

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - III

C.P. 15/2008

&

C.P. 47/2008

Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

IN THE MATTER OF SECTION 397, 398 READ WITH SECTION 237(B), 402
& 403 OF THE COMPANIES ACT, 1956

IN THE MATTER OF:

C.P. No. 15/2008

**PRAMOD KUMAR GOIL,
Director,
Shree Bihari Forgings Pvt. Ltd.,
R/o 6, Navyug Market,
Ghaziabad.**

...Petitioner

Versus

**SHREE BIHARI FORGINGS PVT. LTD.,
A company incorporated under
Companies Act, 1956
Registered Office:**

C.P. No. 15/2008
C.P. No. 47/2008
Shree Bihari Forgings Pvt. Ltd.



**D-31, Main market,
Gali Dharamshala Wali,
Shakarpur, Delhi – 110092.**

...Respondent No. 1

**Mr. LALIT AGGARWAL,
Director,
Shree Bihari Forgings Pvt. Ltd.,
R/o Plot No. 104, Sector – 15A,
NOIDA – 201301.**

...Respondent No. 2

**Mr. MAHESH GUPTA,
Of M/s Gupta Mahesh & Co.,
Statutory Auditor,
Shree Bihari Forgings Pvt. Ltd.,
C-26B, Basement,
Kalkaji, Delhi – 110019.**

...Respondent No. 3

WITH

C.P. No. 47/2008

**Mr. LALIT AGGARWAL,
Director,
Shree Bihari Forgings Pvt. Ltd.,
R/o Plot No. 104, Sector – 15A,
NOIDA – 201301.**

...Petitioner No. 1

**LALIT AGGARWAL (HUF),
Through Karta
Mr. Lalit Aggarwal,
D-31, Main Market,
Gali Dharamshala Wali,
Shakarpur, Delhi – 110092.**

...Petitioner No. 2

C.P. No. 15/2008
C.P. No. 47/2008
Shree Bihari Forgings Pvt. Ltd.

Versus

SHREE BIHARI FORGINGS PVT. LTD.,
A company incorporated under
Companies Act, 1956
Registered Office:
D-31, Main market,
Gali Dharamshala Wali,
Shakarpur, Delhi – 110092.

...Respondent No. 1

PRAMOD KUMAR GOYAL,
R/o 6, Navyug Market,
Ghaziabad,
Uttar Pradesh – 201301.

...Respondent No. 2

RITESH GOYAL,
R/o 6, Navyug Market,
Ghaziabad,
Uttar Pradesh – 201301.

...Respondent No. 3

UDIT GOYAL,
R/o 6, Navyug Market,
Ghaziabad,
Uttar Pradesh – 201301.

...Respondent No. 4

RUCHI GOYAL,
R/o 6, Navyug Market,
Ghaziabad,
Uttar Pradesh – 201301.

...Respondent No. 5

THE CHIEF MANAGER,
Canara Bank,
Mayur Vihar Branch,

C.P. No. 15/2008
C.P. No. 47/2008
Shree Bihari Forgings Pvt. Ltd.



Delhi.

...Respondent No. 6

**CHAIRMAN & MANAGING DIRECTOR,
Canara Bank,
112, J. C. Road,
Bangalore – 560002.**

...Respondent No. 7

For the Petitioners in C.P. 15/2008
& the Respondent in C.P. 47/2008: Mr. A. K. Goyal, Mr. Vikas Sharma, Adv

For the Respondent in C.P. 15/2008
& the Petitioner in C.P. 47/2008: Mr. Rajendra Gupta, Adv
Mr. Lalit Aggarwal, Party in person



ORDER

Date:04.09.2018

1. Both the petitions listed as above concern M/s Shree Bihari Forgings Pvt. Ltd. ("SBF"), being impleaded in the respective petitions as the first respondent and both the petitions have been filed by each of the two directors of the first respondent company against each other under the provisions of Section 397 and 398 of the Companies Act, 1956 read with other attendant provisions alleging oppression and mismanagement against the other in relation to the affairs of SBF and in the circumstances this Tribunal proposes to deal with these petitions by way of a common order. ("SBF") The first petition C.P.15/2008 has been filed by Pramod Goil ("PG"), one of the two directors of SBF and C.P. 47/2008 has been filed by the other director Lalit Aggarwal ("LA"). The averments made in the two petitions are taken one after the other for an easy comprehension of the dispute between the parties and the nature of allegations sought to be levelled against each other by the said directors cum shareholders.



C.P. 15/2008

Petition's Averments:

2. This petition has been filed under Section 397/398 of the Companies Act, 1956 by one Mr. Pramod Goil, the director of Respondent 1 Company, SBF against the only other director of SBF, Mr. Lalit Aggarwal, who has been impleaded as Respondent No. 2 and the statutory auditor of the SBF, Mr. Mahesh Gupta, impleaded as Respondent No. 3 ("R3") for illegal allotment of shares of SBF to R2's relatives and friends ("LA's group").

3. PG avers in his petition that SBF was incorporated on 15.03.2004 by PG and LA as a quasi-partnership for carrying on business of manufacturers and dealers of castings and forgings. Until an illegal allotment by LA, being one of the challenges in this petition of PG, PG's group, it is averred, held 70.105% and LA group held 29.895% of shareholding of the SBF, in the 70:30 ratio, according to the prior understanding between PG and LA.



4. PG states that the Articles of Association of SBF contain the following restrictions on new membership:
- Membership can be granted to only those persons whose names are approved by Board.
 - No invitation cannot be issued to public
5. PG claims that he discovered on 29.02.2008 and 01.03.2008 from inspection on MCA portal that LA has sought to convert unsecured loan of Rs.73.35 lacs into share capital. The said loans had been advanced to SBF by the LA group. PG claims that the following allotments have been made:

Date of Allotment	Name of Allottee	No. of equity shares allotted
17.12.2007	Satish Chand	50,000
17.12.2007	Santokh Singh (Khatter Export)	30,000
17.12.2007	Jaswinder Singh (Khatter Export)	30,000
17.12.2007	Lalit Aggarwal HUF	47,500
17.12.2007	Lalit Aggarwal	45,500

17.12.2007	Seema Aggarwal	13,750
28.12.2007	Ramesh Nath Mehra (Kankisha export)	1,50,000

6. PG alleges that the allotments are illegal and fraudulent as they have been made without PG's consent i.e. without approval of the Board of Directors of SBF and by misuse of PG's digital signature by LA and R3 in filing the Form 2 on MCA portal for allotment of the new shares. PG points out that the fact that the allotments are fraudulent is supported by the following discrepancies:

- a. The Form 2 uploaded on the MCA portal is unsigned by PG whereas the practice has been to get the form signed by the director whose digital signature is being used.
- b. The membership could not have been granted without approval from the Board and no such approval was ever taken.



