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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**IA 68, 69, 70, 71 and 72/2017 and IA 92, 93/2017 with  
C.P. No. 15/241-242/NCLT/AHM/2017**

Coram:

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.06.2017**

Name of the Company:

Power Finance Corporation Ltd.

V/s.

Shree Maheshwari Hydel Power Corporation Ltd. &  
Ors.

Section of the Companies Act:

Sections 241-242 of the Companies Act, 2013

**S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE**

1. UMESH VED PCS R-3,6,8 & 9 Umesh V Ved  
2.

**ORDER**

None present for Petitioner.

Learned PCS Mr. Umesh Ved present for Respondents no. 3, 6, 8 and 9. None present for other Respondents.

Order pronounced in Open Court. Vide Separate Sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 15th day of June, 2017.

**NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD BENCH, AHMEDABAD**

**CP No. 15/241-242/NCLT/AHM/2017**

**CORAM: BIKI RAVEENDRA BABU, MEMBER JUDICIAL**

DATE: 15<sup>th</sup> JUNE, 2017

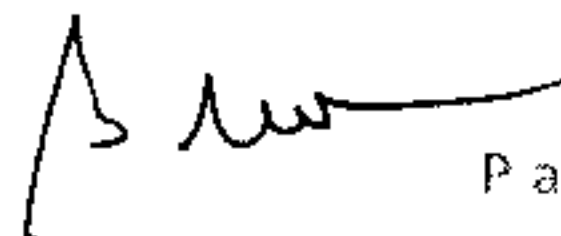
**In the matter of**

M/s. Power Finance Corporation Ltd.,  
Urjanidhi,  
1, Barakhamba Lane,  
Connaught Place,  
New Delhi-110001

**Petitioner**

Versus

1. M/s. Shree Maheshwar Hydel Power Corporation Ltd.,  
Abhayanchal Parisar,  
Ost. Mandaleshwar,  
Mandaleshwar-451221,  
Madhya Pradesh.
2. Mr. Shambhukumar S. Kasliwal  
Padam 1, Flat 17,  
4-B, Pedder Road,  
Mumbai-400026.
3. Mr. Mukul S. Kasliwal,  
Padam 1, Flat 17,  
4-B, Pedder Road,  
Mumbai-400026.
4. Mr. Vikas S. Kasliwal,  
Padam 1, Flat 17,  
4-B, Pedder Road,  
Mumbai-400026.
5. Mr. Abhay Kumar Kasliwal (died)  
Padam 1, Flat 17, 4-B,  
Pedder Road,  
Mumbai-400026.
6. Mr. Warji A. Kasliwal  
Flat No. 3, 4-B,  
G. Deshmukh Marg,  
Mumbai-400026.



7. M/s. S. Kumar Nationwide Limited,  
(Formerly S. Kumar Synfab Limited)  
"Awadh", Avadhesh Parisar,  
Shree Ram Mills Premises,  
G.K.Marg, Worli,  
Mumbai-400018.
8. M/s Entegra Limited,  
S.Kumar's House,  
Plot No.60, Street No.14,  
MIDC (Phase-II)  
Andheri (East)  
Mumbai-400093.
9. M/s MW Infra Developers Pvt. Ltd.,  
99, Niranjana, Marine Drive,  
Mumbai-400002.
10. Shri Ramkrishnan N  
S/O Shri Gopal Krishnan N  
A-2. Third Floor, Atur Park,  
Sion-Trombay Road,  
Chembur, Mumbai,  
Maharashtra-400071

.....**Respondents**

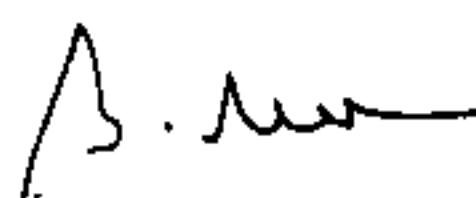
**APPEARANCES**

1. Learned Senior Advocate Mr. U.K. Chaudhary with Mr. Pradeep Kumar Mittal with Learned PCS Mr., Ashish Doshi present for Petitioner.
2. Learned Advocate Mr. Naveen Pahwa present for Respondent No.1.
3. Learned Advocate Ms. Poornima Advani with Learned Advocate Ms. Amrita Joshi with Learned Advocate Mr. Pulkit Sukhramani for Respondent no. 2, 6 and 4.
4. Learned Advocate Mr. Ankur Sood for Respondent No.3 and 8
5. Learned PCS Mr. Umesh Ved for Respondents no. 3, 6, 8 and 9.
6. PCS Mr. Keyur Bakshi for Respondent No.10
7. Learned Advocate A.K. Gupta for respondent No.7.

**FINAL ORDER**

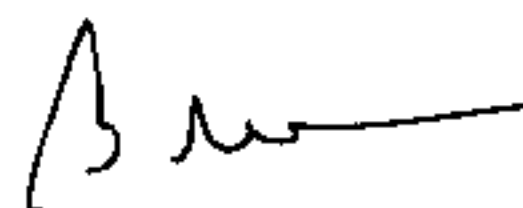
DATED 15<sup>th</sup> JUNE, 2017

1. This petition is filed under section 241, 242 and 243 of the Companies Act, 2013 by M/s. Power Finance Corporation

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Limited being aggrieved by the acts of oppression, mismanagement committed by Respondent No. 2 to 10 in the affairs of M/s., Shree Maheshwar Hydel Power Corporation Ltd., (Here in after called as first respondent Company).

2. First Respondent Company is a company incorporated under the provision of the companies Act, 1956. The registered office of first respondent company is at Abhayanchal Parisar, Post Mandaleshwar, Mandaleshwar-451221, Madhya Pradesh.
3. The main objects of the first respondent company are to generate, develop, accumulate, distribute, buy, sale, transmit and or otherwise deal in all forms of energy including electricity power in any type of ideal power, gas, coal, light and to undertake all forms of construction activity for this purposes etc.
4. The authorised share capital of the first respondent company is Rs. 25,00,00,00,000/- (Rs. Two Thousand Five Hundred Crores Only) divided into 2,00,00,00,000 Equity Shares of Rs. 10/- each and 50,00,00,000 Preference Shares of Rs. 10/- each. The paid-up share capital of First Respondent Company is Rs. 565,379,0000 (Rs. Five hundred Sixty-Five Crores Thirty-Seven lakh ninety Thousand Only) divided into 565,379,000 Equity Shares of Rs.10/- each fully paid up.



5. Power Finance Corporation Limited (Hereinafter called as PFC or petitioner company) is a company incorporated under the Company's Act, 1956 having its Registered Office at Urjanidhi, 1-Barakhamba lane, Connaught Place, New Delhi-110001. PFC is a Government of India enterprise under the administrative control of Ministry of Power, New Delhi. PFC holds 13,18,46,779 Nos. of Equity Shares of Rs.10/- each in the First Respondent Company which, represent 23.32% of the issued and paid-up share capital of the Respondent No.1 Company.
6. Respondent No.2 to 5 are Promoter Directors of Respondent No.1 company. Respondent No.2 to 6 are all personal Guarantors of the Respondent No.1 Company. Respondent No.7 to 9 are the Corporate Guarantors of the Respondent No.1 Company. Respondent No.10 was one of the Executive Director and Company Secretary of First Respondent Company at relevant point of time.
7. In the year 1978 Maheshwar dam was planned as part of the Narmada Valley Development Project. In the year 1989 Madhya Pradesh State Electricity Board was assigned the responsibility of building the Mahaeshwar dam/Project. In the year 1993 State Government of Madhya Pradesh awarded Maheshwar Hydro Power to respondent No. 8 which floated respondent No. 1 to implement the project.



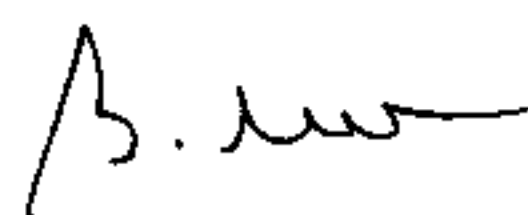
08. PFC is claiming that it holds 23.32% paid up share capital of the 1<sup>st</sup> respondent company. It is also the claim of PFC that other public sector financial institutions also supported the petition. Petitioner and other public sector financial institutions by way of investment both in terms of (i) equity of Rs. 66.1 crores and (ii) loan/advances/financial assistance/guarantees/bonds have invested to the tune of Rs. 2560.00 crores. First respondent failed to service the loans and thereby petitioner and other public sector financial institutions incurred loss of income to the tune of Rs. 2300.00 crores.

9. The project was entrusted to the respondents in the year 1993 to set up a power project having capacity of 400 M.V., in order to reduce the power shortage in the state of Madhya Pradesh. Estimated project cost in December 1996 was Rs. 1565.00 crores. According to the petitioners, respondents are in full and complete management of the project but they could not complete the project for a period of 13 years although it requires only 60 months to complete such project. This was on account of gross mismanagement on the part of respondents, according to the petitioners. On account of delay in implementing the project, the project cost gone up to Rs. 812.09 crores. Petitioners allege that respondents are more interested in extracting money from the project than completing the project. Petitioners mainly allege that respondents failed to bring in equity as promised by them. However, petitioner and other public sector companies from time to time financed the project. On 10.10.1997, PFC



sanctioned a term loan of Rs. 100.00 crores and foreign currency loan (FCL) of USD 34 million. On 30.03.2001 Madhya Pradesh Government accorded approval for a stand-by guarantee facility of Rs. 4000 million so as to enable the 1<sup>st</sup> respondent company to raise optionally convertible bonds to the extent of Rs. 4000 million. On the request of the 1<sup>st</sup> respondent company, PFC provided default guarantee to the extent of Rs. 4000 million in order to improve the marketability of the bond issue.

10. On 16.12.2010, in the lenders meeting held in the office of the petitioner company, the first respondent informed lenders about the revised estimated completion cost of approximately Rs. 3533.00 crores. Lenders reminded the first respondent company about the delay in infusion of equity and conversion of the Optionally Fully Convertible Debentures (OFCD) of approximately Rs. 217.00 crores. Lenders asked the first respondent to take up the issue of obtaining extension of date of completion of commercial operation from Reserve Bank of India which is available only up to 31.03.2012 and thereby avoid of treating the project as non-performing assets in accordance with classification of schemes. In view of the revised commissioning schedule the plant cost was expected to exceed Rs. 4400.00 crores. Lenders insisted the first respondent company to obtain clearance of cost overrun from Madhya Pradesh Electricity Regulatory Commission/ Government of Madhya Pradesh shall be pre-requisite for consideration of any further funding by the lenders.



11. On 05.09.2011 IDBI Trusteeship Services Ltd. the trustee of OFCD holders invoked the default payment guarantee given by petitioner company in favour of OFCD holders for an amount of Rs.20.58 crores. An amount of Rs. 7.15 crores were transferred from respondent No. 1 Trust and retention account and balance payment of Rs. 13.43 crores were paid by petitioner company for servicing of dues payable on 23<sup>rd</sup> September, 2011.
12. On 19<sup>th</sup> October, 2011, respondent 3 representing the respondents had informed that they have arranged Rs. 100.00 crores of equity infusion and expecting another 300.00 crores as equity shortly. Respondent 3, on behalf of 1<sup>st</sup> respondent company requested lenders for debt equity ratio of 80:20. PFC and Rural Electrification Corporation Limited (REC) agreed for the same. 1<sup>st</sup> Respondent company requested the Ministry of Power to take up with RBI for extension of commercial operation date from 31<sup>st</sup> March, 2012 to 31<sup>st</sup> March, 2013. According to the petitioners, the 1<sup>st</sup> respondent company raised equity infusion of 100.00 crores directly for construction account in place of the retention account and payments made directly from the same. 1<sup>st</sup> respondent company although promised to infuse Rs. 430.00 crores of equity could infuse only Rs. 100.00 crores. 1<sup>st</sup> respondent company defaulted in servicing of the debts. The loan amount of the 1<sup>st</sup> respondent company was declared as non-performing assets in the books of accounts of PFC as on 31.03.2012.





13. 1<sup>st</sup> respondent company agreed to infuse equity of Rs. 75.00 crores for starting generation from the first three units and agreed to infuse Rs. 225.00 crores of equity by 31.08.2012 in the lenders' meeting on 04.06.2012. But the 1<sup>st</sup> respondent company failed to bring in equity of Rs. 300.00 crores. Lenders agreed to allow further time till end of October, 2012 for equity infusion by respondent 3. On 22.04.2012, in the lenders meeting, Life Insurance Corporation of India proposed to invest Rs. 500.00 crores as equity in the project.

