year 2007, 2008, 2009 & 2010, the Respondent No. 1 Company is carrying on business as an investment Company in contravention of the main object of the

Company which is to carry on business of real estate and construction.Further,the Respondents in collusion with Respondent No. 10 fudged the accounts of the Respondent No. 1 Company

- Purchase of land shown as fixed assets instead of current even though business of Respondent No. 1 is sale and purchase of Real Estate.
- Closing Balance in the Balance Sheet for 2007 is 58.59 Lacs while opening Balance for the year 2008 is 248.68 Lacs. In the year 2010, the value of the investment has been reduced from 252.19 to Rs. 175.29 and a sum of Rs. 80.40 Lacs has been shown as debtors for shares which proves that Respondent No. 1 is doing trading of investment by doing Book entries. Also debtor for shares is the Company owned by the Respondent No. 2.
- Except for Rajshree Builders & Promoters Private Limited, all the investment as shown in the Balance Sheet for the year 2010, have been made in the Companies owned by the Respondent No. 2 or in Companies in which his relatives are interested.
- The Respondent No. 2 illegally issued corporate guarantee of Respondent No. 1 in favour of Federal Bank (Respondent No. 8) and Punjab National Bank (Respondent No. 9) for Rs. 9 Crores & Rs. 34 Crores respectively for credit facilities availed by Galaxy Nirmaan owned by Respondent No. 2. Also MOA & AOA of the Respondent No. 1 do not authorize to issue corporate guarantee in favour of any third party.
- The Respondents have illegally opened many Bank Accounts of the Company which are being operated by the Respondents only. Petitioners are not aware of transactions in these Bank Accounts.

As this issue involves questions relating to manipulation and fudging of the accounts records, issuing of corporate guarantee without authority, opening of several bank accounts, we think it appropriate to appoint a Independent Auditor,

who can give a detailed report about alleged Mismanagement in the affairs of the Company.

From the above discussion it is clear that Petition is not barred by Limitation as the alleged act of Oppression and Mismangement have continous effect on the functioning the company. It is undisputed that Respondents have after removal of Petitioner No. 2 & 3, appointed Respondents 5 to 7 as directors, increased Authorized Capital, allotted 2928000 equity shares to the Respondent No. 2,3 &4 without giving notice to Petitioners and without following Proper procedure as laid down in Companies Act and only explanation given by Respondents for their alleged illegal act was that that Petitioners are estopped from challenging acts, for which they have given their consent . However, no such proof was placed on record by the Respondents that they informed Petitioners about the alleged acts.

Increase in the Paid up capital of the Respondent No. 1 Company and allotment of 2928000 equity shares by Respondent No. 2 , to himself and to his relative was also blatantly illegal as there was no requirement of funds in the Respondent No.1 Company and only motive behind such allotment was to reduce the Petitioners to the minority , hence it will amount to act of Oppression in the light of Hon'ble Supreme Court judgement in the matter of *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212.

Respondents have done series of acts which are oppressive, there are allegations of financial mismanagement as well and violated the provisions Companies Act. Hence, Petition deserves to be allowed.

ORDER

Petition is allowed with following directions:

I. We declare that the increase in Authorized Capital from Rs. 300.00 to 500.00 lacs by resolution dated 11 August, 2005 is illegal and void , consequently form 5 filed with Registrar of Companies is being cancelled. Further alteration in MOA and AOA is declared as void and form 23 filed with ROC is directed to be canceled.

II. The removal of Petitioner No. 2 & 3 and appointment of Respondents 5 to 7 as directors and resolution dated 25.04.2018 as void and illegal consequently form 32 filed with Registrar of Companies is cancelled.

III. The allotment of 2928000 equity shares as illegal and void. We hereby direct R1 to rectify the Register of Members of Company by cancelling the illegal allotment of 2928000 equity shares to the Respondent No. 2,3 &4. Consequently R-1 company is directed to cancel the shares allotted and return the share application money to the allotees of those shares.

IV. As there are allegation against the Respondents regarding manipulation and fudging of the accounts records, issuing of corporate guarantee without authority and disclosure of Annual Auditors Report, opening of several bank accounts, we think it appropriate to appoint an Independent Auditor. However, we give liberty to both the parties to appoint the auditor by their mutual consent. In case they fail to arrive at consensus they can suggest three names, who can perform audit of the alleged Financial Mismanagement and alleged siphoning of the funds in the Respondent Company.

V. Respondents and Registrar of Company (Kanpur) is directed to file compliance report within one month from the date of the order.

VI. A copy of this order to be communicated to Petitioners , Respondents as well as to ROC (Kanpur) .

Petition is disposed off accodingly.

(SAROJ RAJWARE)
MEMBER (TECHNICAL)

(V.P SINGH)
MEMBER (JUDICIAL)

Dated: 31.08.2018