- c. The allotments made to Ramesh Nath Mehra, Jaswinder Singh and Santokh Singh have not been made against any unsecured loans and no consideration has been received in the bank account of SBF from these three people.
- d. The allotments are made at a premium of Rs.10/- whereas the immediate previous allotments were made at premium of Rs.90/- and the profitability of SBF has only increased since the previous allotment.
- e. The share application money of Rs.48,00,000/- received on 31.08.2006, 01.09.2006 and 02.09.2006 already present in the books of account of SBF was ignored while making these allotments.
- f. Further, the allotments were made in violation of the conditions imposed by Canara Bank:

Condition imposed by bank	Factual position
Subordination of unsecured loan of Rs.80.10 lacs as on 31.03.2007	Allotments were made by conversion of unsecured loan



Share application money of 48 lacs should be converted into capital	Instead of share application money the unsecured loan was converted
Company to raise unsecured loan from 80 lacs to 180 lacs	Unsecured loan of Rs. 73,35,500 of LA group sought to extinguished by conversion into capital of Company

7. Further claims made in the petition are that both PG and LA have a cheque book each for withdrawing money from SBF's bank account. LA has been misusing the same by withdrawing money for personal use as follows:

Cheque No.	Amount in Rupees	In favour of
139478	2 lacs	Self
139479	3 lacs	Self
139481	5 lacs	Rexona (unconnected party)
139482	4 lacs	Rexona
139457	15 lacs	BSL
139458	15 lacs	BSL (when confronted by PG, R2 remitted a sum of Rs. 25 lacs to Company's account but the rest Rs. 5 lacs out of Rs. 30

		lakhs were not returned)
139459 and 139460	5 lacs each	BSL

8. Further, the petition states that the Company had a term loan of Rs. 275 lacs and OCC of Rs. 85 lacs sanctioned by Canara Bank in February 2005 and the limits were enhanced to Rs. 200 lacs for OCC and 225.75 lacs for term loan in January 2008. Amongst the collaterals to be furnished to Canara Bank, was Plot No. 594 at Pilakhwa, Ghaziabad owned by BSL Buildcon (controlled by LA), personal guarantee of LA, corporate guarantee of BSL Buildcon (P) Ltd. and subordination of unsecured loans as on 31.03.2007 of Rs.80.10 lacs were also required. The LA group failed to furnish any of the collaterals because of which the SBF could not get the much needed sanctions for enhancement from Canara Bank.

9. Another averment made in the petition is that LA bought a plot in the name of BSL Buildcon and requested PG to contribute to it in return for directorship in BSL Buildcon. PG contributed a sum of Rs. 15 lakhs from his personal account. The sale deed was executed in BSL's favour in June

2006. LA without PG's knowledge replaced his own property in his individual name which was mortgaged with Canara Bank on behalf of the SBF with the aforesaid plot bought in the name of BSL Buildcon in which PG had also contributed, thus violating his own commitment towards the SBF. Further, PG was never made a director of BSL Buildcon.

10. Thus, PG alleges that the Respondents have committed the above acts of oppression and mismanagement to acquire control of SBF. Thus, PG has prayed for cancelling the illegal allotment of 3,66,750 equity shares by LA to his own group on 17.12.2007 and 28.1.2007, restoration of shareholding pattern as on 30.09.2007 and remove LA as director of SBF amongst other reliefs.

Reply by the second Respondent:

11. LA in his reply states that PG persuaded LA to invest in SBF and offered LA equal share and thus, LA agreed to start the new business with PG in a 50:50 ratio of the shareholding. Even for obtaining finance from the Canara Bank, the personal guarantees and personal and properties, which were mortgaged for the purpose of obtaining the finances were provided in ratio of 50:50.



12.Despite clear-cut understanding as regards division of responsibilities between LA and PG, LA was sidelined and visits by LA to the factory of SBF were discouraged by PG. LA repeatedly asked PG for operational and financial data of SBF and asked that regular board meetings be called to discuss the operations but all such requests were ignored.

13.LA states that allotments made on 17.12.2007, 28.12.2007 and 27.02.2008 were made consequent upon increase of authorized capital of SBF to Rs 150 lakhs on 21.11.2007 to maintain the 50:50 ratio and with knowledge and consent of PG. Thus, the increase was in no way prejudicial to the interests of PG or SBF. Further, LA states that no board meetings have been held in SBF till date, not even for the earlier allotments of shares to PG and his group and thus, similarly, no board meeting was held for the concerned allotments to the LA's group.

14.LA also claims that the digital signature of PG was with PG himself and he had placed the same on the Form 2 and also claims that the earlier forms filed for allotment of shares were filed physically and thus, required PG's physical signature.



15. Further, LA states that Santokh Singh and Jaswinder Singh are proprietors of Khatter Exports whereas Ramesh Nath Mehra is the proprietor of Kanishka Exports and that the money for allotment was received before 31.03.2017. however, PG has only annexed bank account statements of SBF from 01.12.2007 to 14.12.2007.

16. Regarding the withdrawal of money through cheques, LA states that ch. No. 139478 for Rs.2 lakhs and ch.No. 139479 for Rs.3 lacs were issued on PG's instructions for SBF's business purpose as PG was out of town at that time. The cheques 139481 for Rs.5 lakhs and 139482 for Rs.4 lakhs for Rexona were issued as advance payment to Rexona for supply of raw materials; however, Rexona went into liquidation and could not supply the raw material.