14. On 2<sup>nd</sup> May, 2015, report of the High Level Committee constituted by Government of MP government suggested the following scenarios: -

Scenario – I      Implementation by the present promoter – 90 days' time allowed till 2<sup>nd</sup> August, 2015. Existing promoter will have to arrange additional equity of Rs. 600 crores as well as debt of Rs. 1100 crores at concessional rates to achieve the M.P. Power Management Company Limited stipulated tariff of Rs. 5.32 per unit.

Scenario – II      Government companies having majority equity project with management control project could be taken over by NHPC/NHDC and petitioner company would be amenable to infusing equity or additional debt as well as lowering of interest rate for existing debt

and with commensurate support from lenders, tariff could be reduced to Rs. 5.32 per unit which is acceptable to M.P. Power Management Company Limited.

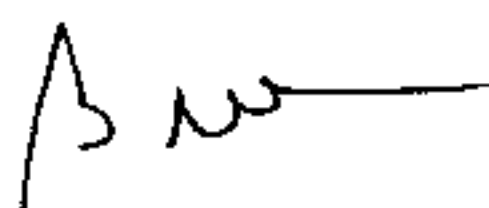
**Scenario-III Cancellation of PPA**

If the scenario I & II above do not fructify, the last option will be that M.P. Power Management Company Limited cancels the existing Power Purchase Agreement. Government of Madhya Pradesh and M.P. Power Management Company Limited would be burdened on account of Govt. MP counter guarantee deed of Rs 400 crores issued to petitioner company. This is apart from Rs. 102.48 crore which has already been paid by M.P. Power Management Company Limited to petitioner company.

15. Promoter was given 90 days' time for submission of the report to submit a firm and binding proposal regarding arrangement of additional equity of Rs. 600.00 crores and debt of Rs. 1100.00 crores at concessional rate while ensuring that the tariff is not more than Rs. 5.32 per unit. The condition is after expiry of 90 days, this scenario-I would not be available to the promoter and efforts would be made to revive the project as per scenario - II. If scenario I and scenario II mentioned above do not fructify, the only option left will be scenario - III. The promoters were unable to actually infuse necessary cash equity and raise the loan to complete the project. Scenario - I failed.

Lenders initiated recovery proceedings with issue of loan recall notice dated 5<sup>th</sup> January, 2016. PFC's subordinate debt was also converted into equity. Respondents 3 and 8 did not clear the default. Notice for invocation of pledge was issued on 19.05.2016 and conversion notice dated 18.12.105 further revised on 27.05.2016 was issued. On 01.06.2016 transfer of pro-rata shares to the lenders who have invoked their rights and new shares were issued to PFC consequent to conversion of sub-debt into equity. Subsequent to lenders taking over majority equity, 1<sup>st</sup> respondent company took up following revival work on the project with the support of lenders: -

- (1) Payment of salary for the staff and workers of SMHPCL from the month of June 2016 onwards is being released.
- (2) Payment of salary for the rehabilitation and resettlement Executing Committee staff from the month of July 2016 onwards is being released.
- (3) Rs. 3.00 crore has also been released to SMHPCL against critical wage payments against the already executed rehabilitation and resettlement works.
- (4) Funds for past statutory dues (EPF on salary dues) inviting default notices from the statutory authorities have been released. Such default on account of mismanagement by Respondent No. 3 have been cured with funds from petitioner after takeover by the lenders.
- (5) Matter taken up with M.P. Power Management Company Ltd. and Bharat Heavy Electricals Ltd. for finalisation of revised cost and timelines for completion of rehabilitation and resettlement works and E & M works respectively.



M.P. Power Management Company Ltd. has already submitted revised cost and schedule for completion of rehabilitation and resettlement works.

- (6) All the 27 Radial gates of the Dam have been made operational after necessary maintenance.
- (7) Dewatering of the power house and dam gallery has been completed.

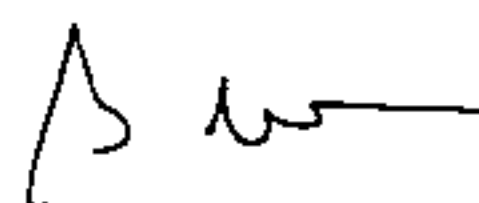
16. Respondent No. 3 resorted to filing false and misleading complaints to the Registrar of Companies (ROC) as a result ROC marked the 1<sup>st</sup> respondent company as "management disputes". Inquiry under section 203 of the Companies Act was initiated by ROC. 1<sup>st</sup> respondent company which was in control of respondent 3 and 8 and respondent 10 did not transfer documents of respondent company to the present management despite lenders holding majority equity shares.

17. Petitioner made the following allegations against the respondents: -

- (1) During the period from February 1999 to December 2010, petitioner transferred a sum of Rs. 700.00 crores towards funds requirement of the project and servicing of debt. 1<sup>st</sup> respondent company defaulted in servicing of its Optionally Fully Convertible Debentures (OFCD) Bond holders. IDBI Trusteeship Services Ltd. is saying that the 1<sup>st</sup> respondent company committed default in remitting the amount towards interest and principal on

the debentures issued by the 1<sup>st</sup> respondent company. PFC is guarantors to the debenture holders in the event of default, breach and neglect on the part of respondent company.

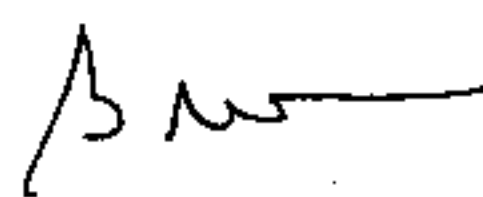
18. The amount remitted to Trust account being optionally fully convertible debenture was required to be remitted only for the purpose of paying interest accrued thereon and the principal sum towards redemption of debentures.
19. IDBI Trusteeship Services vide letter dated 13.03.2013 advised the 1<sup>st</sup> respondent company to refund excess amount of Rs. 54.00 lacs to the petitioner along with interest @ 16.5% which the petitioner has funded against servicing of interest dues payable on OFCDs. Similarly, IDBI Trusteeship Services sent another letter dated 14.03.2013 to the 1<sup>st</sup> respondent company to refund excess amount of Rs. 1.76 crores to the petitioner along with interest @ 16.5% which the petitioner has funded for servicing of interest due on OFCD. IDBI Trusteeship Services vide letter dated 25.3.2013 addressed to 1<sup>st</sup> respondent company highlighted the diversion of a sum of Rs. 2.30 crores by the 1<sup>st</sup> respondent company for its alleged business activity rather than refunding it to the petitioner. Respondent 10, on behalf of 1<sup>st</sup> respondent company vide letter dated 01.04.2013 addressed IDBI Trusteeship Services stating that the surplus money in the designated bank account is being used strictly for project related expenditure and further excess amount in the account arising essentially out of temporary loan



cannot be interpreted as diversion of funds. It is stated that the 1<sup>st</sup> respondent company has not furnished any details of having spent the excess amount of Rs. 2.30 crores. 1<sup>st</sup> respondent company has not recovered a single paisa till today. Petitioner also alleged about sale of scrap from the site of the 1<sup>st</sup> respondent company. 1<sup>st</sup> respondent company vide letter dated 09.01.2014 stated that due to shortage of funds and to meet the day to day expenses like project insurance, salaries, power and water charges, the scrap was sold and funds were utilised. Petitioner also alleged a sum of Rs. 5.28 crore was temporarily transferred to M/s. Entegra Ltd. (Respondent 8) between 25.06.2010 and 05.70.2010 without proper authorisation.

20. Petitioner also stated that the following acts of mismanagement by the respondents.

- (1) 1<sup>st</sup> respondent company did not renew insurance policy.
- (2) Entegra Infrastructures Ltd. did not exercise option of conversion of debenture into equity inspite of repeated requests and reminders.
- (3) Petitioner stated that commitment of respondent 3, the promoter director in various forums to infuse equity did not fructify.
- (4) Respondent 3 has stated absenting meeting to of the Board of Directors.
- (5) Promoter director is responsible for non-compliance of statutory requirements.



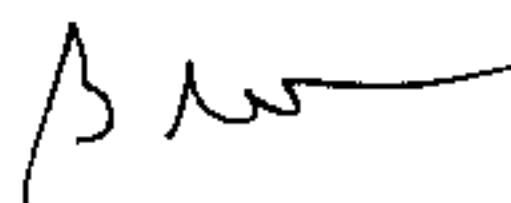
- (6) Madhya Pradesh Power Management Company called upon the 1<sup>st</sup> respondent company to take action for reimbursement of entire base fund of Rs. 76.488 crores.
- (7) Government departments suggested for change of management.

21. PFC in the sanction letter dated 02.03.2005 for revaluation of loan, it was proposed that the lenders shall be entitled to appoint a nominee director on the Board of the 1<sup>st</sup> respondent company. Accordingly, Articles of Association of the 1<sup>st</sup> respondent company was modified following the procedures laid down under the Companies Act, 1956. Thereafter, the 1<sup>st</sup> respondent company availed credit facilities for the project without raising any objection. After the amendment of articles of association of the 1<sup>st</sup> respondent company, the following nominee directors are there on the Board of the 1<sup>st</sup> respondent company.: -

Sr. No.	Name of Nominee Director	Nominee of
01	Mr. G.S. Patra	Power Finance Corpn.
02	Mr. Sanjeev Garg	Rural Electrification Corpn. Ltd. (REC)
03	Mr. Prasoon	IFCI Ltd.
04	Mr. P.R. Srivastava	Housing & Urban Development Corpn.



22. After induction of Nominee Directors of the lenders, all decisions were taken unanimously – obviously those decisions will have the consent of respondent 3.
23. According to the petitioner, contention of respondent No. 3 that the Articles of Association of 1<sup>st</sup> respondent company is not in consonance with the provisions of the Companies Act, 1956 is completely mischievous, frivolous with an attempt on the part of the respondents to come out of the Board control and to have a free ride for siphoning of the funds etc.
24. Respondent No. 3 has falsely alleged that he has no say in running the day to day affairs of the 1<sup>st</sup> respondent company, but according to the petitioner, respondent 3 has been in-charge and responsible for the day to day affairs within the overall guidelines provided by the Board of Directors. Respondents have illegally withheld statutory records, ledgers etc. Respondent No. 10 committed dereliction of duty in not handing over records of the company to the management. Respondent No. 10, Company Secretary of the respondent company resigned with effect from 11.01.2016. The company secretary informed that the corporate office has been closed since 29.02.2016. Respondent 2 to 6 having deducted TDS failed to pay the same to the Income tax authorities for the year March 2012 and from November 2014 to May 2016. Respondents 2 to 6 also defaults in remitting PF contribution. Respondents failed to pay travel agents and suppliers also. 1<sup>st</sup> respondent company committed default in zero coupon bond

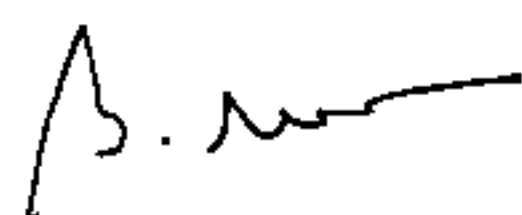




issued by it. ROC unilaterally pronounced that there is "management dispute".

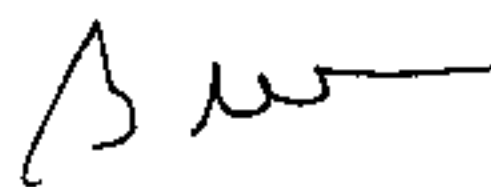
25. Petitioner has prayed for the following reliefs: -

- (a) Declare respondents 2 to 6 and respondent 10 have indulged in serious and grave acts of financial mismanagement and siphoning of funds and other illegal and fraudulent acts.
- (b) Direct respondents 2 to 6 and respondent 10 to restore funds of the 1<sup>st</sup> respondent company.
- (c) To declare respondents 2 to 6 and 10 have indulged in serious acts of fraud.
- (d) Declare that condonation/grant immunity against the violation of various provisions of the Companies Act, 1956/2013 in relation to Shri Gauri Shankar Patra and earlier nominee Director of the petitioner company on the Board of 1<sup>st</sup> respondent company.
- (e) Direct the Registrar of Companies, Gwalior not to launch any prosecution against Shri Gauri Shankar Patra - nominee Director of the 1<sup>st</sup> respondent company.
- (f) Direct respondent 2 to 6 and 10 to restore 1<sup>st</sup> respondent company all statutory records, books of accounts, ledger, cash book etc.
- (g) Director the Registrar of Companies, Gwalior to lift the order of "Management dispute".
- (h) Direct Income - tax authorities not to launch prosecution under the Income-tax Act, 1961.



