

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

T.P. Nos. 203-A/2016, 203-B/2016, 203-C/2016
In TP No. 203/397-398/NCLT/AHM/2016 (New)
C.A. Nos. 216/2016, 227/2014, 228/2014
In C.P. No. 27/397-398/CLB/DL/1995 (Old)

Coram:

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.06.2017**

Name of the Company: J.P. Srivastava & Sons (Rampur) Pvt. Ltd.
V/s.
Gwalior Sugar Company Ltd.

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

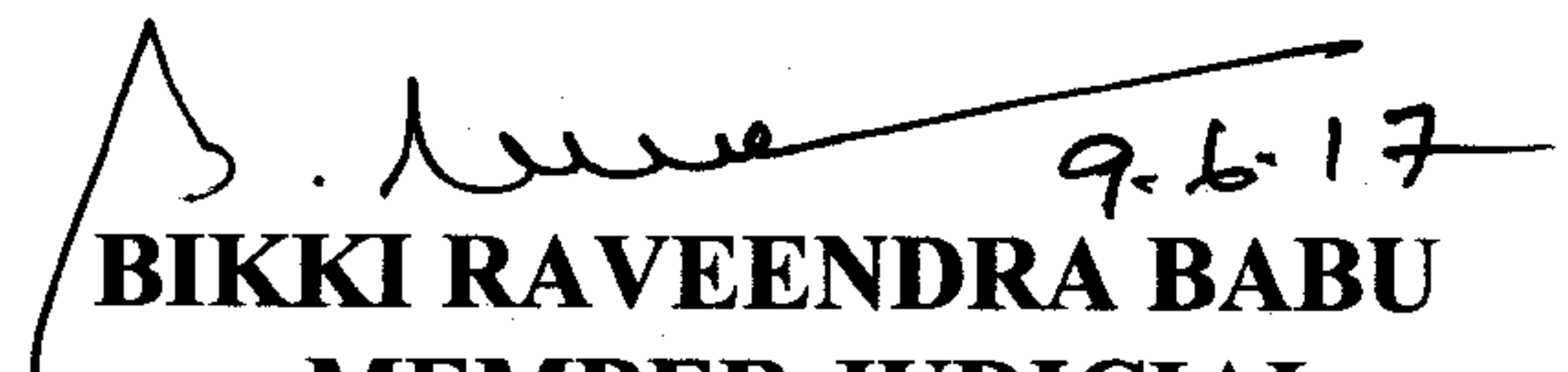
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.	Prabha Prasad for M/s Trivedi & Gupta, Adv.	& 1, 3, 6, 7, 8, 10	Petitioners	Prabha
2.	Mr. Harsh Parekh		Respondents	Harsh

ORDER

Learned Advocate Mr. Harsh Parekh present for Petitioner. Learned Advocate Ms. Prabha Prasad i/b Trivedi & Gupta present for Respondents no. 1, 3, 6, 7, 8 and 10.

Common Order on Applications pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 9th day of June, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

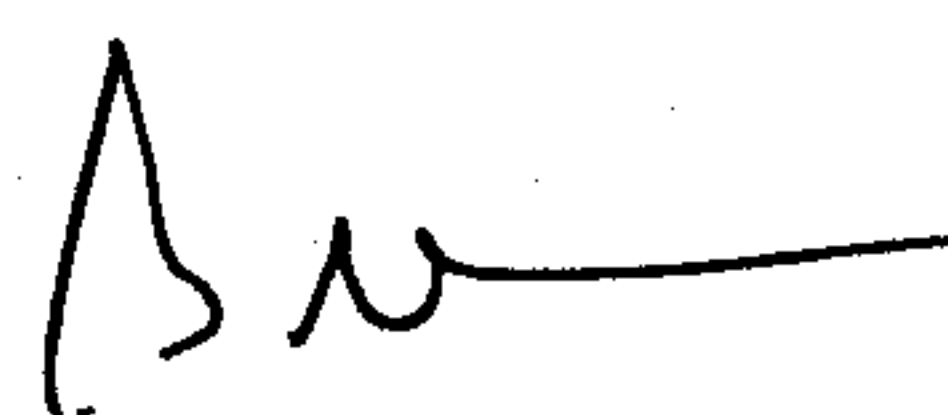
CORAM: SRI BIKKI REVEENDRA BABU, MEMBER JUDICIAL

**TP NO. 203-A/2016, 203-B/2016, 203-C/2016
IN T.P. NO. 203/397-398/NCLT/AHM/2016 (New)
C.A. No. 216/2015, 227/2014, 228/2014 (Old)
IN CP No. 27/397-398/CLB/DL/1995 (Old)**

IN THE MATTER OF GWALIOR SUGAR CO. LTD.

1. J.P. SRIVASTAVA & SONS
(RAMPUR) PVT.LTD. **Petitioners**
Kailash, Nawabganj, Kanpur (U.P)
Through its Secretary Mr. P. Bisht
2. Rampur Finance Corporation P. Ltd.
Kailash, Nawabganj, Kanpur (U.P)
Through its Secretary Mr. P. Bisht
3. Mrs. Nini Srivastava
W/o. Mr. Vijay K. Srivastava
Vill Vikuniya
Mehrauli, Gurgaon Road
New Delhi 110 030
4. Mr. J.K. Srivastava
S/o. J.P. Srivastava
R/o. Kailash, Nawabganj
Kanpur (UP)
5. J.K. Srivastava Family Trust
Kailash, Nawabganj, Kanpur (U.P)
(Through its Trustees Mrs. Nini Srivastava,
Mr. Vijay K. Srivastava & Mr. R.M. Srivastava)
6. Kunal K. Srivastava
R/o. Kailash, Nawabganj
Kanpur (UP)
7. Yatin K. Srivastava
R/o. Kailash, Nawabganj
Kanpur (UP)
8. Mr. Sushil Aggarwal
21, Crosthwaite Road
Allahabad (UP)