17. LA has made certain counter claims of oppression and mismanagement against PG. LA states that he came to know about the increase of OCC limit by Canara Bank in January 2008 when he received papers for his signatures for enhancement. LA claims that his consent was never taken and no board meeting was held to make the decision. LA states that none of the papers



submitted to Canara Bank for enhancement of the OCC limit carried his signatures and thus, PG in connivance with the bank had got the sanction. The enhanced limits were to be utilized by PG for his personal interests.

18. The fact that LA has not given his consent to the enhancement was brought to notice of Canara Bank by LA himself vide his letter dated 01.05.2008. After receiving LA's letter, Canara Bank vide letter dated 06.05.2008 withdrew the enhancement.

19. Further, LA states that PG has withdrawn huge sums to the tune of Rs.9.66 crores from SBF's account and has also transferred huge funds to account of friends and relatives.

20. LA states that the production/turnover shown in the books of account of the SBF is not commensurate with the power consumed by SBF which shows that the sales of the SBF have been suppressed and are being reflected at a very low level as compared to the actual production. PG along with Mr. Ritesh Goyal, Udit Goyal and Mrs. Ruchi Goyal (PG's relatives) are guilty of manipulating the records of the SBF to the detriment of the Respondents to the present petition.



21. Further, LA alleges that since all books of accounts, registers etc are kept in PG's possession, LA had made repeated requests to inspect the same but PG denied any opportunity for inspection which raises the presumption that PG has manipulated the accounts.

Rejoinder in response filed by the petitioner, PG:

22. PG in its rejoinder has denied all the averments made in the reply by the LA. PG states that he came up with the proposal of establishing the SBF and agreed to induct LA in his business with the ratio of 70:30 shareholding only because they were related. Further, a perusal of the sanction letter of Canara Bank makes it clear that the term loan and the cash credit limit were provided by bank primarily on the basis of the collaterals given by PG, contrary to what has been claimed by LA in his reply. Further, from all the collaterals furnished to Canara Bank, almost 70% of the collaterals and guarantees was that of PG's group.

23. PG states that LA has admitted in his reply that no board meeting ever took place in SBF and that no board resolution was passed in favour of the



allotment of the shares. Thus, by the own admission of LA the allotment was illegal. Another discrepancy which PG has pointed out in the rejoinder regarding the allotment of shares is that the Form 2 uploaded on the MCA portal indicates that the shares have been allotted against cash however no cash was received by SBF and no cash transactions have been recorded in the books of accounts for the same; on the contrary, the unsecured loan lying with the company has been converted for allotment of the shares. Further, PG also states that Mrs. Seema Agarwal, wife of LA, has stated on affidavit that she had never provided consent for allotment of shares in return for conversion of unsecured loans.

24. PG questions that if LA did not approve the enhancement of OCC by Canara Bank then why did LA proceeded to withdraw huge sums of money even after the unauthorized sanction was granted by the bank. Regarding enhancement of the credit limit, PG states that Canara Bank had subjected the enhancement to certain terms and conditions stated in the letter dated 11th January 2008 and finally the enhancement was not sanctioned because those terms were not fulfilled due to the disinclination of LA in giving his consent to the enhancement. Thus, the enhancement was not a fraudulent act



of PG and in fact, the sanction did not go ahead because there was absence of consent from R2.

25. PG has produced LA's CIBIL report which shows that he has taken loans of lakhs of rupees and has defaulted in repayment to banks. PG also states that the banks have initiated proceedings under the provisions of SARFAESI for default. Further several proceedings under Section 138 of the Negotiable Instruments Act, 1881 are also pending against the LA. Thus, PG states that LA himself has committed various defaults and is caught in multiple litigations and thus, cannot be trusted as person to be capable of carrying out the operations of SBF sincerely.

26. Regarding R3, PG states that R3 had created crores of imbalances in the balance sheet of SBF to create financial records in favour of LA and when the same was pointed out by PG and PG asked R3 to perform his duty judiciously, R3 discontinued to finalize the accounts of SBF and refused to audit the accounts from financial year 2007 onwards and also did not file the balance sheet of SBF as a result of which accounts of SBF for accounting years 2007-08, 2008-09 and 2009-10 have not been finalized.



Application by Respondent 3:

27. The third respondent, the proprietor of M/s Gupta Mahesh & Co. and the statutory auditor of SBF, has not filed a reply to the company petition but has filed an application for dismissal of the petition qua R3 and deletion of R3 from the array of parties. R3 claims that PG filed a false complaint against R3 before the Institute of Chartered Accountants of India alleging misuse of the digital signature of PG without his knowledge and without his authority, in other words, making the same allegations against R3 as made in the present petition.

28. R3 further claims a disciplinary committee was formed and after perusal of records and evidence, R3 was held not guilty of professional and other misconduct. Thus, R3 avers that the allegations made in this petition are also false, fabricated and baseless and should be dismissed qua R3.

29. PG in his reply has stated that R3 has hidden the fact that a charge sheet has been filed against R3 and investigation is also pending in relation to charges of connivance and fabrication levelled against him. PG, relying on the charge sheet has tried to substantiate the allegations against R3 and has claimed that R3 has hidden the fact of the criminal proceedings pending



against him from the Tribunal because R3 is aware that he will be eventually convicted in the criminal proceedings.

C.P. 47/2008

Petition

30. The second petition C.P. No. 47 of 2008 has been filed under the Sections 397 and 398 of the Companies Act, 1956 by LA, who is the second respondent in the first petition C.P. 15/2008, along with Seema Aggarwal, LA's wife and Lalit Aggarwal HUF against PG, the only other director of SBF, Ritesh Goyal ("R3"), son of R2, Udit Goyal ("R4"), son of R2, Ruchi Goyal ("R5"), wife of R2, Chief Manager of Canara Bank, Mayur Vihar Branch ("R6") and Chairman/Managing Director of Canara Bank (R7"). The second petitioner Seema Aggarwal was deleted as a party to the petition by the CLB as a consequence to an application filed by Seema Aggarwal for deletion of her name from the array of parties as she alleged that her signatures on the petition were forged and she had not consented to the filing of the petition by her.