- (i) Direct the authorities under the Industrial & Labour Laws not to launch prosecution under the relevant laws against the nominee Directors of the 1<sup>st</sup> respondent company.
- (j) Declare the lenders including the petitioner along with other lenders who have acquired management control of the 1<sup>st</sup> respondent company
- (k) Declare that petitioners are not holding company or associate company or joint venture company or co-promoters of the 1<sup>st</sup> respondent company.
- (l) Direct the authorities of Ministry of Corporate Affairs not to launch any prosecution against the petitioners or the 1<sup>st</sup> respondent company.

26. Respondent No. 1 stated in reply that lenders of the company changed their nominee on the Board. Government of Madhya Pradesh also changed nominee in the Board. Shri K.M. Sahani, Shri S.K. Mukopadhyaya and Smt. Sushama Nath resigned from the Board of company with effect from 05.08.2016, 27.09.2016 and 26.09.2016 respectively. Shri Nirbhay Goel is appointed as the Company Secretary on 01.06.2016. It is stated that in the 134<sup>th</sup> meeting dated 01.01.2016, Board considered and approved request of lenders to invoke the pledge of shares due to which the shareholding of Entegra Limited came to be reduced from 58% to 12.28 %. Petitioner being lead lender decided to invoke the pledge. Integra Limited which was earlier the holding company ceased to hold the status as such of being a holding company. Following are



the list of lenders who have proportionately invoked the pledge of shares: -

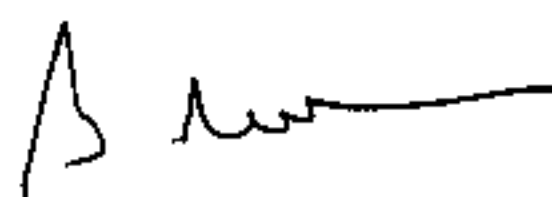
S. No.	Name of lenders	No. of shares
01	Power Finance Corporation Limited	6,57,46,779
02	Housing and Urban Development Corporation	5,23,93,732
03	Rural Electrification Corpn. Ltd.	5,05,74,445
04	Edelweiss Asset Reconstruction Company Ltd.	3,64,13,601
05	IFCI Limited.	83,87,028
06	Dena Bank	82,94,209
07	National Insurance Co. Ltd.	4,48,090

27. The sub-debt was converted into equity from 01.06.2016 for an amount of Rs. 66.10 crores. This led to increase in the paid up capital of the 1<sup>st</sup> respondent company from Rs. 4,99,27,90,000/- to Rs. 5,65,37,90,000/-. Form pas - 3 for the purpose of above mentioned change was filed with the Registrar of Companies, Gwalior for such allotment of shares but the same did not get approved as the 1<sup>st</sup> Respondent company was marked by the Registrar of Companies, Gwalior vide letter dated 29.04.2016 as "under Management dispute". Petitioner infused funds of Rs. 20.00 crores in the 1<sup>st</sup> respondent company for preservation of assets. PFC issued sanction letter to infuse further critical loan amount of Rs.



600.00 crores. Minutes books, registers, books of accounts, tax scrutiny related documents of the 1<sup>st</sup> respondent company are not traceable. The 1<sup>st</sup> respondent company issued legal notice to the past management and respondent No. 10 but records were not made available. Acts of mismanagement is attributable to only previous management. Previous management were in the helm of affairs of the 1<sup>st</sup> respondent company. Lenders used to disburse funds to the first respondent company on regular intervals. Records of past employees also not available. In the absence of proper records it is not possible to confirm the averments made in para 6.86 to 6.94. Records are to be kept in the safe custody of Company Secretary of the previous management and Company Secretary did not handover records of the company. 1<sup>st</sup> Respondent company to join the petitioner to seek appropriate orders for rectifying the status of the 1<sup>st</sup> respondent company on the MCA portal.

28. Respondent No. 2 in his reply stated that he has no role to play in the decision making process of the 1<sup>st</sup> respondent company and 1<sup>st</sup> respondent company was independently managed by professional Managing Director. In and around the year 2014 due to unfavourable market conditions the project undertaken by 1<sup>st</sup> respondent company required refinance. At this juncture, 1<sup>st</sup> respondent company entered into discussion with PFC, Government of Madhya Pradesh, Ministry of Power, Government of India to refinance to revive the project. After prolong discussions, PFC agreed refinance the project, subject



to modification of the Articles of the 1<sup>st</sup> respondent company to the extent that PFC will have complete autonomy in the decision making and appointment of Directors on the 1<sup>st</sup> respondent company. Respondent 8 was given right to nominate only a single director on the Board of 1<sup>st</sup> respondent company. Respondent 2 had no role to play. Respondent 2 stepped down as Non-Executive Director in order to comply with the terms of refinancing of PFC. In the year 2005, Articles of Association of 1<sup>st</sup> respondent company were amended and since then PFC has been managing the 1<sup>st</sup> respondent company. Respondent No. 2's name has been dragged with ulterior motives to tarnish the name of "Kasliwal Family" which has been one of the most respected families in the community. Respondent 2 is an established businessman and he has not committed any violation for a period of 50 years in active business. PFC is solely responsible for the affairs of the 1<sup>st</sup> respondent company since 2004. This petition is filed with malicious intention to cover its own mistakes.

29. It is reported that Respondent No. 5 is no more.
30. The case of respondents 3, 4, 6, 7, 8 & 9 as can be seen from the reply and sur-rejoinder is as follows: -
31. First plea of these respondents is that shareholding of petitioner and his supporters is based on illegal invocation of the pledged shares, which cannot be taken into consideration. According to these respondents, shareholding of PFC is zero. It is also stated that PFC is supported by other public sector



companies and their affidavit in support is filed at a later stage and such course of action is not permissible. It is stated that this petition is scuttle for the ongoing investigation into the wrongdoings of PFC with respect to the affairs of the first respondent company.

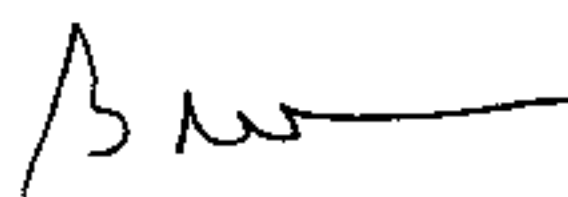
32. These respondents further state that, false allegation of oppression and mismanagement made by PFC relate to the period when PFC was in control of affairs of the first respondent company. No reasons are assigned by PFC for filing this petition in a belated manner. Petition is not a bona fide petition. Respondents made several complaints to PFC and to various other authorities regarding illegal and wrongful manner in which the affairs of the first respondent company are being conducted by officers of PFC.
33. In the year 2005, PFC took over control of the first respondent company through its management Committee. Since then affairs of the first respondent company have been managed by the PFC and its officials with the intention of destroying value of the first respondent company. In that direction, Articles of Association of the first respondent company was completely altered giving full powers to PFC. PFC transformed the first respondent company from promoter managed company to lenders managed company. The day to day affairs of the first respondent company have been in the hands of PFC itself. The persons of PFC were appointed on the Board of the first respondent company as Chairman, Managing Director, Finance Director and Nominee Directors. Even the right to approve

non- Executive Directors were kept with PFC. The only right remained with these respondents were appointment of single non-Executive Director as promotor Director. The acts of oppression and mismanagement, if any, are attributable to PFC's own officers. In the year 2010, first respondent company was ready for commissioning of three turbines, but, PFC deliberately blocked the commissioning of the turbines by diverting the entire fund of the first respondent company to lenders and thereby causing significant loss of revenue to the first respondent company. PFC neither funded nor allowed other investors to fund. On the other hand, PFC declared the first respondent company as NPA. PFC also declared in the press that the account of first respondent company is NPA, with a calculated move to prevent commencement of operations and to dissuade any investors from investing in the first respondent company. On 29.09.2009 and 16.09.2009 letters were addressed to PFC for cancellation of Subordinated Loan Agreement. Government of Madhya Pradesh formed a High Powered Committee to find solutions for the project. As per the recommendations of the Ajay Nath Committee (Scenario I), respondents had arranged a generous investment. PFC was the only financial institution not willing to accept the same. Subordinate Loan was forced upon the company under threat and coercion. The Subordinate Loan, therefore, is void and illegal. The reliefs sought by the PFC are barred by law. During the tenure of 12 years, management control by PFC and respondent 3 is the only non-executive Director on the Board of the first respondent company without any executive



authority and powers. Responsibility to keep safe custody of records, documents etc. was never handed over and entrusted to respondent 3. The fraudulent accounts prepared by PFC and its officials cannot be accepted. Detailed investigation must be carried out with regard to working of the first respondent company and then only real facts can be brought before this Tribunal.

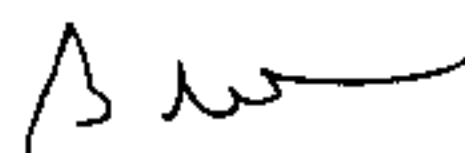
34. Based on the complaints of respondents 3 to 8, Registrar of Companies, Gwalior conducted an inquiry under section 206 (4) of the Companies Act, 2013 vide letter dated 28.04.2016. ROC, Gwalior vide letter dated 30.05.2016 asked management of the first respondent company to furnish explanation on various discrepancies found in the management. Petitioner apprehending punitive actions to be taken against PFC by Ministry of Corporate Affairs, trying to suppress the said report. The observations of Registrar of Companies, Gwalior is necessary and shall be taken into consideration. The present petition is filed with sole intention of blocking and avoiding the ROC report being made public and action being taken against the wrong doings.
35. PFC made explanation regarding amendments made in Articles of Association of the first respondent company to improve control over the affairs of the first respondent company. Nine out of twelve directors on the Board will be selected by PFC. Ministry of Power also sent a letter to Ministry of Finance dated





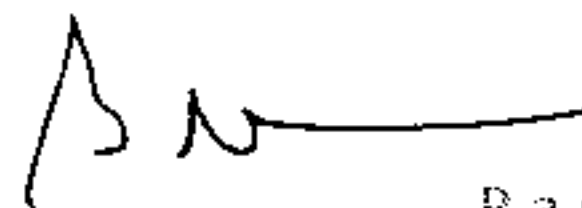
10.08.2006 confirming the transfer of absolute management control from respondents to PFC.

36. PFC in order to escape penal actions warranted under applicable sections of the Companies Act, 1956/2013 intends to use this Tribunal in the guise of oppression and mismanagement. Report of ROC was finalised and sent to the Ministry of Corporate Affairs and it is pending for appropriate action by Ministry of Corporate Affairs. At this stage there cannot be direction to keep the investigation pending. In fact, respondents 3, 6, 8 and 9 had no connection or control over the records of the first respondent company. Mr. A. Chakravarti, Mr. Sanjiv Garg, Mr. S.P. Arora and Mr. V.T. Subramania were the team of management left out by PFC. Mr. A. Chakravarti had been Chairman of Board of Directors. Mr. Sanjiv Garg was Chairman of Audit Committee, Mr. S.P. Arora has been a member of Audit Committee. No allegations were made against them by PFC. PFC under the extra-constitutional authority styled "Maheshwar Committee acting as "shadow Board" of the first respondent company, comprising of 8-10 senior employees of PFC who had total conflict of interest and zero accountability towards the first respondent company, implemented their decisions which helped PFC. Decision of the Committee have always been against the interest of the first respondent company. Some of such decisions are diversion of project funds from TRA bank account which is under their operating control to itself and co-lenders rather than giving preference to the project completion



declaring the first respondent company as NPA, forcing the respondent to accept expensive loans. Registrar of Companies had already examined the role played by the "shadow Board" vis-à-vis respondent 1. Mr. Satnam Singh, former Chairman of PFC and M. Nagarajan have blocked few investments brought into the business of the first respondent company. It is stated by respondent No. 3 that a sum of approximately Rs. 3100.00 crores which was lent by various public financial institutions are at risk of being lost due to the purposeful mismanagement of the first respondent company by PFC. There were various opportunities brought into by the respondents, but the petitioner refused to give any more funds as equity or debt.

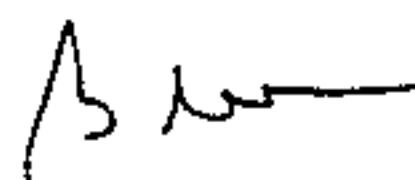
37. 2<sup>nd</sup> respondent sent a letter to the Registrar of Companies, Gwalior by mail to use his good office to ensure that no further harm is caused by PFC and see that PFC does not convert its loans into equity, does not forfeit our shareholdings, pledged or otherwise and, that they are injuncted from operating the Board of the first respondent company in any manner.
38. In reply, respondent No. 4 has stated that he has no involvement in the affairs of the company since 2005.
39. Respondents 6, 8 and 9 also stated that PFC took over control of the first respondent company through its management committee and since then affairs of the first respondent



company have been looked after by PFC officials with an intention to destroy the value of the first respondent company.