Versus



- Respondents**
1. GWALIOR SUGAR COMPANY LTD.
P.O. Dabra,
Dist. Gwalior (M.P.) & Ors
 2. H.K. Srivastava
S/o. J.P. Srivastava
Managing Director
M/s. Gwalior Sugar Company Ltd.
C/o. Gwalior Sugar Co. Ltd.
P.O. Dabra, Dist. Gwalior (M.P.)
 3. Vikram Srivastava
S/o. H.K. Srivastava
Jt. Managing Director
Gwalior Sugar Company Ltd.
P.O.Dabra, Dist. Gwalior (M.P.)
 4. Vir Srivastava
S/o. H.K. Srivastava
Executive Director
M/s. Gwalior Sugar Company Ltd.
P.O.Dabra, Dist. Gwalior (M.P.)
 5. Mrs. Hemlata Srivastava
W/o. H.K. Srivastava
C/o. Sugar Mill Colony
P.O. Dabra, Dist. Gwalior (MP)
 6. Mrs. Radhika Bhargava (Ne: Srivastava)
W/o. D. Bhargava, m D/o. H.K. Srivastava
C/o. EMA India Ltd.
C-37 Panki Industrial Area
P.O. Udyog Nagar, Kanpur – 22
 7. J.P. Srivastava Associates (Trading) P. Ltd. – 3
P.O. Dabra
Dist. Gwalior (MP)

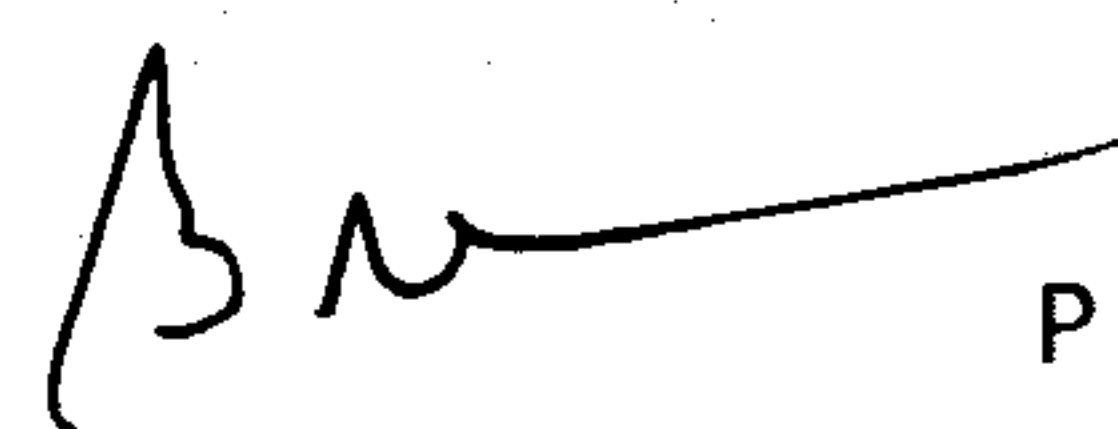
Appearance:

1. Learned advocate Ms. Tasneem Ahmadi with learned advocate Mr. Harsh Parekh present for petitioner.
2. Learned advocate Mr. Ramesh Singh with learned advocate Mr. Abhay Anand Jena with learned advocate Ms. Prabha Prasad with learned advocate Mr. Vir Srivastava present for respondents.



FINAL ORDER
Dated 09-06-2017

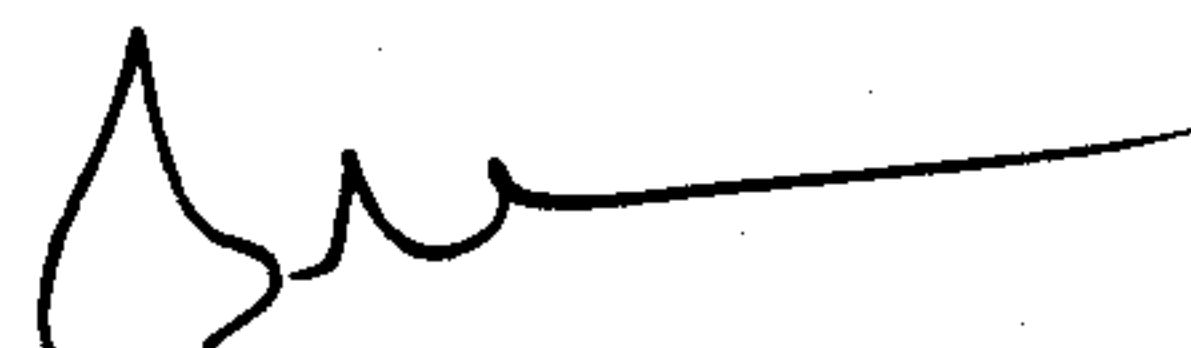
1. Respondents 3, 6 and 7 filed CA 216 of 2015 re-numbered as TP 203/A of 2016 under section 634 (A) of the Companies Act, 1956 read with Regulation 22 & 44 of the Company Law Board Rules and Regulations 1991 seeking enforcement of the orders dated 07.05.1996, 10.06.1996 and 18.01.1999 passed by Hon'ble Company Law Board by way of direction to the petitioners (JKS Group) to return the original share scripts along with blank transfer forms of the 5137 nos. of equity shares, 1279 nos. of redeemable cum preference shares and the 63.50 nos. irredeemable cum preference shares to the applicants (respondents 3, 6 & 7) the value of which was paid to the JKS group by way of encashment of bank guarantee of Rs. 3,09,56,250/-
2. Petitioners (JKS Group) filed this application under Regulation 17 & 44 of the Company Law Board Regulations 1991 to consider the impact of the subsequent events on the value of the shares held by the petitioner group and compute additional amount payable to the petitioner group.
3. Company application 227 of 2014 (203-B/16) is filed by the petitioners under Regulation 17 & 44 of the Company Law Board Regulations 1991 seeking an order the restraining the respondents Gwalior Sugar Company Ltd. and Gwalior



Agricultural Company Limited from barring or delaying release of 4759.69 acres of land that allowed to be retained by the company by virtue of the order of the Additional Commissioner dated 03.02.1998 on the same terms and conditions as contained in the order dated 25.04.2011 of the Hon'ble Supreme Court.

4. The facts in brief that laid to filing of these three applications are as follows: -
5. M/s. J.P. Srivastava & Sons (Rampur) Pvt. Limited & Ors., filed CP 27 of 1995 before the Company Law Board, Principal Bench, New Delhi under section 397 and 398 of the Companies Act, 1956 alleging the acts of oppression and mismanagement in the affairs of Gwalior Sugar Company Ltd.
6. During pendency of the proceedings before the Company Law Board, on 22.01.1996 the Company Law Board passed the following order: -

"In view of the close relationship between the parties, we suggested to the counsel for both the sides that they should try to work out an amicable settlement between the parties. The counsel have undertaken to do so. The result of their efforts will be intimated to us on 20.02.1996 at 2.30 p.m."