31. The backdrop of this petition is the same as that of C.P. No. 15 of 2008 and the averments made in the petition are the same as have been made by LA in his reply to C.P. 15 of 2008, where he is the second respondent. The claims/explanations which are unique to the present petition in addition to what has been stated therein are as follows:

- a. In terms of the understanding between LA and PG, LA agreed to contribute his hard-earned money in lieu of his 50% share in SBF. PG continued to allot shares to himself and his family members from time to time disturbing the equilibrium of SBF. When LA approached PG for restoring the equilibrium by allotting further shares to LA's group to bring at par with shareholding of PG's group, PG coerced LA into signing the financial statements for the year ended 31.03.2007 in bargain (which LA was not allowed to go through, as alleged by LA). It was only after signatures were made on the financial statements, PG agreed to increase the authorized capital of SBF from Rs.100 lakhs to Rs.150 lakhs with the intent to bring the shareholding at par. In furtherance of this purpose, LA's group was allotted 4,16,750 equity shares on 17.12.2007, 28.12.2007 and 27.02.2008 by conversion of



unsecured loans lying with SBF. thus, no prejudice whatsoever as purported and perceived has been caused to PG's group.

- b. LA claims that PG's clandestine removal of goods belonging to SBF which is a clear manifestation of malafide intent and mismanagement on part of the Respondents. LA has prayed for appointment of an independent chartered accountant to assess the impact and effect of malafide acts of PG in suppressing the production/turnover of SBF and unauthorizedly removing the goods so produced and selling them for cash by PG.
- c. LA also claims that on the basis of power consumption by SBF during 2005-06 and 2006-07, the production of SBF should have been 9345 MT and 21305 MT instead of 385 MT and 10419 MT as reflected in the books of account for these two years. This suppression of production translates into a loss of revenue of around Rs.10 crores in 2005-06 and Rs.20 crores in 2006-07. LA claims that PG has pocketed the above sums causing serious loss not only to the SBF but also to the stakeholders including LA. An analysis of the power bills for the period 2007-08 indicates that average rate per unit is Rs.3.79



per unit as was projected by SBF and the said average rate per unit has been used for calculating the 'ought to be actual turnover' as against 'purported/reflected actual turnover'.

- d. In October 2007 LA wrote to R6 for making the operation of the bank account of SBF jointly in place of several signatures of LA and PG. However, R6 rejected the request of LA stating that it has to be accompanied by a board resolution. LA states that though R6 rejected LA's request for joint operation on the pretext of unavailability of board resolution, R6 sanctioned the enhancement of the cash credit limit without asking for a board resolution to that effect.

Reply:

32.PG has filed his reply and has made the same averments as found in C.P. 15/2008. The grounds/explanations taken in the present reply which are raised for the first time herein are as follows:

- a. LA enquired about the affairs of SBF only for about the first six months but neither enquired nor visited the factory premises after that.



Therefore, with the express consent of LA, PG was given entire responsibility to run, operate and manage the affairs of SBF. to this end, the shareholding of PG was gradually increased from 50% to 70% over a period of about 2 years.

- b. Regarding the allegation of withdrawal and transfer of sums of money from SBF's account, PG states that all the transactions have been accounted for in the books of accounts of SBF which have also been annexed with the reply. The money has been mostly used towards paying the wages, salary, telephone bills, conveyance and other miscellaneous expenses. Further, the cheques have been mostly issued towards purchase of raw materials and to transporters as recorded in cash book entries of SBF.
- c. With regard to the discrepancy in power consumption and production PG states that LA has mainly relied in the Project Report of SBF and such reliance is totally misplaced as LA has made selective references to draw an erroneous comparison between the actual production and power consumption.



- i. PG also pointed out that the total man power required under the Project Report is 32 persons, however, over the past years only about 20-25 persons have been employed by SBF. Therefore, it is obvious that the production would be lower than that which is provided in the said Project Report.
- ii. LA has stated that the actual production for the year 2006-07 should have been 21,305 MT whereas the Project Report itself states that the installed capacity of SBF's unit is 18,000 MT per annum. Therefore, the allegation of LA that PG is showing lower production in the books falls flat on its face.
- iii. The said Project Report makes projections for maximum production which would be attained under ideal conditions, which cannot be achieved/maintained all the time. There are instances such as abrupt power supply which results in cooling down of furnace which is used for melting the scrap iron, which requires a lot of power to reach the temperature at which the iron melts, which are to be considered. Therefore, there is every



possibility that the actual production may be less than the production under ideal conditions.

- d. PG denies that no actual board meetings have taken place in SBF and only paper meetings have taken place, as alleged by LA. PG states that since SBF has only 2 directors, in order to simplify matters, it was not a practice to take down the minutes of the meetings of Board of Directors. All resolutions used to be passed after lengthy and detailed discussions between the two directors. It has also been stated that being a director of SBF, it is also the responsibility of LA to ensure that the statutory meetings are convened at the appropriate time, in compliance with the law. Thus, the aforesaid conduct of LA shows the lack of interest of LA in the affairs of SBF.
- e. Further, PG states that Canara Bank enhanced the working capital only at the behest of both directors since both the directors approached the bank together for the enhancement.
- f. PG states that on 24.07.2008 the Company Law Board had directed the convening of a board meeting within 15 days and agenda for the



board meeting to be given within a week. Pursuant to the said order, an attempt was made to conduct board meetings on 04.08.2008 which was reconvened for 21.08.2008. On 21.08.2008, LA and the Company Secretary accompanying him resorted to rude, obnoxious and unprofessional conduct towards PG and his advocates. PG's advocates were thus compelled to write a letter of complaint dated 22.08.2008 to the advocates of LA. Upon receiving the said letter from PG, LA approached the Station House Officer at the Police Station, Sector-20, NOIDA, where he submitted a complaint dated 21.08.2008 against PG, the accountant of SBF and the advocates who were present at the board meeting with PG. The contents of the complaint as made out by LA are prima facie false, baseless, concocted, malicious and defamatory. LA in his complaint has gone as far as to say that the advocates for PG had manhandled him at the meeting. Some of the other false allegations made against PG and his advocates were that the advocates snatched LA's mobile phones and that the advocates physically restrained him from leaving the conference hall and also threatened him with physical harm. LA states that the complaint false and fabricated which is evident from the corresponding report made out by the police, which confirms the contents of the complaint only



to the extent that pursuant to the order of this Hon'ble Board, a board meeting of SBF was being convened at the Radisson Hotel, Sector 18, NOIDA. The police report goes on to state that on questioning the staff of the Radisson Hotel, the police were informed that no scuffle ensued between the parties.