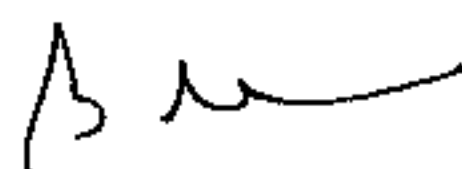
40. In reply, respondent 7 has stated that the corporate guarantee of respondent 7 as stated by the petitioner is neither legally valid nor subsisting. Hon'ble High Court of Mumbai vide its order dated 01.07.2016 in company petition No. 511 of 2014 placed the ordered winding up of respondent company and professional to take over possession of assets of respondent No. 7 company. Respondent 7 filed appeal against the said order and obtained stay in Appeal 273 of 2016. Respondent No. 7 issued letter dated 05.04.2007 to the PFC requesting for release of corporate guarantee given by him to lenders of the first respondent company. It is the plea of the 7<sup>th</sup> respondent that the petition is not maintainable.

41. Respondent No. 10 in reply dated 22.02.2017 has stated that Internal Committee of PFC called Maheshwar Committee which in fact acted since 2005 as a "Shadow Supervisory Board" of 1<sup>st</sup> respondent company through their nominated employee as director. Control of the first respondent company is vested with lenders' dominated Board of Directors since 2005. 1<sup>st</sup> respondent company was avoidably classified as NPA in March 2012. There was lack of governance and failure on the part of PFC to discharge fiduciary responsibility. PFC illegally convened Board Meeting dated 01.06.2016. PFC diverted huge project funds to themselves and small amounts to fellow



lenders. PFC got the shares illegally transferred. PFC committed another fraud in order to give them status of a member by causing the Company Secretary of 1<sup>st</sup> respondent company (a transferred employee of the petitioner's group) to fabricate a register of members. It is stated that the petition is not maintainable. Respondent 3 was only non-executive Director without any power since 2005. Petitioner has suppressed the documents which disclose the fact that the management control being vested in them. Lenders and Government of Madhya Pradesh and public at large invested Rs. 2000.00 crores in the project out of which 40% was diverted back to the petitioner/lenders.

42. Respondent 10 referred to letter of revalidation dated 02.03.2005 which was subsequently amended on 25.11.2005, letter to PFC nominated M.D. by PFC dated 08.11.2005, letter issued by PFC to IL & FS dated 18.04.2005, letter issued by PFC TO SBI Capital markets dated 28.04.2005, letter from Ministry of Power to Ministry of Finance dated 10.08.2006 and Amendments carried out in the Articles of Association of 1<sup>st</sup> respondent company in 2005. Respondent 1 narrated in the reply how the management control was exercised by PFC. It is stated that Rs. 3137.61 crores that was available to the 1<sup>st</sup> respondent company, Rs. 1,339.71 crores (42.61%) was diverted towards lender's dues causing the project to bleed for lack of funds to commission even the three ready Turbines in 2011. The Trust Retention account always operated as per the decision of Maheshwar Committee percolated through PFC's



employee director and the PFC nominated Managing Director. TRA banker had also direct instructions on purposes for which funds to be withdrawn. The lenders Financial Advisor appointed by the petitioner audited the bank accounts and reported directly to the petitioner. Not even a single case of siphoning of funds was stated by the PFC but made allegations of siphoning funds without evidence. A sum of Rs. 5.28 crores appropriated by TRI bank without approval of PFC cannot be deemed to be illegal siphoning of funds by any of the respondents. Respondent 8 used to extend unsecured interest-free loan to meet urgent requirements of 1<sup>st</sup> respondent company such as wages, salaries, statutory dues like PF and TDS, insurance, power and such other essential expenses. Total amount of such assistance had been to the extent of Rs. 77.07 crores. PFC took Rs. 48.20 crores out of it for themselves and paid only Rs. 13.40 crores to OFCD holders.

43. Regarding unauthorised sale of scrap, the reply given by respondent 10 is that due to non-payment of salary, wages for 7 to 12 months there was strike by the site employees including the security personnel working in the project. There was notice for disconnection, regular theft of materials, non-extension of insurance coverage etc. Labour Commissioner also intervened and demanded early resolution due to law and order situation. A committee of four personal was finalised with approval of respondent 10 for the purpose and competitive quotes with security deposit was called and the scrap was sold. Proceeds of the scrap sale was used for clearing expenses such salaries,

wages, insurance and creditors. The Special Audit also did not raise any objection. The matter was discussed in Board Meeting in presence of four nominees.

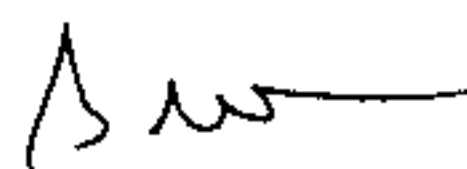
44. In extra ordinary general meeting held on 17.06.2010 resolution was passed approving the issue of shares at par in the event of failure to repay the subordinate loan keeping in mind clause 1.2 of the subordinate loan agreement. But on the very next day i.e. on 18.06.2010 PFC issued a letter amending the terms of subordinate loan agreement to the detriment of first respondent and to the advantage of PFC. Clause 5 of the letter reads as follows: -

*"PFC shall have the right to debit outstanding dues against Subordinate Loan."*

45. According to respondent 10, PFC never complained about his actions till they issued notice. In fact, respondent 10 was not paid salary for 30 months until final settlement took place. As there was no seriousness to comply with the provisions of the Companies Act, 2013, except recording minutes as it suited the Chairman, respondent 10 wrote to PFC on 26.05.2015 pointing out all the deficiencies including payment of accumulated wages, salaries, TDS etc. Having seen approach of the PFC, respondent 10 tendered his resignation both as ED-Finance & Company Secretary by letter dated 26.08.2015. In the Board Meeting dated 29.09.2015 respondent was asked to continue till alternative arrangements are made to take charge of his responsibilities. In the Board Meeting held on 17.12.2015 resignation of respondent 10 was accepted with effect from

31.12.2015 without any reference to settlement of dues and without naming any official who will take charge of functions and records from respondent 10. As no authorised officer was nominated by the Board to take charge, respondent 10 filed form for cessation of office with ROC on 11.01.2016 and stopped attending office of the first respondent company. Respondent 10 filed complaint with the Registrar of Companies, Gwalior regarding lack of governance etc. The promoter Director had also filed his complaint on the grounds of oppression and mismanagement of affairs of the first respondent company. Registrar of Companies, Madhya Pradesh had gone into every aspect of the complaints such as vesting of management control with the petitioner, validity of several amendments made in the Articles of Association for vesting control over management without owning shares, violation of Companies Act related to Board composition, quorum etc. Respondent 10 requested to call report from Ministry of Corporate Affairs, Government of India so that findings of ROC can be extended to logical conclusions. According to respondent 10, PFC is more worried about ROC report since it discloses about several acts committed by PFC. Having not authorised anybody to take charge from respondent 10, PFC is alleging that respondent 10 has not handed over the charge. Respondent 10 stated that the records were there wherein they were lying for the last 25 years.

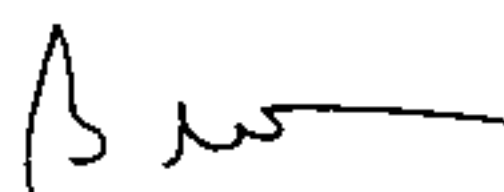
46. Petitioner filed rejoinder against the replies filed by the respondents denying the allegations that PFC was in



management and control of affairs of the respondent company from 2005. It is also stated that, other than nominee of the petitioner, on the board of the first respondent company, no employee of PFC has overlapping role between the PFC and first respondent company. However, the same does not apply to respondent 8 which shared common office space and whose employees have overlapping roles with the first respondent company. PFC reiterated that respondents failed to infuse equity of Rs. 470.00 crores for the project and they could bring Rs. 136.00 crores only till 2006. The promoters along with various investors infused equity of Rs. 499.00 crores whereas lenders disbursed Rs. 1817.00 crores. Petitioner denied allegation that the first respondent company arranged for genuine investment from foreign investors and that was not accepted by PFC.

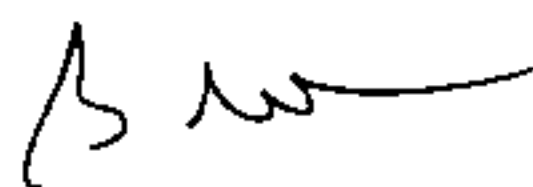
47. Petitioner stated that the reliefs are not barred by limitation. It is denied that respondent No. 3 is only non-Executive Director. It is stated by the petitioner that accounts and statutory records of the first respondent company are in the custody of respondent 10.

48. Respondent 10 vide letter dated 08.07.2016 has stated that the documents and records of the company are maintained in Mumbai Office and are in safe custody of employees. PFC stated that records are in custody of respondent 10 or respondent 10 continues to be aware about the location of records. Respondent 2, 3, 6, 8 and 9 filed rejoinder giving details of the meetings of the Board of Directors of the first



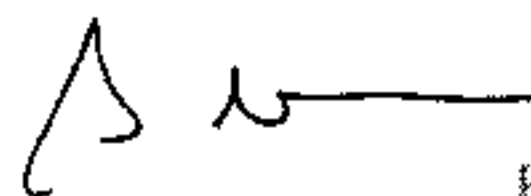


respondent company. It is also stated in the rejoinder that, petitioner left no option to capture management of the first respondent company. Management team was framed by PFC with selected members on the Board comprising of members appointed and nominated by PFC and nominees of other lenders. The said management team exercised full management control upon the project. An agreement dated 16.09.2005 was entered into between the first respondent company and petitioner PFC acting on its behalf and other lenders. In the said agreement term of Board of Directors was defined which included Director Finance appointed by PFC/lenders or nominee of the lenders and Government of Madhya Pradesh and MPSCB and one nominee director representing the interest of promoters. As per the agreement it was decided that the management control for managing the affairs of the first respondent company is with PFC till actual debt is repaid. The promoters are shareholders of the company and they have no say in finalising the agreement. As per the new arrangement, the entire control of management shall be with Managing Team comprising of promoters and other lenders. There is a clause in the said agreement that Memorandum and Articles of Association would not be further amended except as required by PFC. Another supplementary agreement dated 25.11.2005 was executed by M.D. nominated by the petitioner and it is stated in the letter dated 16.11.2005 written by petitioner to respondent No. 1 that draft of supplementary agreement was finalised by petitioner and its execution was prerequisite for disbursement of loan. In the



sur-rejoinder details of Articles of Association amended are given. It is also stated that records and minutes of meeting of "Maheshwar Committee shall reveal enormous powers assumed by the Committee and the major role played by it in diversion of funds from TRA for servicing of interest and financial costs of petitioner/lenders in priority over construction and completion of the project. The decision of Managing Committee used to be conveyed to the Managing Director of first respondent company with a copy to TRI banker with instructions that funds permitted may be withdrawn as Managing Director of the first respondent company. In detail it is stated in the sur-rejoinder about the illegal transfers and conversion of debts.

49. Heard arguments of learned Senior Counsel Mr. U.K. Chaudhary for the petitioner, and arguments of Mr. Navin Pahwa for 1<sup>st</sup> respondent No.1, Learned Advocate Ms. Amrita Joshi for respondents 2 and 3, Learned advocate Mr. Umesh Ved for respondents 3, 6, 8 and 9, Learned advocate Mr. Ankur Sood for respondent 3. Learned PCS Mr. Keyoor Bakshi for respondent 10. Learned advocate Mr. A.R. Gupta for respondent 7. Learned advocate Ms. Poonam Advani for respondent 2.
50. Having gone through the pleadings of petitioner and respondents and having heard the learned counsel appearing for the parties, this Tribunal is of the view that the

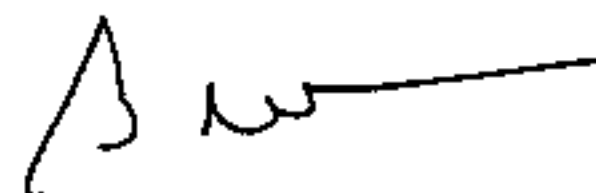


determination on the following points is essential for the adjudication of the issues involved in this petition.

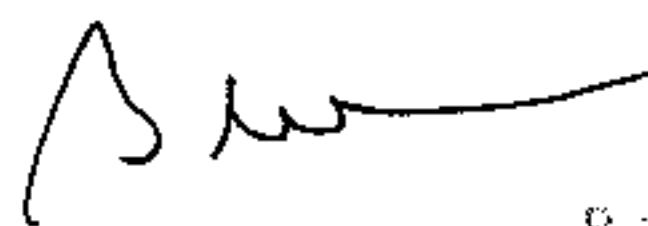
51. Before going for the exercise of identifying the points for determination, it is necessary to mention that respondents filed certain applications questioning maintainability of the application as well as calling for the report of Registrar of Companies, Gwalior and for permission to have copies of the report of ROC. This Tribunal by its order dated 18.04.2015 had decided that all pending applications shall be taken up for hearing along with the petition on the ground that the reliefs claimed in the applications require consideration of facts and law by this Tribunal which would only be possible after final hearing.