7. Again, on 07.05.1996, the Company Law Board passed the following order: -

"It was agreed by the parties that the petitioners will sell their shares to the respondents for a value per share to be determined by a valuer appointed by us and the value will be binding on all the parties. The parties will approach jointly reputed valuers and suggest an acceptable name for our approval on 30.05.1996 at 4.15 p.m."

8. On 10.06.1996, with the consent of the parties CLB appointed M/s. Thakur Vaidyanathan Iyer, Chartered Accountants, New Delhi to value the shares of the company.
9. Company Law Board in its order dated 18.01.1999 concluded that the fair value of the share of the company can be considered as Rs. 6000/- per equity share and Rs. 100/- each for the preference shares.
10. In the meanwhile, on 03.11.1998, respondent No. 8, Mrs. Radhika Srivastava filed a petition challenging order dated 10.06.1996 alleging that she has no knowledge about the compromise. Mrs. Radhika Srivastava in the said application raised the issue that petitioners did not hold requisite 10% share capital of the company and, therefore, petition, under section 397 and 398 of the Companies Act, 1956 is not

maintainable. Hon'ble Company Law Board by its order dated 18.01.1999 rejected the challenge made by respondent no. 8 – Mrs. Radhika Srivastava against consent order dated 10.06.1996. However, the company Law Board upheld contention of respondent no. 8 – Mrs. Radhika Srivastava that the petition is not maintainable on the ground that petitioner did not hold requisite 10% shares.

11. As against the order of the Company Law Board dated 18.01.1999, J.P. Srivastava & Sons (Rampur) Pvt. Ltd. filed Company Appeal No. 6 of 1999 challenging dismissal of the Company Petition on the ground it is not maintainable.
12. Challenging the conclusions reached in para 9 and 10 of the CLB order dated 18.01.1999, Company case No. 5 of 1999 and Misc. Appeal 1 of 2005 were filed. All the appeals were dismissed by Hon'ble Single Judge of the Madhya Pradesh High Court, Jabalpur Bench at Gwalior vide common order dated 17.03.2009. Against the said three orders, three separate applications were filed before Division Bench, Madhya Pradesh High Court. Division Bench dismissed the appeal filed by Mrs. Radhika Srivastava and H.K. Srivastava against which special leave application was preferred before Hon'ble Supreme Court. Hon'ble Supreme Court in Civil Appeal No. 6951 of 2004 held that the petitions filed before the Company Law Board u/s 397 and 398 is maintainable and thereby set aside order of the division. Bench judgement and remanded the matter to the



Hon'ble Single Judge of the Hon'ble High Court of Madhya Pradesh for disposal of all the appeals.

13. Thereafter, the Hon'ble Single Judge of Madhya Pradesh High Court held that the Company Law Board has not decided other matters on merits and send back the matter to the Company Law Board. Against the said order of the single judge of Hon'ble High Court, J. P Srivatava and Sons filed another Civil Appeal No. 5471-72 of 2008 before Hon'ble Supreme Court of India decision of which is reported in [2008] (8) S.C. cases page 754. Hon'ble Supreme Court of India passed the following order dated 03.09.2008.

"We, therefore, would reiterate the earlier order of remand to the Single Judge passed by this Court. In that view, we direct:

- (1) That the single Judge will now take up all the three appeals filed by the parties against the order of CLB and dispose of the same in the light of the observations made by us.*
- (2) This shall be done within six months from the date this order reaches the High Court.*
- (3) All the other contentions would be allowed to be raised and considered except the question of tenability of the petition under Sections 397*

and 398, which has been finally decided by this Court in the earlier round of litigation.

(4) The parties are also permitted to raise the questions regarding the subsequent developments directly in accordance with law and only if they are germane to the matter in question.

The appeals are disposed of in above terms. There shall be no orders as to costs."

14. The Hon'ble High Court of Madhya Pradesh, Jabalpur Bench, in Misc. Application 1/2005 in company case 5 of 1999 in its order dated 17.03.09 in para 12 observed as follows: -

"Only question involved in this appeal is about the correctness of the valuation report and the principles of valuation adopted by the valuation."

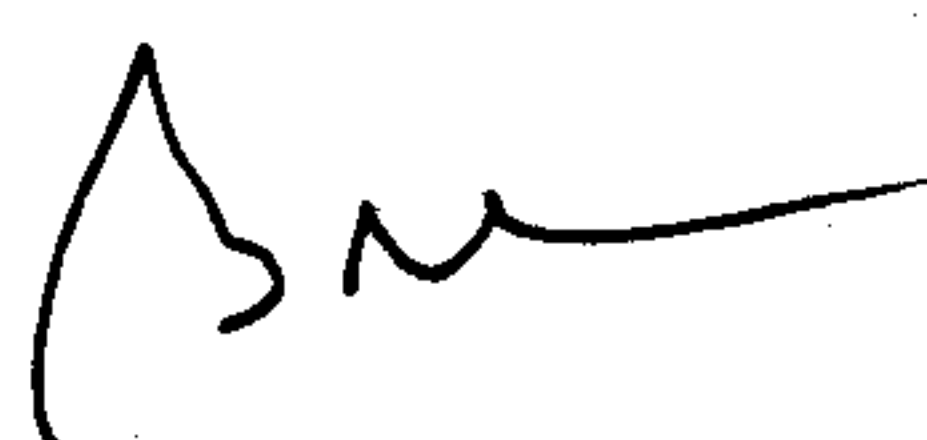
15. In para 21, 22, 23 & 24 of the judgement of the Hon'ble Madhya Pradesh High Court Bench at Gwalior it is held as follows: -

21. "So far as the question of mismanagement and other ingredients of sections 397 and 398 of the

Companies Act are concerned, the Company Law Board has not given any finding. Counsel for the appellants has also confined his argument only to the question of valuation. Counsel for the respondents, however, filed certain documents on record to show that certain lands which were acquired under the provisions of Ceiling Act are released. This position is disputed by the counsel for the appellants. This court has put a specific question to the counsel for the respondents whether the respondents want another report on the valuation in the changed circumstances to which Ms. Ahmadi contended that she is satisfied with the earlier report. She has filed documents to show that certain land is released, however, she still relies on earlier report and does not want to press for any fresh valuation report.

22. Since there are no findings of the Company Law Board on the ingredients of Sections 397 and 398 of the Companies Act, the matter is remanded back to the Company Law Board to decide the said question taking valuation of the shares at Rs. 6000/- per equity share.