Subsequent Developments:

33. The parties involved in the present dispute have initiated numerous proceedings/litigations against each other, the number of which as on 27.03.2017 ranged to more than thirty. Further, multiple applications have been filed by all parties even in the present two company petitions praying for various reliefs. It is neither feasible nor necessary to go into the details of all the proceedings and applications pending amongst the parties, thus, we are going to refer to the relevant developments which have taken place over the course of the present proceedings and have been brought to the notice of this Tribunal through applications and additional documents.

34. One of the applications filed and disposed of during the present proceedings was CA 150/2011 wherein the CLB vide order dated 08.03.2013 appointed



Seema Naresh Bansal and Co. to conduct fair and independent inspections of the financial transactions and accounts of SBF. The said order was challenged by LA before the Hon'ble Delhi High Court and the Hon'ble High Court by order dated 13.05.2013 modified the order dated 08.03.2013 to the extent that a comprehensive audit of the accounts of SBF may be undertaken by the chartered accountant appointed by CLB from the year 2007-08 to 2012-13. However, the auditor appointed resigned for various reasons and another auditor Kapoor S. Jain & Co. vide order dated 30.08.2013 was appointed by the Hon'ble High Court. The auditor so appointed contacted PG for relevant documents to carry out the audit but were not supplied with any documents. The Hon'ble High Court took note of this fact in its order dated 09.1.2013 and imposed costs of Rs.25,000/- on the respondents.

35. Another application CA 18/2013 was filed by LA for appointment of administrator of SBF and thus, the CLB appointed Mr. Rakesh Chandra as the administrator of SBF vide order dated 30.01.2014 for monitoring and coordinating the date to day working of SBF. On 24.03.2014 the administrator Rakesh Chandra filed his report before the CLB, in which, after noting the violation of various provisions of the Companies

Act 1956 the administrator requested CLB to discharge him from the post of administrator as he was unable to discharge the duties in view of the lack of documents or any records of SBF.

36.LA filed CA 43/2015 in C.P. 15/2008 for initiation of contempt proceedings against PG. in this application LA has placed on record documents such as a kalandra dated 03.06.2014 by Inspector Vijay Kumar of PS New Ashok Nagar. This kalandra reveals that PG had filed an NCR dated 6.07.2013 stating that a bundle of documents consisting of minutes book, statutory registers and ROC files of the company SBF were lost when the registered office of SBF was being shifted from the previous address at 3/56, Ram Gali, Pandav Nagar, Shahdara, New Delhi to the new registered office at A-651 b, New Ashok Nagar, Delhi – 96.LA on the other hand filed an NCR dated 15.04.2014 stating that the NCR filed by PG was false and PG was only trying to avoid the High Court's order for comprehensive audit of SBF's documents. In pursuance to this an enquiry was carried out, where it was found out that the NCR file by PG was false and fabricated. The owner of the premises in Shahdara where the alleged old registered office of SBF was situated stated that he did not know Pramod Goil and he had never rented out the premises to PG or to any company called Shree Bihari

Forgings Pvt. Ltd. It was found that the alleged new registered office in New Ashok Nagar was also a farce since the owner of that property said that PG rented the property for only 2 to 3 months at a rate of Rs. 3000 per month and visited the place only once a month, never brought any material in the shop and never put up any board of SBF. Notices were issued to PG to join the enquiry but he did not join it.

37. Subsequently, the Hon'ble High Court of Delhi in CO.A(SB) 32/2014 vide order dated 16.07.2015 appointed Mr. Justice Anil Kumar (Retd.) as the third administrator of SBF, before whom the books of accounts of SBF were to be produced on 16.09.2015 by order of the Hon'ble High Court. PG addressed a letter dated 17.09.2015 to the Administrator stating that Ritesh Goyal met with an accident when he was taking the documents of SBF from the factory to the administrator's address in Panchsheel. The car caught fire and all the documents in the car were destroyed by fire. Thereafter, PG stated to the administrator that he shall reconstruct the account books. The administrator in its report dated 29.02.2016 stated that PG did not reconstruct the account books and he also stopped appearing before the administrator. The administrator Mr. Justice Anil Kumar resigned from his post on 29.02.2016.



38. Certain more additional documents have been filed by LA which show the dubious workings carried out in relation to SBF. The Registrar of Companies (“RoC”) issued a show cause notice dated 03.10.2013 to SBF, PG and LA stating that SBF’s registered office has been stated to be at 3/56, Ram Gali, Pandav Nagar, Shahdara, Delhi – 32 but SBF is in default for not maintaining its registered office at the Shahdara address, as the letter sent to SBF’s registered office is returned back to the RoC office, Delhi with the remark ‘Left without Address’ and for violating Section 146 of Companies Act 1956.

39. Amongst the various orders passed against SBF and its officers by various authorities, an order dated 20.03.2013 passed by the Office of Commissioner, Customs, Central Excise Commissionerate has found that during the year 2008 SBF and its officers were involved in claiming CENVAT credit on invoices against goods/raw materials which were not actually received by SBF and thus, imposed a demand of Rs.35,74,199/- and further interest and penalty on SBF.



40. PG has filed his written submissions in the two company petitions. In the written submissions PG has placed on record statement of Arihant Chand Jain, Proprietor of Rexona Industries as given in FIR No. 787/09, P.S. Shakarpur, Delhi. In his statement the proprietor of Rexona Industries states that LA gave five cheques of Shree Bihari Forgings Pvt. Ltd. to him for repayment of a personal loan that LA had taken from him amounting to Rs. 24 Lakhs, which included ch. nos. 139481, 139483, 139485 and 139489 of Rs. 5 lakhs each and ch. no. 139482 of Rs. 4 lakhs. In the same FIR Mrs. Seema Aggarwal. The wife of LA gave a statement that she had never consented to the issue of shares of in December, 2007 against the unsecured loan of Rs.2,75,000/- as advanced by her to SBF and had never signed any application for the same.