52. **Points for determination:-**

- 1) Whether the statements made in the sur-rejoinders filed by the respondents can be taken into consideration?
- 2) Whether this Tribunal is entitled to decide the dispute raised by the respondents on the shareholding of PFC and its supporters?
- 3) Whether the invocation of the shares pledged by the respondent no.8 is valid or not?



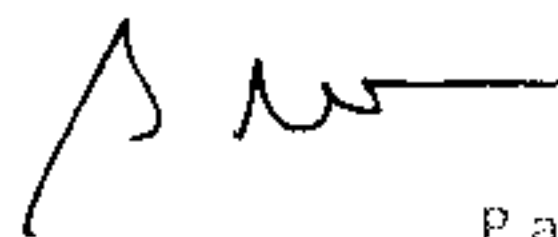
- 4) Whether shares were transferred to Petitioner according to provisions of Companies Act, 2013?
- 5) Whether the conversion of Sub-debt into equity is valid or not?
- 6) Whether petitioner and his supporters are entitled to agitate about the alleged acts of Oppression and mismanagement that took place prior to 01.06.2016 on the ground that they are not members of First Respondent Company prior to 01.06.2016?
- 7) Whether the petition is barred by limitation or not?
- 8) Whether there is any delay or latches on the part of the petitioner in approaching this Tribunal?
- 9) Whether the management and affairs of the First Respondent Company have been controlled by PFC from 2005 onwards or not?
- 10) Whether the failure to infuse equity and repayment of loan amounts to petitioner and other financial institutions amounts to acts of oppression or mismanagement?
- 11) Whether the respondents siphoned the moneys of the First Respondent Company?



- 12) What are the reasons for the delay in the commissioning of generation of power in the project- Maheshwari Dam?
- 13) Whether the parties can have access to report of ROC Gwalior?
- 14) Non joinder of parties- Prayers E, G, H, I, L.
- 15) Whether petitioner is entitled for relief (C) prayed in the petition?
- 16) Whether petition is bona fide one or not?
- 17) Row over records of 1<sup>st</sup> Respondent Company.
- 18) Whether petitioner is entitled for any reliefs in this petition and if so to what reliefs?

Point no. 1

53. Learned Sr. counsel Mr. U.K. Chaudhary argued that the pleas raised by respondents in their sur-rejoinder cannot be taken as pleas in the reply or additional reply.
54. In support of the contention the following decisions have been relied upon: -
  - (1) Decision of Division Bench of Delhi High Court in the case of Ashutosh vs Arun Jaitley & Ors. decided on 03.06.2016.



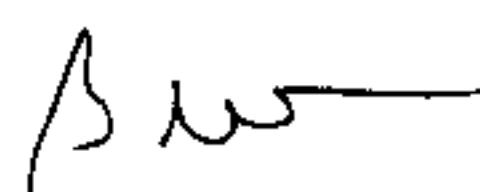
(2) Decision of Supreme Court in Ram Sarup Gupta (Dead) by Lrs. v/s Bishun Narain Inter College and Ors. decided on 08.04.1987 AIR 1987 SC 1242

(3) Rajiv Motors Ltd. v/s Shri Jagvir Singh decided on 29.04.2011 MANU/DE/2067/2011

55. In the decision of Delhi High Court it is held that the scope of sur-rejoinder is only to deal with new issues arising out of rejoinder. In the other two decisions it is held that in absence of pleadings any amount of evidence produced by the parties is of no use.

56. Learned counsel appearing for the petitioner on this aspect relied upon the judgement in the case of Mahadev Narayan Datar & Ors. vs. Sadashiv Keshev Limaya Raghunath Ram Chandra Agarkar and Ors. of Hon'ble High Court, Mumbai reported in ILR 1921 45 Bom 45.

57. In the case on hand in order to appreciate the rival contention it is necessary to narrate the proceedings that took place before it reached the stage of final hearing. This petition is listed before this bench on 30.01.2017. Thereafter, this Tribunal on 15.2.2017 treated that respondents 2, 4, 5 & 10 have no reply to be filed by them. Respondents 1, 2, 4 & 10 filed replies to the interim reliefs. Thereafter respondents 2, 4, and 10 filed IA. 27, 28 and 29 of 2017 requesting the



Tribunal to receive their replies. Thereupon petitioner's counsel reported no objection to receive the reply. This Tribunal received replies filed by respondents 2, 4 & 10 but they are only on interim reliefs. Later, respondents filed I.A. 68, 69, 70, 71 and 72 of 2017 seeking direction to Registrar of Companies, Madhya Pradesh to produce report prepared by it and challenging the maintainability of the petition. Respondents also filed IA 92 and 93 of 2017 to give copies of ROC report and to grant time to prepare and file detailed rejoinder. This Tribunal on 18.04.2017 decided that all pending applications shall be taken up for hearing along with main petition. This Tribunal, again, by its order dated 04.05.2017 ordered that IA 92 and 93 of 2017 filed by respondents shall also be heard along with main petition. This Tribunal received sur-rejoinders filed by the respondents. Therefore, in these set of facts, the pleas made in the sur-rejoinder need not be brushed aside on the ground that those pleas were not taken in the replies. Moreover, a perusal of the replies filed by respondents and their sur-rejoinders clearly reveal that pleas taken in the reply to the interim reliefs are elaborated in the sur-rejoinder. Moreover, after filing sur-rejoinder, petitioner did not choose to file any additional affidavit. It is the practice in this Tribunal that parties are filing rejoinder as well as sur-rejoinders. No new fact has been introduced in the sur-rejoinders. Moreover, strict rules of Civil Procedure Code are not applicable to the proceedings in this Tribunal and this Tribunal is governed by principles of natural justice. When there is no procedure of taking the evidence on



oath, the proposition of law that any amount of evidence without a pleading is not applicable to the proceedings before this Tribunal in the light of above stated facts. There is absolutely no quarrel about the proposition of law laid down in the judgement of the Hon'ble Supreme Court in Ram Sarup Gupta (Dead) by Lrs. And Rajiv Motors case.

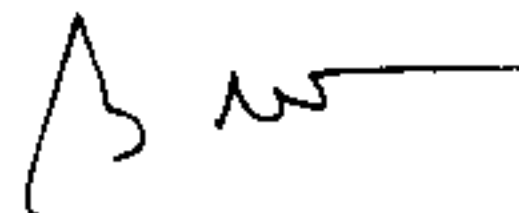
This point is answered accordingly.

Point no. 2 and 3

58. In the petition it is stated that the petitioner is holding 23.32% of shares in the paid up share capital of the company and, therefore, he is entitled to file this petition. It is the plea of the respondents that, petitioners acquired shareholding in the first respondent company by way of invocation of pledged shares. Learned senior counsel appearing for the petitioner contended that the share certificates along with endorsement of transfer of shares filed by the petitioner along with rejoinder is evidence of shareholding of the petitioner and this Tribunal cannot go into the aspect of mode of acquisition of shares and manner of transfer of shares.

59. On this aspect, learned senior counsel for petitioner referred to the following decisions: -

- (1) Radhe Shyam Gupta and another vs. Kamal Oil & Allied Industries Ltd. & Ors. reported in [2001] 103 Comp Cas 337 (Delhi)





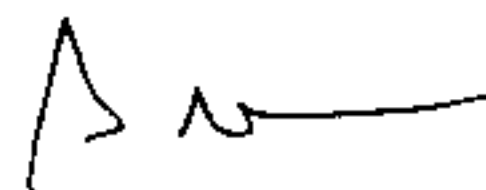
(2) Sangramsinh P. Gaekwad and Ors. vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. And Ors. reported in [2005] 11 SCC 314

(3) Ammonia Suppliers Corporation P. Ltd. Vs. Modern Plastic Containers Pvt. Ltd. reported in AIR 1998 s.c. 3153.

60. In the decision of Radhe Shyam Gupta and another vs. Kamal Oil & Allied Industries Ltd. & Ors. what was decided is that the maintainability of the petition has to be ascertained at preliminary stage on the basis of allegations made in the petition. In the same decision, in para 7, it is observed as follows : -

"The plea doubting the appellant's title to the membership will have to be established by cogent and reliable evidence, if otherwise permissible to be raised as a defence to the Company Petition "

61. In that case the title of the appeals to the shares was in dispute. But in the case on hand there is no dispute about the fact that the shares belong to Respondent 8. It is the petitioner who got the shares of respondent 8 transferred to him by way of invocation of pledge. The dispute raised by the respondents is the pledge has not been validly invoked, but not about the validity of pledge or right to invoke pledge. Therefore, the aforesaid decision is of no help to the petitioner. In the decision in Sangramsinh P. Gaekwad and Ors. vs. Shantadevi



P. Gaekwad (Dead) thr. Lrs. And Ors. and Ammonia Suppliers Corporation P. Ltd. Vs. Modern Plastic Containers Pvt. Ltd. what was decided is that a dispute regarding right of inheritance between the parties and a dispute of fraud etc. cannot be decided by the Tribunal and such dispute has to be necessarily relegated to Civil Court. Learned counsel appearing for the respondents contended that the share certificate is not final proof of shareholding of the petitioner. He contended that as per section 46 of the Companies Act, share certificate is only a prima facie proof and respondents can rebut the said presumption.

62. In Mega Resources and Ors. vs. Bombay Dyeing and manufacturing Company Ltd. and Ors. reported in [2003] 116 CompCas 205 (CLB) in para 10.3 it is held as follows: -

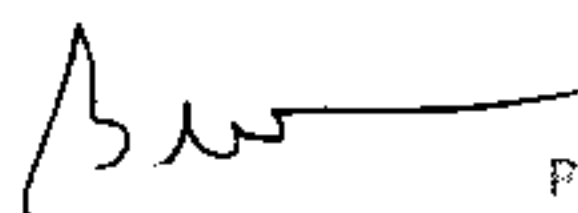
"If, in a petition, the legality of the acquisition of the shares, or the factum of holding shares, the strength on which the petition is filed, is challenged, before proceeding with the petition, the bench has to examine the same and give its finding, which has to be definitely and necessarily subsequent to the date of filing the petition. Therefore, we are not impressed with the arguments of Shri Mookherjee that at the time when the petition was filed, there was no finding against the petitioners. Assuming that there were no earlier proceedings, in the present proceedings, we would have to first deal with the objection of the company as to whether the petitioners were holding the shares validly by examining

whether they had complied with the provisions of take-over code and would have to give our finding.”

63. In this context, it is necessary to refer what is the nature of dispute raised by the respondents regarding shareholding of the petitioner. The first dispute is that the pledge has not been validly invoked. The second dispute is that there is no valid transfer of shares. These defences need not be referred to Civil Court. This Tribunal on the basis of material available and according to the legal aspects has to give decision. Therefore, the contention of the learned senior counsel for the petitioner, this Tribunal is not entitled to decide the pleas raised by the respondents on the shareholding of the petitioner is not acceptable.

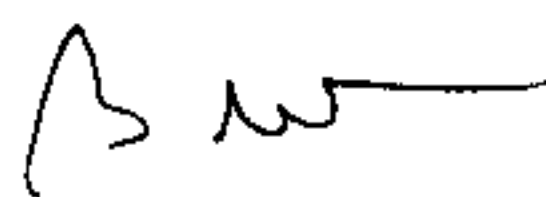
64. Admittedly the shares of respondent 8 was pledged to Power Finance Corporation and other lenders. The petitioner in written arguments referred to clause 10 of the deed of the pledge of shares dated 30.11.2006.

65. The petitioner, either in the petition or in the rejoinder did not chose to narrate as to the manner in which he has acquired shareholding. Petitioner did not even chose to file the share certificates and transfer endorsement forms along with the petition. Petitioner filed copies of share certificates along with



transfer endorsements only along with the rejoinder which was filed on 17.04.2017 i.e. nearly than four months after filing of this petition. No doubt the first respondent company in the reply supported the case of the petitioner on the aspect transfer of pledged shares to the petitioner and other lenders. The first respondent company filed reply on 15.02.2017. The first respondent did not even to choose to produce copies of share certificates along with its reply. If we peruse the share certificates filed along with rejoinder, the copy of the share certificate at page 127 of the rejoinder, the number of shares in figures is mentioned as 7,46,849 but in words it is mentioned as "seventy lakh, forty-six thousand eight hundred forty nine only." Surprisingly in the sheet attached to the share certificate styled as "Memorandum of transfers of share(s) mentioned overleaf is left blank without any endorsement. Even in respect of share certificates at page 129 of the rejoinder in the memo of transfer sheet there is no endorsement.