23. So far as subsequent events are concerned, the Apex Court has permitted the parties to raise regarding subsequent developments directly in accordance with law, only if they are germane to the

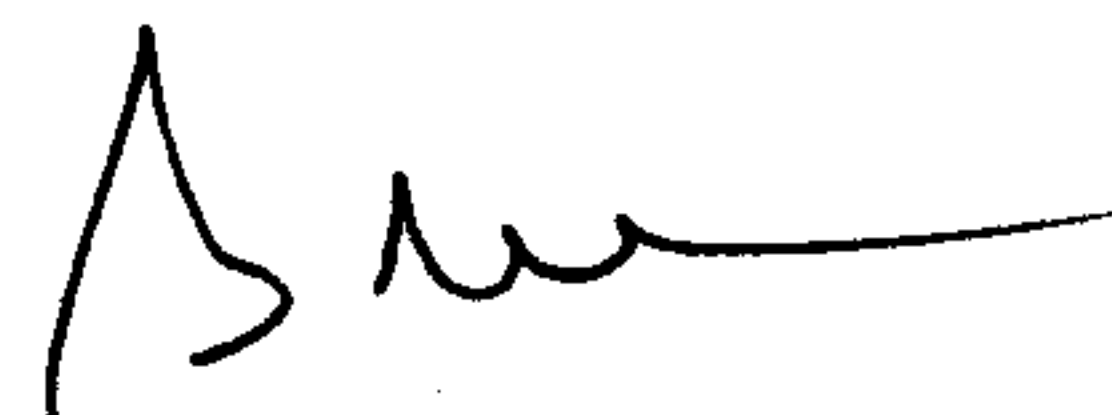


matter in question. Question of subsequent events in the present case does not arise from the impugned order which is the requirement of section 10 (f) of the Companies Act. However, said events can be considered by the Company Law Board for deciding the question of mismanagement.

24. With these observations, this appeal stands dismissed with no order as to costs"

16. Thereafter, J.P. Srivastava & Sons (Petitioners) filed S.L.P (Civil) no. 9643 of 2009 challenging the order dated 17.03.2009 passed by the Hon'ble High Court of Madhya Pradesh without taking into consideration of subsequent events and sending the matter to the Company Law Board to decide the aspect of oppression and mismanagement.

17. Mr. Vikram Srivastava, Managing Director of Gwalior Sugar Co. Ltd. has filed special leave petition (Civil) 28768 of 2009 before Supreme Court of India as against the order dated 17.03.2009 passed by the Hon'ble High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in appeal 5 of 1999 renumbered as Misc. Appeal No. 1 of 2005. Challenging confirmation of value of the shares at Rs. 6000/- per equity share by Company Law Board.



18. In special leave petition 9643 of 2009 filed by J.P. Srivastava & Sons, Hon'ble Supreme Court passed the following interim order on 04.05.2009.: -

"In the meantime, there will be an interim order restraining the respondents, their servants, agents and assigns from encumbarancing, alienating, converting and asset of, or land of Gwalior Sugar Company Ltd. and/or its wholly owned subsidiary Gwalior Agricultural Company, until further orders.

Liberty is given to the respondents to apply for variation of this order upon notice to the petitioner"

19. Hon'ble Supreme Court of India in IA 9 of 2011 in SLP (Civil) 9643 of 2009 by its order dated 25.04.2011 passed following order: -

"Accordingly, we vacate the interim order passed on 4th May, 2009 subject to the respondents 1 and 2 securing the claim of the petitioner in accordance with the valuation made by the Company Law Board by way of a bank guarantee of a nationalised bank to the satisfaction of the Registrar of this Court. We also make it clear that the respondents will not be entitled to deal with or alienate the properties or lands which were allowed to be retained by the Additional Commissioner by virtue of his order dated 3rd

February, 1998, without the leave of the Court. The Bank guarantee is to be furnished within 7 days from the date and is to be kept renewed and valid till the disposal of these Special Leave Petitions.

The application stands disposed of accordingly.

Let these two special leave petitions be listed together for final disposal on 3rd August, 2011, at the top of the list."

20. Hon'ble Supreme Court of India on 09.12.2014 passed the following Common order in SLP (Civil) 9643 of 2009 and SLP (Civil) 28768 of 2009.

SLP (Civil) 9643 of 2009

"The Special Leave Petition is dismissed.

However, the petitioners are permitted to encash the bank guarantee given to them by the respondents in pursuance of this Court's order dated 25th April, 2011, as modified on 6th May, 2011.

In view of the dismissal of the special leave petition, all the I.A.s shall stand disposed of."

21. SLP (Civil) 28768 of 2009

"The learned counsel for the petitioners seeks permission to withdraw the special leave petition.



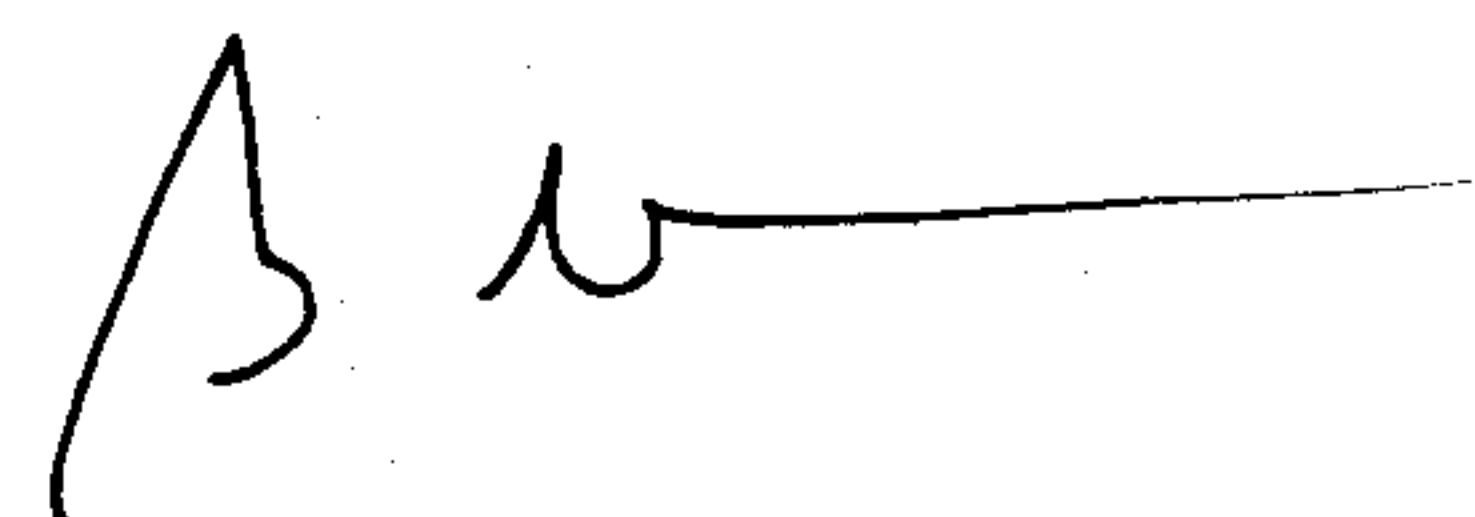
Permission is granted.