41. The present two petitions were transferred from CLB to National Company Law Tribunal, New Delhi after institution of NCLT under the Companies Act, 2013. On 18.10.2016 the PG in C.P. 15/2008 and the respondents in C.P. 47/2008 were proceeded ex-parte as no one appeared on their behalf despite service of notice. Thus, arguments of LA were heard in both matters and orders were reserved.



42. Looking at the above stated facts and circumstances the following issues are framed:

- a. The jurisdiction under Section 397/398 of the Companies Act, 1956 being that of an equitable jurisdiction whether the parties have approached this Tribunal invoking the equitable jurisdiction with clean hands and if not, whether the petitions are liable to be dismissed on this ground?
- b. Whether R2 illegally issued 3,66,750 equity shares of R1 in violation of the provisions of the Companies Act, 2013 and behind the back of the PG to himself, to his HUF, wife and other friends and business associates?
- c. Whether R2 and R3 have misused the digital signature of the PG for illegally allotting the above shares?
- d. Whether allotment of shares alleged to be made by R2 were in violation of the terms imposed by Canara Bank in its term loan?
- e. Whether R2 siphoned off money from R1's bank account?



- f. Whether R2 replaced his Gurgaon property mortgaged with Canara Bank with property of BSL Buildcon for which the PG also paid Rs. 15 lacs?
- g. Whether the PG has siphoned off sums of R1?
- h. Whether the PG has manipulated the books of accounts, financial statements and other records of R1?
- i. Whether the enhancement of the cash credit limit from 85 lacs to 200 lacs by Canara Bank in favour of R1 was in violation of specified procedure?

First Issue

43. In view of allegations of grave nature being made by each of the petitioner's primarily against the other in the respective petitions in relation to the affairs of the 1st respondent company, for deciding the first issue it is necessary to discuss the principle of equity that the person who seeks equity must come with clean hands and its application in cases of oppression and mismanagement.



44. The Hon'ble Supreme Court in *Sangramsinh P. Gaekwad & Ors. vs. Shantidevi P. Gaekwad (Dead) through LRs & Ors.*, while discussing the nature of reliefs that can be granted in the case, stated as follows:

“204. The Court may also refuse to grant relief where the petitioner does not come to court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair and that the relief granted should be restricted. (See Re London School of Electronics, [1986] Ch. 211”

45. The Hon'ble High Court of Bombay in *Abdul Wahid Abdul Gaffor Khatri & Ors. vs. Safe Heights Developers Pvt. Ltd. & Ors.* held as follows:

“18. The CLB has, after a detailed consideration of the Appellants' conduct, arrived at a finding of fact that the Appellants had suppressed material facts and had not come with clean hands, having indulged in various acts of misconduct as set out in the order, including running a parallel Board of Directors, holding meetings without any notice (as opposed to the Respondents having shown UPC records for service of notice for their meetings) and

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appointing/removing directors at their whim. The CLB has rightly noted that a party seeking relief in an equitable jurisdiction must itself act equitably (i.e., a person who wants equity must do equity), and has arrived at a conclusion that the Appellants have not acted equitably.

19. In their submissions, the Appellants have sought to deflect attention from their own defaults by alleging defaults on the part of the Respondents. The Appellants have not been able to deny the illegalities committed by them, but have simply alleged that the same yardstick was not applied to the Respondents. This stand is factually incorrect in as much as the Appellants did not give any notice for their meeting, whereas the Respondents had given notice by UPC. Even otherwise, it is the Appellants who have approached the CLB in the exercise of its equitable jurisdiction, and it is the Appellants who must show that they have acted equitably and with clean hands. It is no answer to contend that their illegalities are justified by alleged illegalities on the part of the Respondents, which in themselves have been denied.”



46. The High Court of Karnataka in *Srikanata Datta Narsimharaja Wadiyar vs. Sri Venkateswara Real Estate Enterprises (Pvt.) Ltd. & Ors.* denied the reliefs prayed by the petitioner and stated as follows:

“Even assuming that the allegations of the petitioner, if proved, do make out a case of oppression and mismanagement within the scope of sections 397 and 398 of the Act, mere proof of those allegations would not entitle the petitioner to the reliefs sought for when these reliefs are discretionary reliefs and they will be granted only to persons who approach this court in good faith and the parties who approach this court for equitable reliefs must come with a clean record. I do not go to the extent of accusing the petitioner for not approaching court with clean hands, but I am satisfied that the petitioner’s earlier conduct borders on recklessness as he is prepared to disown his own obligations, his own documents for the sake of obtaining some advantage against his adversary. So, such a person should not be entitled to the reliefs under sections 397 and 398 of the Act.”

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47. The Hon'ble National Company Law Appellate Tribunal in *Surgi Aid Lifecase P. Ltd. & Ors. vs. Rahuldev Vyas*, overruled the order of the NCLT in which the NCLT had granted relief to the petitioner even when it was apparent that the petitioner had not approached NCLT with clean hands.

“9. From the above, it is clear that the learned National Company Law Tribunal could see from the record that the original petitioner was not with clean hands. Rather, the last paragraph of the impugned order shows that the National Company Law Tribunal was not in a position to give a finding on "oppression and mismanagement" but strained itself to pass orders for setting aside appointment of respondent No. 3 and cancelled the allotment of shares on December 26, 2016 (which development had occurred pending the company petition). When it is on record that the petitioner himself opted not to oversee affairs of the company since 2012 to 2016 and failed to discharge statutory duties, equity should hardly stand in his favour. It is also on record that he was changing addresses without bringing the same on record. It is also held against him that he illegally diverted money due to the company to his account. It is surprising that the National Company Law Tribunal should still have given any relief to such petitioner.