66. Now, coming to the pledge deed dated 30.11.2006, it has not seen the light of the day. It may be argued respondent No. 8 is not disputing the pledge. It is a fact that respondent 8 is not disputing the pledge of shares but respondents are disputing the invocation of the pledged shares. Clauses in the deed of pledge are very much relevant in deciding the validity or otherwise of invocation of the pledge. However, petitioner has given opportunity to this Tribunal at least to read clause 10 of



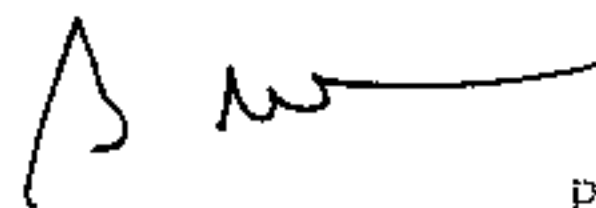
the pledge deed by reproducing it in the written arguments. This Tribunal had no opportunity to see other clauses in the pledge deed.

67. In this background, it is the plea of the petitioner in the petition at page 47 para 6.81 that notice of invocation of pledge was issued on 19.05.2016. A copy of such notice has not been filed either along with petition or along with rejoinder. In the written arguments also it is reiterated that notice for invocation of pledge was given on 19.05.2016. It may be contended that there is no denial of issuance of notice of revocation of pledge. But there is a plea by the respondents in the reply itself that pledged shares were illegally invoked and transferred.

68. In the written arguments it is mentioned as follows: -

In light of the foregoing, PFC has complied with the requirements of section 176 of the Act by giving reasonable notice of 30 days to the pledger before invoking the share pledge deed.

69. Even according to the petitioner, notice of invocation of pledge was given on 19.05.2016. According to the petitioner the shares were transferred 01.06.2016. Therefore, even according to the petitioner 30 days' notice is reasonable time. Even before expiry of 30 days, petitioner obtained the share certificate from the first respondent company on 01.06.2016 in the name of invocation of pledged shares.

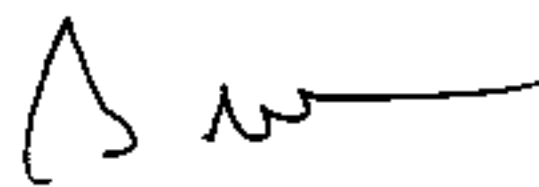


70. Here it is pertinent to refer to section 176 of the Contract Act.

Section 176 of the Contract Act, 1872 lays down the rights of the pledgee:

*176. Pawnee's right where pawnor makes default.----If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. -----if the pawnor makes default in payment of the debt, of performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale." If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.*

15. The rights of the pledgee are restricted to: (a) filing a suit for recovery and holding the pledge goods as

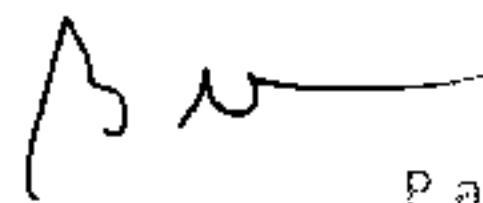


collateral security; or (b) selling the pledged goods. As a matter of law, a pledgee does not have any right to acquire in respect of the goods pledged.

16. The Delhi High Court, in GTL Limited v. IFCI Ltd. 2011 (126) DRJ 394, *accepted* and

*"64.. (i) The provisions of Section 176 Contract Act are mandatory. The applicability and sweep of Section 176 unlike several other provisions on the same subject is not eclipsed by the phrase- "in the absence of a contract to the contrary." The notice that is to be given to the pledger of the intended sale by the pledgee is a special protection which statute has given to the pledger and parties cannot agree that in the case of any pledge, the pledgee may sale the pledged articles without notice to the pledger (para 55)*

*(ii) If a sale is held of the shares under authority of the pledger then it could convey to the purchaser full title in the shares; sale under Section 27 of Sale of Goods Act title conveyed to the purchaser would not be a title better than that of the seller. (Para 56)*

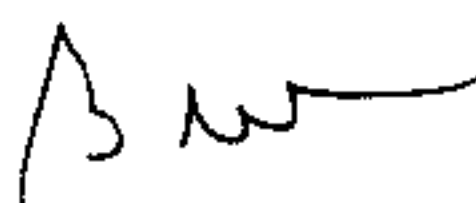


*(iii) Notice under Section 176 of Contract Act must be given before the power of sale can be exercised. If the notice is essential, the purchaser, however innocent cannot acquire a title better than his vendor has (Para 56).*

*(iv) Right to redeem under Section 177 can be exercised up to time the actual sale of the goods pledged takes place. The actual sale referred to in Section 177 must be a sale in conformity with the provisions of Section 176 which gives the pledgee the right to sale; and if the sale is not conformity with those provisions, then the equity of redemption in the pledger is not extinguished. (para 57).*

*Further, the said right is otherwise also not available in view of absence of ownership and right which is available is right to sell to the extent of the realization of debt.*

71. Learned counsel appearing for the Respondent No. 3 relying upon the decision of High Court of Delhi in the case of GTL Ltd. vs. IFCI Ltd. and Ors. reported in 2011 [126] DRJ 394 wherein it is contended that the rights of the pledge are restricted to filing a suit for recovery and holding the pledged goods as



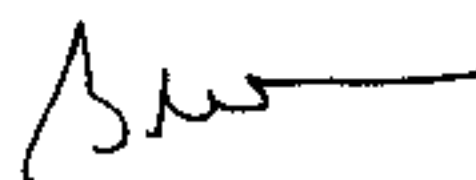


collateral security or selling the pledged goods. He further contended that the pledgee does not have any right to acquire ownership in respect of the goods pledged. Learned counsel for respondent No. 3 also contended that sale notice under section 176 is mandatory statutory notice, giving reasonable time.

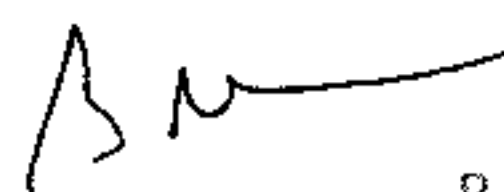
72. Learned counsel appearing for the petitioner on this aspect relied upon the decision of Punjab High Court in Dhani Ram and Sons vs. The Frontier Bank Ltd. and another reported in AIR 1962 Punjab 321. In that decision the bank instead of selling the shares by auction, the bank sold the shares to itself and credited the account of pledger with the face value of those shares.

73. The Learned Single Judge of the Calcutta High Court in Neekram vs. Bank of Bengal (ILR 19 Cal 322) held that the sale to bank itself was unauthorised and therefore in the appeal by the Bank the matter was heard by the full bench. The full bench held that selling of the pledged shares without further notice and without further demands was a wrongful act by the Bank for which they are liable to pay.

74. Therefore, the legal position is that notwithstanding anything contained in the contract or pledge section 176 will prevail.



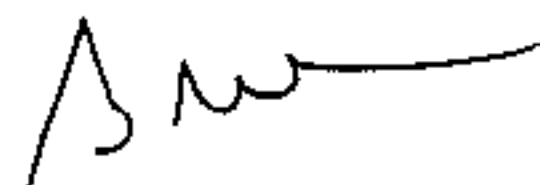
Section 176 clearly says that the pledgee may sell the goods pledged and can retain receivables as collateral security. The decision of Delhi High Court is of the year 2011. Therefore, the decision of Delhi High Court is latest in point of time. Simply because the judgement of Delhi High Court is interlocutory application it cannot be overlooked especially in that judgement after referring to the entire case law on the subject observed about the principles relating to section 176. Again it is necessary to mention that except clause 10 which is written in the written arguments other clauses of the document pledged are not made available to this Tribunal by the petitioner. The notice said to have been issued by the petitioner has not been placed on record. When the petitioner is claiming acquisition of share on the invocation of the pledge and the respondent took plea that the shares were acquired illegally is it not the duty of the petitioner to place on record the deed of pledge, as well as notice said to have been issued by the petitioner irrespective of the fact whether respondent denied or not about the notice. Non-production of aforesaid two documents certainly gives rise to adverse inference. In these set of fact that share certificates were not placed on record till four months after filing of this petition assumes importance. Here is the case where the company is sailing with the petitioner and its supporting lenders. When such is the case version of the first respondent without producing copies of share certificates that are in the name of petitioner and other lenders or the register of members do not merit acceptance.



75. What is disputed is not the creation of pledge or the right of the petitioner to invoke pledge of shares. What is being disputed is that petitioner has no right to keep the shares in his name being a pledgee and the statutory requirement of notice has not been established.
76. Learned counsel for the petitioner also referred to the judgement of Company Law Board in Maruti Udyog Ltd. vs. Pentamedia Graphics Ltd. reported in [2002] 111 CompCas 56 (CLB). Decision of the CLB, on this Tribunal may not be binding in view of the decision of Hon'ble High Court of Delhi wherein referring to various decisions on the aspect of section 176 of Contract Act principles have been stated. It appears that in the above decision CLB has recognised the practice of registering the shares in the name of the pledgee and in that case since it is observed that the pledgee does not in any way constitute a sale requiring notice. It is not even the case of the petitioner that no notice is required. It is the case of the petitioner that he has issued 30 days reasonable notice but he did not choose to file a copy of the notice. As already said, there is only fifteen days' time gap between the date of notice and the date of transfer of shares. Therefore, this Tribunal is of the view of invocation of the shares by the petitioner has not been done validly. It does not mean that the petitioner has no right to invoke pledged shares. It is left to the petitioner again to take recourse to invoke the pledged shares by following

statutory requirements. This Tribunal is not deciding the rights between the pledger and pledgee but the decision is only on the statutory requirement and the interpretation of section 176 of the Contract Act. This Tribunal is of the considered view that kind of function has to be done by this Tribunal when defence has been raised at the initial stage of the petition itself.

77. Another contention of the learned counsel for the petitioner is that, although the pledge was invoked on 01.06.2016 no action was initiated by the respondents till today except plea raised as defence.
78. Learned counsel for respondent No. 8 raised a dispute about the invocation of the pledge of shares by way of mail dated 08.01.2016 issued by Mr. Mukul Kasliwal to ROC, Gwalior. He also contended that respondent 8 has got time to file appropriate proceedings against the illegal invocation of the pledged shares and his remedy is not barred by limitation. Therefore, on the ground that respondent No. 8 did not initiate any proceedings against the invocation of the pledge of shares the defence raised by the respondents need not be brushed aside.
79. Whether the transfer of shares in favour of the petitioner and his supporters is valid or not?



80. It is held in point No. 3 that the invocation of pledge of shares has not been done validly. Even assuming that invocation of shares has been done validly, the transfer of shares must be according to section 56 of the Companies Act, 2013 that came into force on 01.04.2014.

Point no. 4

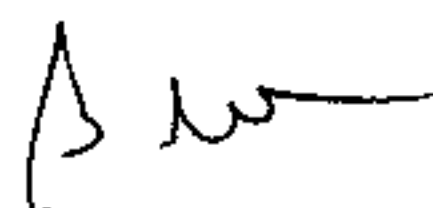
81. It is the contention of the learned counsel for respondent 3 and 8 that provisions of Companies Act 2013 has not been followed and forms SH 4 & 5 have not been submitted for the transfer of his shares. It is also contended that the share transfer forms that were given at the time original pledge of shares cannot be used for transfer of shares on 01.06.2016. He also referred to section 56 read with sub-section 11 of the Companies Act (share capital and Debentures Rules 2014) on this aspect. Learned counsel appearing for the petitioner contended that, Ministry of Corporate Affairs, Government of India, New Delhi vide circular dated 12.06.2014 clarified the position on this aspect. Said circular reads that any share transfer form executed prior to 01.04.2014 and submitted to the company concerned within a period prescribed under relevant section of the Companies Act, 1956 needs to be accepted by the companies for registration of transfers. In case any such transfer form executed prior to 01.04.2014 is not submitted within the prescribed period under the Companies Act, 1956, the concerned company may get itself satisfied suitably with regard to justification of delay in submission etc. In case a company decided not to accept the share transfer form it shall

convey reasons for such non-acceptance within time provided under section 56(4)(c) of the Companies Act, 2013. In view of the said circular it is necessary to refer to relevant provision of the Companies Act, 1956, since in this case the share transfer form used was executed prior to 01.04.2014. Relevant section is section 108. Sub section (1C) section 108 says that nothing contained in sub-section (1A) and (1B) shall apply to any share deposited by any person with State Bank of India or any schedule bank or any banking company or financial institution approved by the Central Government or the Central Government or State Government or any Corporation owned or controlled by Central Government or State Government by way of security for repayment of any loan or advance.