*The Special leave petition is disposed of as
withdrawn.*

*I.A. for withdrawal of the Special Leave Petition shall
also stand disposed of accordingly”.*

22. In view of the order of Hon'ble High Court of Madhya Pradesh dated 17.03.2009 passed in Misc. Company Appeal No. 1 of 2005, Company Appeal No. 27/1995 was remanded to the Company Law Board.
23. Thereafter, petitioners filed Company Application No. 227 of 2014 seeking an order restraining Gwalior Sugar Company Ltd. and Gwalior Agricultural Company Ltd. from in any matter dealing with 4759.69 acres of land that allowed to be retained by the company by virtue of the order of the Additional Commissioner dated 03.02.1998.
24. Gwalior Sugar Company Ltd. filed contempt petition No. 12 of 2015 in special leave petition (Civil) 9643 of 2009 before Hon'ble Supreme Court of India against the petitioners J.P. Srivastava & Sons (Rampur) Pvt. Ltd. & Ors. with a prayer to initiate contempt proceedings against the contemnors 1 & 2 and consequently direct the petitioners to deposit the original shares with blank transfer forms with the Registrar of Hon'ble Court and dismiss CP 27 of 1995 and CP 46 of 2000 pending before the Company Law Board.

25. Thereafter, respondents no. 3, 6 and 7 filed Company application 216 of 2015 for enforcement of orders dated 07.05.1996, 10.06.1996 and 18.01.1999 and give directions to the petitioners (JKS Group) to return original share scripts along with blank transfer forms of the 5137 nos. of equity shares, 1279 nos. of redeemable cum preference shares and the 63.50 nos. irredeemable cum preference shares to the applicants (respondents no. 3, 6 & 7) the value of which being secured by the bank guarantee of Rs. 3,09,56,250/- which has already been encashed by the original petitioners.
26. Thereafter, on 15.09.2015 contempt petition 12 of 2015 in SLP (Civil) 9643 of 2009 was withdrawn with the permission of Hon'ble Supreme Court.
27. Petitioners also filed CA 228 of 2014 with a prayer to consider impact upon the value of the share held by petitioner group and compute the additional amount payable by the respondent group to the petitioner group. That is how CA 227 of 2014 and CA 228/2014 which are renumbered as TP 203-B and 203-C of 2016 came up for hearing before this Tribunal after its constitution having been transferred from the Company Law Board, Delhi.



28. Heard arguments of learned counsel for the original petitioner and original respondents. Two points that needs adjudication in these three applications are as follows: -

- (1) Whether this Tribunal needs to take into consideration subsequent event viz. release of 4759.69 acres of land in favour of Gwalior Agriculture Company Limited. which is the wholly owned subsidiary of Gwalior Sugar Company Limited. by virtue of order of Additional Commissioner on 03.02.1998 for the purpose of consideration of value shares of the petitioners group.
- (2) Whether the orders dated 07.05.1996, 10.06.1996 and 18.01.1999 passed by the Hon'ble Company Law Board in company petition 27 of 1995 can be enforced by giving a direction to the original petitioners (JKS Group) to return the original share scripts along with blank transfer forms of the 5137 nos. of equity shares, 1279 nos. of irredeemable cum preference shares to the respondents 3,6 & 7.

Point No. 1

29. Basis for the main contention of the learned counsel for the petitioner is the order of Hon'ble Supreme Court. As the order of the Hon'ble Supreme Court in Civil Appeal No. 5471-72 of 2008 decided on 03.09.2008. The said decision is reported in [2008] 8 SCC page 754 J.P.

Srivastava & Sons (Rampur) Pvt. Ltd. versus H.K. Srivastava (Dead) through Lrs. & others. In the said judgement, Hon'ble Supreme Court permitted the parties to raise question regarding subsequent developments directly in according with law and only if they are germane to the matter in question. There is no reference in the aforesaid judgement of Hon'ble Supreme Court about the release of 4759.69 acres of land in favour of Gwalior Agricultural Company Ltd. taking into consideration as a subsequent development in valuation of the shares of the Gwalior Sugar Company Ltd.

30. However, learned counsel appearing for the petitioners vehemently contended that Hon'ble Supreme Court considered the subsequent developments viz. release of 4759.69 acres of land in favour of Gwalior Agricultural Company Ltd. and that is why Hon'ble Supreme Court permitted the petitioners to raise a question about subsequent developments.

31. The grievance of the petitioner in filing SLP (Civil) 9643 of 2009 against the order of Hon'ble High Court of Madhya Pradesh in Misc. Appeal 1 of 2005 as can be seen from the affidavit filed in support of SLP 9643 of 2009 is that the Hon'ble Madhya Pradesh High Court did not consider the subsequent events inspite of direction No. 4 given by Hon'ble Supreme Court in its judgement

dated 03.09.2008. One of the grounds taken in SLP 9643 of 2009 is as follows: -

"The Hon'ble High Court of Madhya Pradesh erred in not considering the subsequent events inspite of the directions (Direction No. 4) given by the Hon'ble Supreme Court in its judgement dated 03.09.2008 as follows: -