17. We find that when the National Company Law Tribunal could not record finding of oppression or mismanagement and there was material to show that the petitioner had not come with clean hands, it was not open for the learned National Company Law Tribunal to still go on to set aside the appointment of respondent No. 3 and set aside shares issued as per the resolution passed on December 26, 2016 or give direction that the respondents will purchase the shares of the petitioner. For the above reasons, the appeal is allowed. The impugned order of the National Company Law Tribunal is quashed and set aside.”

48. The Company Law Board, Mumbai Bench in *Yogesh Chandrakant Bhavsar vs. Vraj Integrated Textile Park Ltd. & Ors.* has held as follows:

“22. The State of affairs as noted in para 21 above in this matter is clamouring for ascertaining of siphoned off of Government Grants and Bank loans. This is not a case which can be thrown out at the threshold on account of alleged unclean hands of the petitioner. The conduct of the parties is a very important factor to be kept in view in

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these equitable proceedings. The court, therefore, exercising equity jurisdiction, cannot ignore the well known maxims of equity. Two such maxims are that he who seeks equity must do equity and he who comes into equity must come with clean hands. "...Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief". The petitioner seeking equitable relief must come with clean hands and good conduct. The Supreme Court has held that the maxim, he who comes into equity must come with clean hands does not mean that every improper conduct of the applicant disentitles him to equitable relief. The maxim may be invoked where the conduct complained of is unfair and unjust in relation to the subject-matter of the litigation and the equity sued for. The CLB would do well to consider the severity of the allegations of oppressive conduct and the prejudice caused to the petitioner vis-a-vis the respondents since the primary purpose of the remedy provided by the sections 397 and 398 is to protect minority shareholder from the oppressive conduct of the majority shareholder. If a person acts in



a manner prejudicial to the interest of the company as well as the shareholders acting in violation of mutual trust and confidence his conduct would be that of a person who has not come to the court with clean hands. The affairs of a company can be conducted oppressively by the directors doing nothing to defend its interest when they ought to do something just as they can conduct its affairs oppressively by doing something injurious to its interests when they ought not to do it."

49. The petitioners in both petitions as evidenced from the facts have not approached the Tribunal with clean hands and have not only suppressed vital facts but are also responsible for acts which have caused grave prejudice to the interest of the company. The actions of the respective petitioner in the company petitions, occupying responsible positions and holding substantial stake in SBF, personally as well as along with their associates, have however acted not only irresponsibly but also illegally thereby leading to a complete breakdown in relation to the affairs of SBF, despite both being related to each other. Both the petitioners in the respective petitions, it is seen without giving much credence to the corporate principle and the statute relating to its governance, namely the Companies Act and that they are operating in a

corporate structure, have treated SBF as their own personal fiefdom and have sought to run the affairs of SBF on the lines of a sole proprietorship concern as if the respective petitioners in the two petitions are not answerable to law or to abide by any formalities. The consistent effort on the part of PG not to abide by the orders of the CLB or the Hon'ble High Court of Delhi or the Ld. Administrator appointed by it to produce the books of accounts and records of SBF when called for on the basis that it had been accidentally destroyed and the book and records, despite an undertaking that the same will be reconstructed, till today has not been done, but on the other hand PG had conveniently avoided the proceeding before the Hon'ble High Court as well as this Tribunal.

50. On the part of LA it is seen that without complying with procedural formalities even according to his own admission allotment of shares have been done on various dates on the premise that the respondents in the petition C.P. 47/2008 have also done in a similar manner. Can these sort of actions without adhering to prescribed formalities as laid down under law for increase of share capital and conduct of business be tolerated by this Tribunal, particularly in light of equitable jurisdiction being exercised as well in light of the above decisions cited in relation to the principles



governing this Tribunal as to the well-known maxim “he who seeks equity must do equity and he who comes into equity must come with clean hands”.

51. Under the given circumstances can the petitioners in the respective petitions surmount the test posed by the above two maxims with a view to invoke the equitable jurisdiction of this Tribunal and tug at its strings to afford remedies which are equitable in relation to SBF and its shareholders including the petitioners of the respective petitions. Both the petitioners of the respective petitions do not have the right to relief under the equitable jurisdiction of this Tribunal in view of their prejudicial conduct, which can be ascertained by the subsequent developments in the matter thus being guilty either according to their own admission or in view of their conduct before judicial authorities.

52. At the cost of repetition, PG, the petitioner in C.P. 15/2008, has avoided furnishing the documents of SBF at every turn, then claimed that all documents were accidentally destroyed and failed to reconstruct the documents even after undertaking the task of reconstruction, giving rise to the presumption that PG has an ulterior motive in not furnishing the documents of SBF for inspection/audit. Further, it appears PG has hoodwinked this Tribunal as well as the RoC with regard to the maintenance



of the registered office of SBF. From the various orders placed on record it also appears that PG has handled SBF's affairs in a dishonest manner. Thus, PG does not deserve the grant of any reliefs from this Tribunal and his petition is liable to be dismissed at the threshold.

53. LA, the petitioner in C.P. 47/2008, has himself admitted that no board meetings were held in SBF and that no board meeting was held for the allotment of shares to LA's group on 17.12.2007, 28.12.2007 and 27.02.2008. Further, the proprietor of Rexona Industries has admitted that the cheques given by LA to him was for repayment of a personal loan given by him to LA, contrary to the claim of LA in his pleadings that the amount was advance payment for raw material for SBF. LA's wife Seema Aggarwal has also made a statement that she had never consented to issue of shares to her against the unsecured loans advanced by her to SBF. All these facts point towards suppression of facts and false claims being made by LA. Thus, LA also does not deserve any of the reliefs claimed by him in his petition and C.P. 47/2008 is also liable to be dismissed.