82. Sub-clause I of clause (B) of section (1C) of section 108 of the Companies Act, 1956 says that the Corporation shall put its stamp or otherwise endorse on the form of transfer of such shares where such share intended to be registered in its own name. It further says that the instrument of transfer shall be delivered to the company within two months so stamped or endorsed.
83. Petitioner is a Corporation owned by Central Government. In view of circular issued by Ministry of Corporate Affairs referred to above the petitioner corporation has to follow the aforesaid provisions.



84. In the case on hand, petitioner did not choose to file copies of transfer forms. It may be said that the petitioner has not retained a copy of the transfer form but it is not possible to state that the transfer forms filed by the petitioner are not available. It is not known why the first respondent who is supporting the petitioner did not choose to produce copies of the transfer forms deposited by the petitioner with the company. Therefore, it is not possible to say that there was stamp or endorsement of the Corporation on the transfer forms and on what date it was made. Therefore, non-production of copies of transfer forms either by the petitioner or by the first respondent company also gives rise to adverse inference as to in what manner the shares were transferred. This point is answered accordingly.
85. Learned senior counsel appearing for petitioner relying on the judgement of Supreme Court in Vasudev Ramchandra Shelat vs. Pranal Jayanand Thakar & Ors. contended that requirements of form and mode of transfer are really intended to ensure that the substantial requirements of transfer have been satisfied. In that case donor acquired rights over shares under registered gift deed and it was accepted by Donee. A gift if complete create right over property unlike pledge. Hence the above said decision is not applicable to pledge of shares.
86. Interestedness of Directors :- According to the petitioner, the resolution is passed by the first respondent company on 01.06.2016 accepting the invocation of pledge and registered transfer of shares in the name of petitioner and his supporters.



In that Board meeting only nominees of lenders were present. Out of the four nominated directors nominated by lenders they are also employees of the same lender institute in whose favour transfer of shares or conversion was carried out.

87. Learned counsel for the respondent stated that interested directors would not participate in passing such resolutions thereby their lender institutions are acquiring shares.
88. Learned counsel appearing for the petitioner contended that interested means the directors must have personal interest or they must be Directors of some other company for which transaction is being entered with.
89. Learned counsel appearing for the respondents, on this aspect, relied upon the decision of Bombay High Court in Firestone Tyre and Rubber Co. vs. Synthetics and Chemicals Ltd. and Ors. reported in [1971] 41 CompCas 377 (Bom.)

*"27. Though this was a case from Scotland, the rule of English law is the same, for, as observed by Swinfen Eady. L.J., in Transvaal Lands Company v. New Belgium (Transvaal) Land and Development Company, the doctrine rests on such obvious principles good sense that it is difficult to suppose that there could be any system of law in which it*

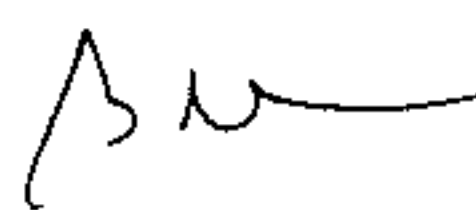




would not be found, In *Transvaal Land Company's* case it was held at page 503 that:

"Where a director of a company has an interest as shareholder in another company or is in a fiduciary position towards, and owes a duty to, another company which is proposing to enter into engagement with the company of which he is a director, he is in out opinion within this rule. He has a personal interest within this rule or owes a duty which conflicts with his duty to the company of which he is a director. It is immaterial whether this conflicting interest belongs to him beneficially or as trustee for others."

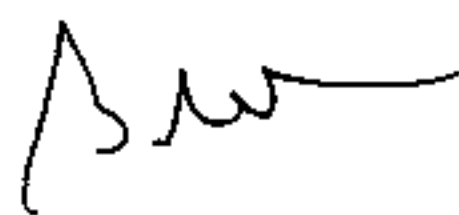
28. Thus, this rule applies not only where there in a conflict of interest or conflict of interest and duty but also where there is a conflict to two duties. It is immaterial whether the interest is a personal interest or arises out of a fiduciary capacity or whether the duty which is owed is in a fiduciary capacity. Actual conflict is also not necessary. A possibility of conflict is enough to bring the case within the ambit of this rule nor does the application of this rule depend upon the extent of the adverse interest. Directors stand towards the company in a fiduciary position in India this fiduciary character has received statutory recognition in section 88 of the Indian Trusts Act, 1882. The reason underlying this rule is that the



*company has a right to the unbiased voice, advice and collective wisdom of its directors.*

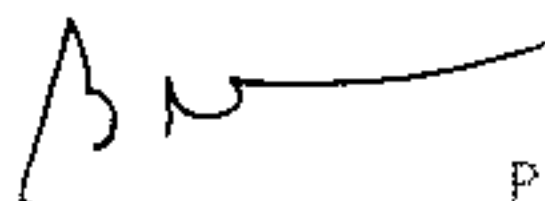
*29. The section itself makes it clear that the interest or concern need not be direct. It may be indirect, Further, the words used in the Section are "concerned or interested". The phrase "concerned in the contract" has been the subject-matter of judicial interpretation in England. In Nutton v. Wilson, the Court of Appeal had to consider rule 64 of Schedule II to the Public Health Act, 1875, under which a member of a local board who "in a manner" was "concerned in any bargain or contract" entered into by such board ceased (except in certain cases) to be such member and his office was thereupon to become vacant. By rule 70 of the said Schedule a penalty was imposed upon a person who acted as such member when disabled from acting by any provision of the Act. The defendant, a member of a local board, was employed by person with whom the board had contracted for the performance of certain works on the premises of the board, to do the portion of the work so contracted. The trial court held against the defendant and an appeal against the said decision was dismissed. In the Court of Appeal Lindley L.J. Observed at page 748:*

*"There does not seem to be any question here of participating in the profit of a contract; but the*



*question is whether the defendant can be said to have been concerned in any bargain or contract entered into by the board. The expression 'In any manner concerned' is a somewhat lax one. Cases may be put in which a person might perhaps be said in one sense to be concerned in a contract entered into by the board and yet it might be tolerably obvious that he was not 'concerned in the contract in the sense in which the Act uses the words. To interpret words of this kind, which have no very definite meaning, and which perhaps, were purposely employed for that very reason, we must be look at the object to be attained. The object obviously was to prevent the conflict between interest and duty that might otherwise inevitably arise."*

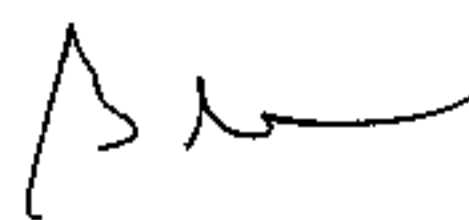
*30. In Bannacle v. Clark the respondent was a member of a school board. He sold sand and gravel to a builder who had entered into a contract with the board for the building of a school. At the time of the sale the respondent was aware that the sand and gravel were intended to be used, as they were in fact used, in the building of the school. The respondent was prosecuted under section 34 of the Elementary Education Act, 1870, under which a member of a school board who, inter alia, "shall in any way share or be concerned in the profits of any bargain or*



*contract with or any work done under the authority of such school board" was liable to a penalty and his office became vacant. The justices for the country of Northampton holding that the respondent was not guilty of any offence dismissed the information. Upon a case being stated to the court it was held that the respondent was guilty. Ridley J. referred to Nutton v. Wilson and observed that, though that was not a precise authority in favour of the appellants contention, it showed the lines upon which similar statutory enactments had been construed. The court came to the conclusion that, having regard to the object of the Act, it should be carefully and strictly construed and, although the respondent had unwittingly offended against the provisions of the section and although there was no suggestion that what he did was done with a corrupt purpose or from a corrupt motive and although no blame attached to him, he ought to have been convicted.*

33. Lord Cozens-Hardy M.R.. described the defendant' case as almost unarguable. He said at page 81:

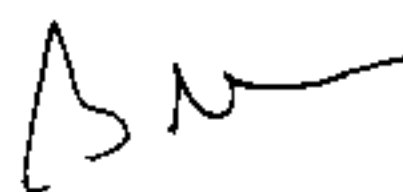
*"A man may have a duty on the one side and an interest on another. A solicitor who puts himself in that position takes upon himself a grievous responsibility. A solicitor may have a duty on one side and a duty on the other, namely, a duty to his client as solicitor*



*on the one side and a duty to his beneficiaries on the other; but if he chooses to put himself in that position it does not lie in his mouth to say to the client. 'I have not discharged that which the law says is my duty towards you may client because I owe a duty to the beneficiaries on the other side.' The answer is that if a solicitor involves himself in that dilemma it is his own fault."*

*36....Both under the Companies Act as in the statutes which were considered in Nutton v. Wilson, Barnacle v. Clark and England v. Inglis the object intended to be attained by the enactment of such prohibitions was to prevent the conflict between interest and duty which might otherwise inevitably arise. In enacting section 299 and 300, the legislature wisely did not attempt to define "concern" or "interest". Since these sections were enacted in the interest of the shareholders, so that they may have the benefit of the independent, unbiased and collective judgement, opinion and wisdom of their board or director, the words used in the section have been purposely used in as general a sense as possible. To have laid down any confining limits to the operation of these section may have resulted in defeating the very object for which these sections were enacted.*

*37. The section must, therefore, be construed bearing in my mind the old long established rule of equity*

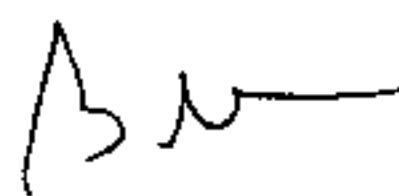


*which they enact and having regard to the subject intended to be attained.*

*38. It should also be noted that section 300(1) does not merely use the word "interest" but speaks both of "concern" or "interest" whether direct or indirect and in this connection reference may again be made to the observation of Lindley L.J. in Nutton v. Wilson, of Darling J., in Barnacle v. Clark and of Romer J., in Victors Ltd. v. Lingered referred to above.*

*43. The word 'concerned' is of quite general import. Clearly it cannot be limited to 'concerned' in the sense of financial interest of of being an employee of the business. Again, I can see no more effective way of being concerned in a business than by providing the capital necessary to establish it, and the word 'concerned' seems also to cover the assistance given by the father in the course of negotiations.*

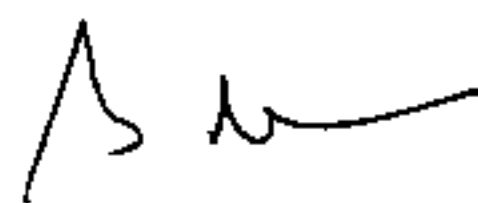
90. It is further contended that before meeting Respondent No.3 had already sent a written notice objecting conversion of sub loan into equity but lenders with support of employee directors passed the resolution. Therefore, the resolution accepting the conversion and pledge is passed with the help of interested directors who are nominees of lenders in whose favour the shares were transferred. In that view of the matter also, transfer of shares and conversion of sub-debt gets affected. It



is too much to expect this Tribunal to grant any equitable relief on the basis of such tainted shareholding of petitioner and its supporters. The highlight of this issue is the value given by petitioner for all the pledged shares is Rupee one.

Point No. 5

91. Conversion of Debentures into Equity:- According to the petitioner the debentures were converted into equity. According to the petitioner's averments, petitioner on 18.12.2015 issued conversion notice and revised notice dated was issued on 25.12.2015. Petitioner did not choose to file copies of the said two notices. Petitioner did not even choose to file subordinate loan agreement in which sub debt was created. But fortunately this Tribunal finds those two documents in the sur-rejoinder of respondent 3 at page 350 to 352. The reply to the conversion notice given by Mr. Mukul Kasliwal was at page 355 to 359 of the sur-rejoinder of respondent 3. It is the argument of the learned senior counsel for the petitioner that respondents having availed loan of Rs. 375.00 crores now cannot turn around and question about the validity of the subordinate loan agreement or about the manner in which it came into existence. There is any amount of force in this argument of learned counsel for petitioner if the plea of the respondents. What is now questioned by the respondents is whether article 1.2 of the subordinate loan agreement will prevail over article 1.4 of the subordinate loan agreement. Material on record clearly goes to show that clause 1.4 was subsequently introduced by way of letter dated 18.06.2010 i.e.



one day after the Extra Ordinary General Meeting dated 17.06.2010 in which members approved the motion wherein clause 1.2 is there. In the letter dated 18.06.2010 addressed by the PFC to the Company Secretary of respondent 10 it is mentioned that prior to disbursement of subordinate loan the first respondent company shall conduct EGM. Therefore, it is clear that in the EGM held on 17.06.2010 there was no discussion about the conversion clauses.

92. Another ground on which subordinate agreement was questioned is that EGM was held without giving 21 clear days of notice that is how there is also cloud on conversion of subordinate loan into equity. This point is answered accordingly.