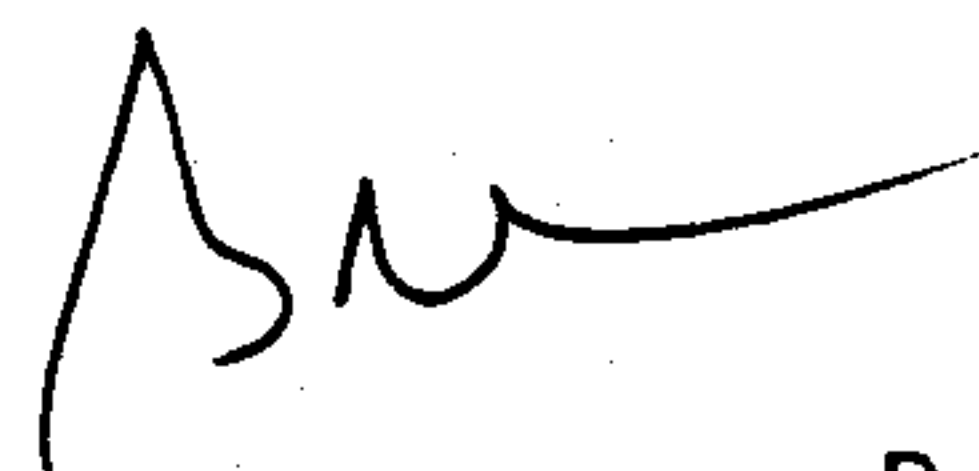
The parties are also permitted to raise the questions regarding the subsequent developments directly in accordance with law and only if they are germane to the matter in question".

32. The following order passed by Hon'ble Supreme Court in SLP 9643 of 2009 on 09.12.2014 is as follows: -

"The Special Leave Petition is dismissed.

However, the petitioners are permitted to encash the Bank Guarantee given to them by the respondents in pursuance of this Court's order dated 25th April, 2011 as modified on 6th May, 2011.

In view of the dismissal of the special petition, all the I.As shall stand disposed of."



33. From the aforesaid order of Supreme Court it can be concluded that the grievance of the petitioner that Hon'ble High Court of Madhya Pradesh did not consider the subsequent events inspite of directions given by Hon'ble Supreme Court has not been considered by Hon'ble Supreme Court. In this context is proper to refer judgement of Hon'ble Supreme Court reported in [1981] 2 SCC 663 in Ahmedabad Manufacturing & Calico Printing Co. Ltd. v/s Workmen and another. In the said judgement, of Hon'ble Supreme Court, counsel for the appellant, relied upon another decision of Hon'ble Supreme Court case reported in [1978] 3 SCC cases 119 Workmen v Board of Trustees of the Cochin Port Trust. In that decision Hon'ble Supreme Court observed as follows: -

"Indisputably nothing was expressly decided. The effect of non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any interference".

34. Order of Hon'ble Supreme Court in SLP 9643 of 1999 became final. Hon'ble Madhya Pradesh High Court did not consider the subsequent developments viz. release of 4759.69 acres of land

in favour of Gwalior Agricultural Company Ltd. The Hon'ble Madhya Pradesh High Court vide its judgement dated 17.03.2009 made in Civil Misc. Appeal 1 of 2005 observed as follows: -

"So far as the question of mismanagement and other ingredients of sections 397 and 398 of the Companies Act are concerned, the Company Law Board has not given any finding. Counsel for the appellants has also confined his argument only to the question of valuation. Counsel for the respondents, however, filed certain documents on record to show that certain lands which were acquired under the provisions of Ceiling Act are released. This position is disputed by the counsel for the appellants. This Court has put a specific question to the counsel for the respondents whether the respondents want another report on the valuation in the changed circumstances to which Ms. Ahmadi contended that she is satisfied with the earlier report. She has filed documents to show that certain land is released, however, she still relies on earlier report and does not want to press for any fresh valuation report.

Since there are no findings of the Company Law Board on the ingredients of Sections 397 and 398 of the Companies Act, the matter is remanded back to the Company Law Board to decide the said question

taking valuation of the shares at Rs. 6000/- per equity share.

So far as subsequent events are concerned, the Apex Court has permitted the parties to raise regarding subsequent developments directly in accordance with law, only if they are germane to the matter in question. Question of subsequent events in the present case does not arise from the impugned order which is the requirement of section 10 (f) of the Companies Act. However, said events can be considered by the Company Law Board for deciding the question of mismanagement.

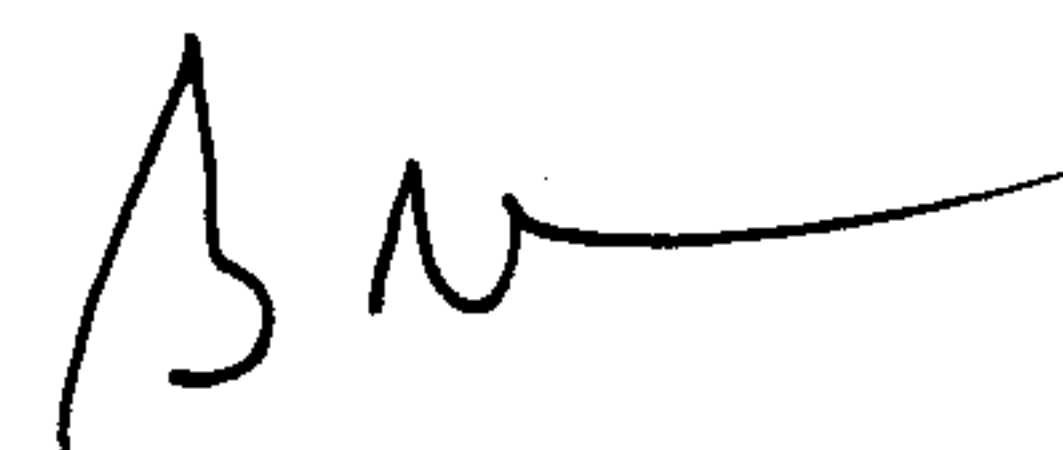
With these observations, this appeal stands dismissed with no order as to costs"

35. In this context it is necessary to refer again to the judgement of Hon'ble Supreme Court in Civil Appeals 5471-72 of 2008 reported in [2008] 8 SCC page 754 para 13 wherein Hon'ble Supreme Court referred order of Madhya Pradesh High Court whereby single judge sent back the whole matter to the Company Law Board by its order dated 27.02.2005. In the judgement of Hon'ble Single judge of Hon'ble Madhya Pradesh High Court there was reference of subsequent events which resulted in filing of another petition against the company which is CP 46 of 2000. Even the learned single Judge of Madhya

Pradesh High Court first remanded the matter to CLB vide order dated 27.02.2005, there was no reference to the subsequent developments viz. release of 4759.69 acres of land in favour of Gwalior Agricultural Company Ltd.