54. A dispute which started out as a dispute between the two directors of the company regarding their shareholdings in the company has mutated, during



the course of the lengthy proceedings to reveal that, into a situation where the substratum of the company SBF has been destroyed due to the dubious acts and omissions of both the directors of the company. All the statutory records and documents of SBF are destroyed as claimed by PG. All assets kept in the factory premises of SBF have disappeared as per the report of the administrator Mr. Justice Anil Kumar. The administrator had authorized LA to initiate investigation in the matter of theft of assets of the company. No board meetings or general meetings have taken place in a number of years. Attempts made by various auditors and administrators have gone to waste due to lack of compliance on part of the two directors, especially PG all of which taken together with the fact that SBF is not even having an address in relation to registered office points out to a situation of deadlock in the management. Further, the facts also clearly establish there has been serious violation on the part of SBF in relation to availing CENVAT credit and SBF, its is evident, is being used as an instrument to perpetrate illegality between themselves as well as against the revenue, in other words, the State

55. There are about 30 matters pending before various forums to investigate into the different aspects of affairs of SBF and acts of PG and his group, which also include certain criminal proceedings. The CLB vide its order



dated 18.11.2015 directed the RoC, NCT of Delhi and Haryana, on the basis of the report filed by the first administrator of SBF, Rakesh Chandra, in which it was stated that SBF is responsible for violation of multiple provisions of the Companies Act, 1956. It appears from letter dated 16.06.2016 of the RoC addressed to LA that the matter is under process. However, no further information is available in relation to these proceedings.

56. Keeping in mind all the facts and circumstances of the present matter it is evident that there exists a ground for winding up SBF on the grounds that it is just and equitable to do so. The only question confronting the Tribunal is whether by such an action the shareholder of SBF will be unfairly prejudiced or the public interest will be prejudiced. This Tribunal is of the considered view that neither will be prejudiced, as it is seen that the SBF has no operations or business over the past several years because of the inter-se disputes between the main protagonists, namely the two directors of SBF, being its only two directors and the assets of SBF, it is evident, have also been stripped off. Thus, SBF has become a complete farce. It is also seen that public interest will only be best served by SBF being wound up as even otherwise due to non-filing of annual returns and balance sheets, SBF in any

case is liable to be struck off, as the pending proceedings before this Tribunal cannot be factor for not filing the annual returns and balance sheets and thereby the statutory compliances, all of which goes to the root of corporate governance. Thus, in any which way looked at, SBF is a fit candidate to be wound up taking into consideration the above noted factors.

57. In coming to the decision as above, this Tribunal is guided by the decision of the Hon'ble Supreme Court rendered in *Rajamundhry Electric Supply Corporation Ltd. vs. A. Nageswara Rao and Ors.*, where at paragraph 11, the Hon'ble Supreme Court, while dealing with a petition filed for winding up under 'just and equitable clause' as well as on the ground of inability to pay its debts had observed as follows:

"11. When once it is held that the words "just and equitable" are not to be construed ejusdem generis, then whether mismanagement of directors is a ground for a winding up order under section 162(vi) becomes a question to be decided on the facts of each case. Where nothing more is established than that the directors have misappropriated the funds of the company, an order for winding up would not be just or equitable, because if it is a sound concern, such



an order must operate harshly on the rights of the shareholders. But if, in addition to such misconduct, circumstances exist which render it desirable in the interests of the shareholders that the Company should be wound up, there is nothing in section 162(vi) which bars the jurisdiction of the court to make such an order. Loch v. John Blackwood Ld. [1924] A.C. 783, was itself a case in which the order for winding up was asked for on the ground of mismanagement by the directors, and the law was thus stated at page 788 :

" It is undoubtedly true that at the foundation of applications for winding up, on the 'just and equitable' rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business."

Further more the lack of confidence must spring not from dissatisfaction at being out voted on the business affairs or on what is called the domestic policy of the company. On the other hand, whenever the lack of confidence is rested on a lack of probity in the



conduct of the company's affairs, then the former is justified by the latter, and it is under the statute just and equitable that the company be wound up."

58. Thus, this Tribunal is of the considered view that in relation to the affairs of SBF there has been a absolute lack of probity in its dealings by both the petitioners and hence SBF is required to be wound up taking into consideration the facts and circumstances of the two company petitions filed by the rival parties to the lis and also having come to the conclusion that both the parties are not entitled to any reliefs as sought for in the respective petitions.

59. In consonance with the above decision and from 15.12.2016, this Tribunal has been empowered to wind up companies by virtue of Section 271 and 272 of the Act having been notified as amended by Insolvency and Bankruptcy Code, 2016 and on the grounds that it is just and equitable to do so, orders winding up of the SBF and further orders as follows:



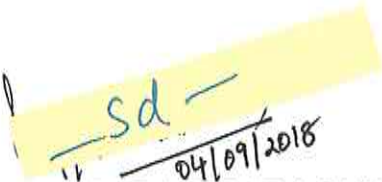
- a. In exercise of the powers under Section 275(1) appoints Mr. Tanuj Kumar Bhatnagar [e-mail id – tanujkumar85@gmail.com, mobile no. 9654906020/9868455181] as the company liquidator of SBF.
- b. The Company Liquidator, in absence of rules framed in relation to winding up by the Central Government, shall to the extent applicable follow the Companies Court Rules, 1959 in terms of Section 468(3) of the Companies Act, 2013.
- c. The notice to SBF as contemplated under second proviso to Section 273(1) stands dispensed with taking into consideration the facts and circumstances of the case.
- d. In exercise of the powers under Section 273(1)(e) this Tribunal further orders the directors of SBF, being the petitioner in their respective petitions, namely, Mr. Pramod Kumar Goyal and Mr. Lalit Aggarwal within 30 days of the order individually to file the Statement of Affairs in the form prescribed under the Companies Court Rules, 1959.



- e. The Company Liquidator appointed herein shall file a declaration as contemplated under Section 275(6) of the Companies Act, 2013 from the date of this order disclosing any conflict of interest or lack of independence in respect of his appointment.
- f. Further in terms of Section 277(4) the Company Liquidator named herein shall, within a period of 3 weeks from the date of this order constitute a winding up committee, with such members as are named therein.
- g. In terms of Section 277 of the Companies Act, 2013 the registry of this Tribunal is directed to communicate this order to the following:
- i. Company Liquidator herein
 - ii. Registrar of Companies, NCT of Delhi and Haryana.
 - iii. Further the parties to the proceedings shall also be communicated with a copy of the order as contemplated under the NCLT Rules, 2016



Both the petitions stands disposed of in terms of the above order passed in common.


04/09/2018
(R. VARADHARAJAN)
MEMBER-JUDICIAL