36. Again in the judgement of Madhya Pradesh High Court in Misc. Appeal 1 of 2005 in para 21 and 22 it is observed as follows:-

"So far as the question of mismanagement and other ingredients of sections 397 and 398 of the Companies Act are concerned, the Company Law Board has not given any finding. Counsel for the appellants has also confined his argument only to the question of valuation. Counsel for the respondents, however, filed certain documents on record to show that certain lands which were acquired under the provisions of Ceiling Act are released. This position is disputed by the counsel for the appellants. This Court has put a specific question to the counsel for the respondents whether the respondents want another report on the valuation in the changed circumstances to which Ms. Ahmadi contended that she is satisfied with the earlier report. She has filed documents to show that certain land is released, however, she still relies on earlier report and does not want to press for any fresh valuation report.



Since there are no findings of the Company Law Board on the ingredients of Sections 397 and 398 of the Companies Act, the matter is remanded back to the Company Law Board to decide the said question taking valuation of the shares at Rs. 6000/- per equity share”.

37. Although SLP 9643 of 2009 is filed by petitioner against judgement of Hon'ble Madhya Pradesh High Court in Misc. Appeal 1 of 2005 the said SLP was dismissed by granting only one relief of encashment of bank guarantee. Therefore, in view of dismissal of SLP 9643 of 2009 filed by the petitioner before Hon'ble Supreme Court of India, petitioner cannot now canvass before this Tribunal to take into consideration the subsequent development viz. release of 4759.69 acres of land in favour of Gwalior Agricultural Company Ltd. which is a subsidiary of Gwalior Sugar Company Ltd.
38. It is pertinent to mention here that the valuation as fixed by CLB @ Rs. 6000/- per equity share has been confirmed by Hon'ble Supreme Court of India in view of the dismissal of the SLP 2768 of 2009, filed by Gwalior Sugar Company withdrawn.
39. Now if the subsequent development i.e. release of land is taken into consideration, it certainly increases fair value of the equity shares of the company. Petitioner is not asking for fresh valuation but only asking for calculation by taking into

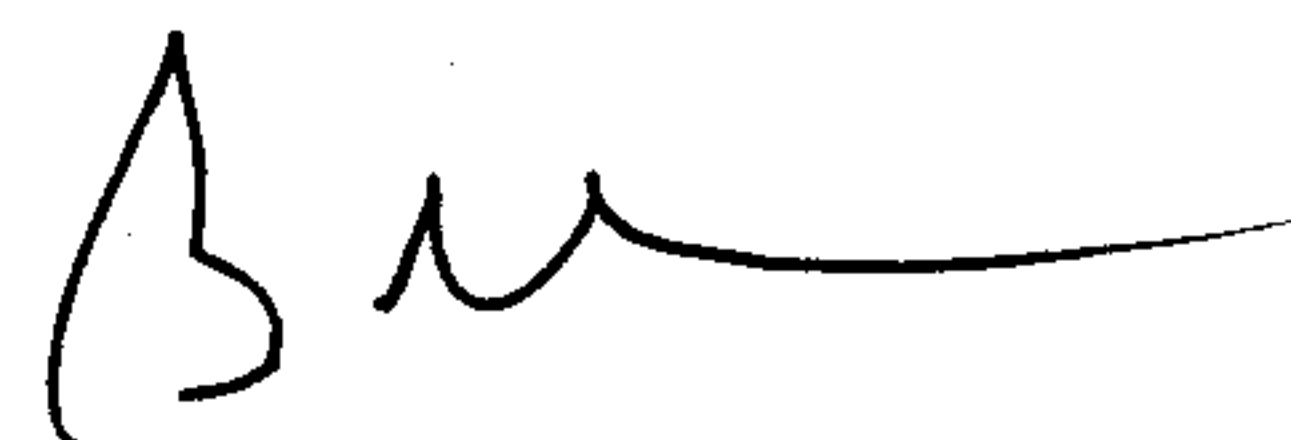
consideration number of acres of land that were added to the company. In my view that may not be possible without taking fresh value of shares. It is to be remembered that the basis for the Company Law Board to fix value of the equity shares is the consent of the parties. When such is the case whether subsequent development viz. of 4759.69 acres of land in favour of Gwalior Agricultural Company Ltd. which according to the petitioner took place even proceedings are pending before CLB can be taken into consideration so as to deviate from the consent order. If the release of land in favour of the company was there during the pendency of the proceedings or during the fixation of the fair value of the shares it is for this petitioner to bring those facts to the notice of the CLB at that time itself. Now, the petitioner having encashed the bank guarantee given by the company towards the value of the shares of the petitioner @ Rs. 6000/- per share is again asking this Tribunal to take into consideration the subsequent developments of releasing the land which prayer was neither considered by Hon'ble Madhya Pradesh High Court in its order in Civil Misc. Application 1 of 2005 or by Hon'ble Supreme Court in SLP 9643 of 2009. The plea of taking into consideration the subsequent developments regarding the release of the land in favour of the company was for the first time taken before Hon'ble Supreme Court.

40. In ~~IA 2013~~ in special leave petition No. 9643 of 2009 there is no order by Hon'ble Supreme Court to take that subsequent development in to consideration. On the other hand, Hon'ble

Supreme Court by its final order made in special leave petition No. 9643/2009 dismissed the said petition. Therefore, without there being a specific direction, this Tribunal is of the considered view that the subsequent development viz. release of 4759.69 acres of land in favour of Gwalior Agricultural Company Ltd. cannot be taken into consideration by this Tribunal.

41. **Point No. 2**

Hon'ble Supreme Court in Special Leave to Appeal (Civil) No 9643 of 2009 while vacating the interim order passed against the company on 04.05.2009, directed the company to secure claim of the petitioners in accordance with the value made by CLB by way of bank guarantee to the satisfaction of Registrar of Supreme Court. Hon'ble Supreme Court also in the said order made it clear that the company is not entitled to deal with the properties of the land which were released in favour of the company by virtue of the order of Additional Commissioner dated 03.02.1998 without leave of the Court. Thereafter, Hon'ble Supreme Court in SLP 9643 of 2009 allowed the petitioner to encash bank guarantee in pursuance of order of Supreme Court dated 25.04.2011 as modified on 06.05.2011 and accordingly the petitioner withdrawn the bank guarantee given by the company. Hon'ble Supreme Court passed final order in SLP 9643 of 2009 dismissing it and dismissing IAs also which includes IA 9/2011.



42. Company Law Board by order dated 07.05.1996, 10.06.1996 and 18.01.1999 confirmed value of equity share of the company @ Rs. 6000/- which is ultimately confirmed by Supreme Court also.
43. It is the contention of the learned counsel for the company the very fact that Hon'ble Supreme Court permitted the petitioners to withdraw the bank guarantee and dismiss SLP 9643 of 2009 goes to show that petitioners have to transfer their shares in favour of respondents no. 3, 6 and 7 by executing transfer deeds.
44. Learned counsel for the petitioner contended that similar request made by the respondents in contempt petition 12/15 filed before Hon'ble Supreme Court of India was dismissed as withdrawn and therefore, the company is not now entitled to file this petition u/s 634 (A) of the Companies Act, 1956. The order of Supreme Court in contempt petition No. 97 of 2010 in SLP 9643 of 2009 dated 15.09.2015 reads as follows: -

"Learned counsel for the petitioner seek permission to withdraw the contempt petition.

Permission granted.

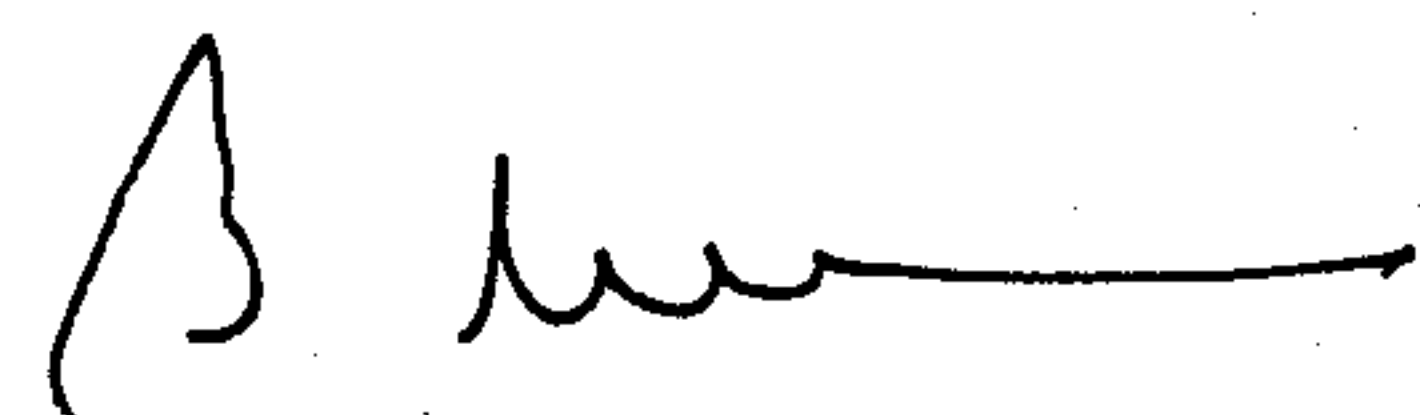
The contempt petitions stand dismissed as withdrawn.

Interim order, if any, shall stand vacated."

45. Learned counsel appearing for the company relying upon the decision rendered in the matter of Ahmedabad Manufacturing & Calico Printing Co. Ltd. v/s Workmen and another reported in [1981] 2 SCC 663 contended that the dismissal of the contempt petition seeking permission is not a bar to file this petition. In the above judgement in para 19, Hon'ble Supreme Court held as follows: -

"After having analysed the various cases cited, we are of the view that permission to withdraw a leave petition cannot be equated with an order of its dismissal. We also come to the conclusion that in the circumstances of the case the High Court has not exercised a proper and sound discretion in dismissing the writ petition in limine on the sole ground that the application for special leave on the same facts and grounds had been withdrawn unconditionally."

46. In view of the aforesaid judgement and in view of the fact that contempt petition was dismissed as withdrawn, this Tribunal is of the considered view that respondent company is entitled to file the application 2016/15 under section 634 (A) of the Companies Act. Here it is pertinent to refer that the petitioners filed affidavit before this Tribunal stating as follows: -



"The petitioner group submits that as the matter has progressed this far on the payment of the value of the shareholding of the petitioner group and in order to give a quietus to the present company petitioner, the petitioner group has been advised not to press for an order on the question of oppression and mismanagement of the Company's affairs and only to press for a computation on the value of their shares, taking into account the factum of release of 4759 acres of land which fact was suppressed by the company and the respondents, more so, as the matter has been pending for almost 22 years with the petitioner group having been removed from the management of the company.

It is therefore, respectfully submitted that this Hon'ble NCLT may take the present affidavit on record and proceed with C.P. Nos. 27/95 & 46/2000 to compute the additional amount payable to the petitioner group so that the matter is given a quietus after such a long pendency."

47. In view of these facts, this Tribunal need not give any finding on the aspects of oppression and mismanagement alleged by the petitioner in CP 27 of 1995 or/ in 46 of 2000. The only controversy left is whether the subsequent development viz. release of 4759.69 acres of land in favour of Gwalior Agricultural Company Ltd. can be taken into consideration or

not in determining the value of the equity shares. This question has already been answered by this Tribunal.

48. Counsel for the petitioner read upon the decision of the Hon'ble Bombay High Court reported in [2005] 125 comp cases 168 (Bom) Anil Kumar Agarwal and Ors v/s. Sunil Kumar Agarwal and Ors. In that case the order which was sought to be executed is inconclusive and incomplete order and the order reads with its merely broad guidelines and authorise steps required to be taken in order to final binding settlement between the parties. But in the case on hand the consent order relating to fixation of value of the shares of the company reached the final stage and confirmed by Hon'ble Supreme Court also. Therefore, such order can certainly be enforced by giving necessary direction by this Tribunal u /s 634 (A) of the Companies Act, 1956.

49. Therefore, there is no impediment for this Tribunal to give direction to the petitioners to return the original share scripts along with bank transfer forms. In the result, application No. 227 of 2014 (CA 203-B/16) & 228 OF 2014 (CA 203-C/16) are dismissed. CA 216/16 (203-A/16) is allowed. Petitioner to deposit the original share scripts along with blank transfer forms duly signed by the Transferors relating to 5137 nos. of equity shares, 1279 nos. of redeemable cum preference shares and 63.50 nos. irredeemable cum preference shares with Registrar of this Tribunal within three months' time from the date of this order. The respondents no. 3, 6 and 7 are entitled

to receive the share scripts and transfer forms only after three months from the date of this order.

50. These applications are disposed of accordingly. There is no order to costs.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this 9th day of June, 2017.