Point No. 6

93. This is one of the crucial issue that relates to the maintainability of the petition. In view of the findings on point No.3 the shareholding of the petitioner in the first respondent company is not valid. Even assuming that shareholding of the petitioner in the first respondent company is valid petitioner became member of the company only on 01.06.2016. Further, the other financial institutions who are supporting the petitioner whose affidavits are filed along with rejoinder along with share certificate copies also become members only from 01.06.2016, even according to the petitioner. Therefore, it is an admitted

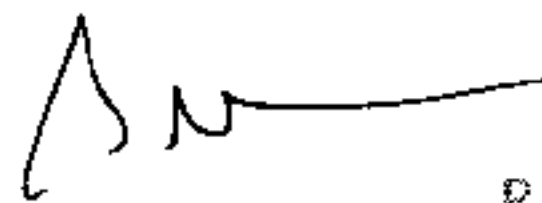


fact that prior to 01.06.2016, petitioner and his supporters were not members of the first respondent company.

94. This petition is filed under section 241 and 242 of the Companies Act, 2013. Section 241 of the Companies Act, 2013 reads as follows: -

Section 241 – Application to the Tribunal for relief in cases of oppression, etc.

- (1) Any member of a company who complains that-
- (a) The affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or
  - (b) The material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholder of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a



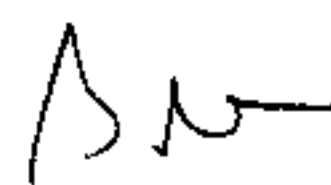
manner prejudicial to its interests of its members  
or any class of members.

may apply to the Tribunal, provided such member has a right  
to apply under section 244, for an order under this chapter.

(2) The Central Government, if it is of the opinion that the  
affairs of the company are being conducted in a manner  
prejudicial to public interest, it may itself apply to the  
Tribunal for an order under this chapter."

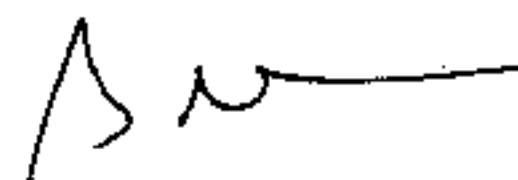
95. Learned counsel appearing for the respondents 3 and 8  
contended that all the alleged acts of oppression and  
mismanagement, even according to the petitioner took place  
prior to 01.06.2016. Even the petitioner has not disputed on  
the aspect that the acts of oppression and mismanagement  
took place prior to 01.06.2016 but learned senior counsel  
vehemently contended that acts of oppression and  
mismanagement are continuous acts. He pointed out that in  
section 241 unlike section 367 "have been" introduced and  
therefore it covers even the concluded acts.

96. Learned counsel appearing for the respondents contended that  
it is settled law that acts of oppression and mismanagement  
that took place before a person became member of the  
company cannot be challenged even under section 241 of the  
Companies Act, 2013. On this aspect, learned counsel for



petitioner referred to the judgement of High Court of Orissa in N.R. Murty vs. Industrial Development Corporation of Orissa Ltd. and Ors. reported in [1997] 47 Comp Cas 389 (Orissa). In that case the shareholder of a public limited company East Coast Breweries & Distilleries Ltd. filed petition under section 397 and 398 of the Companies Act alleging acts of oppression and mismanagement. In that case, Orissa High Court ruled "that the company affairs were conducted in a manner oppressive to some part of the members including the petitioner as also against the interest of the company and on the facts winding up order under just and equitable clause should ordinarily have been made" (page 18 para 55) In that case Hon'ble High Court of Orissa directed the Corporation to cooperate with the management of the company and without further delay the agreement with IDBI should be executed so that funds would be available. In the case on hand, the petitioner corporation being a lender turned out to a member by invocation of pledge of shares and seeking reliefs alleging oppression and mismanagement, including reliefs of protection from prosecution under various Acts without going ahead with the project having taken over Management of company for completing the remaining work of factory without further loss of time.

97. On this aspect, learned counsel of the respondents relied upon the following decisions: -



- (1) M/s. Vardhman Dye-stuff Industries P. Ltd. vs. P.J. Dharod and P.P. Dey reported in [2005] 128 CompCas 710 (CLB)
- (2) Palghat Exports Pvt. Ltd. vs. T.V. Chandran and others reported in 1993 SCC Online Ker 441 :1994) 79 Comp Cas 213
- (3) V.M. Rao V. Rajeshwari Ramakrishnan and others [1987] 61 Comp Cas 20 (Mad)
- (4) Mr. Vijayan Rajes s/o. Mr. M.S.P. Rajes and vs. M.S.P. Plantations Private Limited [2009] 151 Comp Case 413 (Kar)

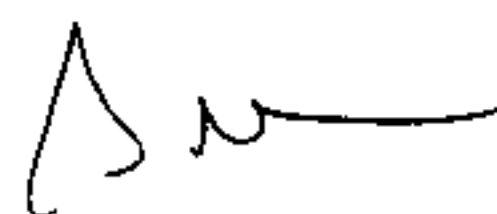
98. In the above decisions it is held that persons who are not members on the date of alleged acts of oppression and mismanagement are not entitled to question such acts. On this aspect learned counsel for respondent No. 3 relied upon BNS Steel Trading P. Ltd. And Others v. Orissa Sponge iron and Steel Lt., (2010) 154 Comp Cas 357 (CLB)

*"23. In so far as the alleged tainted transactions are concerned the admitted fact is that all these transactions took place before the Bhushan group became shareholders. By these transactions, the Bhushan Group has not been affected at all in any manner...In Northern Projects Ltd. v. Blue Coast hotels and Resorts Ltd., [2007] 140 CompCas 300, this Board has categorically held that in a petition under section 397/398 past and concluded transactions cannot be agitated. This has been upheld by the*

*Bombay High Court observing that a view to the contrary can create havoc in the running of companies. This observation is more relevant in the present case. It is an admitted fact that there are three entities including the Bhushan group that have gone for acquiring shares in the company by open offer. In all these offers, the present share capital of the company is shown as Rs. 200 lakhs. If these past and concluded transactions were to be declared as null and void, the share capital of the company would come down and every one of the offers will have to be revised creating havoc. Further, even on the merits, as dealt with below, the Bushan group has not established that there has been any violation of section 77(2) of the Act."*

M.R. Shah v. Vardhman Dye-Stuff Industries P. Ltd. [2005]128 CompCas 710 (CLB)

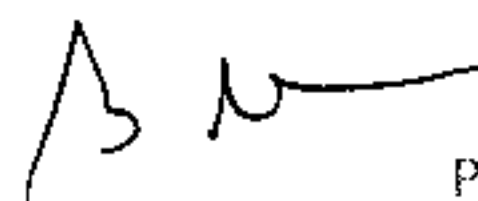
"36. *I find that the petitioner has been indulging in forum shopping and she was aware of everything happening in the company till the dispute arose after March, 2000. Now when the relationship in the two groups have soured, the petitioner has raised various issues of action/inaction on the part of respondents alleging that the affairs of the respondent company are being conducted in a manner oppressive to the petitioner. The petitioner was a party to all these decisions and operating through her husband. She cannot turn back at a later stage to invoke equitable jurisdiction on the basis of certain decisions taken by the respondent company. Although some of these decision like transferring of Rs. 20 lakhs to the personal account of a particular director for two days, diversion of*



*companies export business through another company of the respondent directors for saving sales tax etc as well as selling the flat which had not been released out of the collateral security, are some of the actions which are apparently wrong on the part of the respondent company. The concerned authorities like Registrar of Companies would take note of these omissions and not adhering to the provisions of the Companies Act and take suitable action against the company. However, no case of oppression to the petitioner is made out by merely some wrongful actions taken by respondent company as mentioned above."*

99. Learned counsel appearing for the petitioner contended that those decisions were rendered under section 397 of the Companies Act 1956 but not under section 241 of the Companies Act, 2013. No doubt, section 241 of the Companies Act, 2013 the word "have been" used. "Have been means" is a present continuous tense or a past action still has effect upon something happening in the present and just been completed. On this aspect there is a decision of NCLT Mumbai Bench in Cyrus Investments P. Ltd. and Ors. vs. Tata Sons Ltd. and Ors. decided on 17.04.2017 MANU/NC/0280/2017.

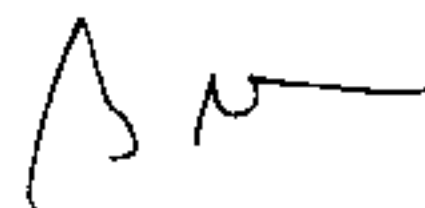
100. In the case on hand following are alleged acts of oppression listed in the present petition. All those acts took place prior to 01.06.2016, the date on which petitioner claims to have allegedly become shareholder.



**B. The Petitioner was not a shareholder at the time of the alleged oppressive acts -**

The following alleged acts of oppression listed in the present petition all took place prior to 01.06.2016, i.e., the date on which the Petitioner became allegedly a shareholder:

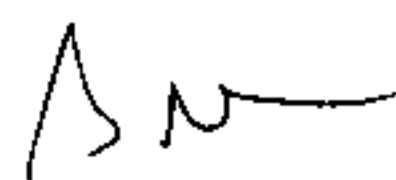
- a. The allegations of siphoning of funds and financial mismanagements in relation to the servicing of debentures issued to IDBI Trusteeship Services Limited by the Respondent No. 1 Company including the alleged diversion of a sum of Rs. 2.30 cores by it, allegedly took place in March 2013. (See **Pet. @p.53**)
- b. The allegations in relation to the default in repayment of an inter-corporate deposit by M.P> Sate Industrial Development Corporation Limited as well as the alleged dishonour of cheques issued to them are between 2009 to 2013. (See Pet. @p.56-57).
- c. The alleged illegal transfer/adjustment of funds amounting to Rs. 5.38 crores transferred to respondent No. 8 Company for the short period between 25.06.2010 and 05.07.2010. (See **Pet. @p.59**)
- d. The instances of mismanagement pointed out by the Petitioner, i.e., the lapsing of project insurance in February 2014 and the allegedly fraudulent refusal between 2010-11 on the part of the Respondent No.8 Company to convert optionally fully convertible debentures into equity shares all took place prior to 01.06.2016. (See Pet. @p.60-61)



- e. The alleged persistent default in the payment of principal and interest for debentures amounting to Rs. 400 crores issued by the respondent no. 1 company to M.P. Power Management Company Limited took place between 08.11.2013 and 10.01.2014. (See Pet. @p.64-65)
- f. The alleged failure on the part of Respondent No., 10, who is also the Executive Director and Company Secretary of the Petitioner, to hand over the entire statutory records of the respondent No. 1 company with proper notice to the Board of Directors after ceasing to be the Company Secretary, also took place around December 2016. (See **Pet. @p.71**)
- g. The alleged failure to forward TDS amounts to the the income tax authorities was in March 2012 and during the period November 2014 to May 2016, well before 01.06.2016. (See **Pet. @p.79**)

101 In fact, in the rejoinder, petitioner admitted that all the acts of oppression and mismanagement took place prior to the petitioner became a shareholder.

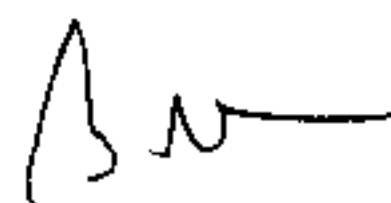
102. When the petitioner is not a shareholder on the date of alleged acts of oppression and mismanagement, he has no right to file petition under section 241 of the Companies Act, 2013. Section 244 deals with right to apply under section 241 of the Act. It says that members of a company shall have right to apply in the case of company having share capital not less than hundred members of the company or not less than one-tenth



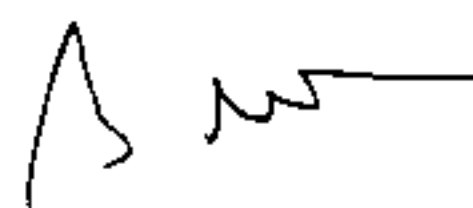


of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of company. This criteria has to be seen on the date of filing of this petition. No doubt, petitioner claims that he is having more than one-tenth of the paid up share capital of the first respondent company from to 01.06.2016 because prior to 01.06.2016 petitioner in the capacity of member had no interest in the affairs of the company. The role of a petitioner as a member is altogether different from that of the role of a lender. Lender is not a person entitled to move this Tribunal under section 241 of the Companies Act, 2013 alleging oppression and mismanagement. The remedies to lenders are so many in so many other forums. Here the lenders choose to become members from 01.06.2016 and are trying to question the alleged acts of oppression and mismanagement said to have taken place prior to 01.06.2016, which are all concluded.

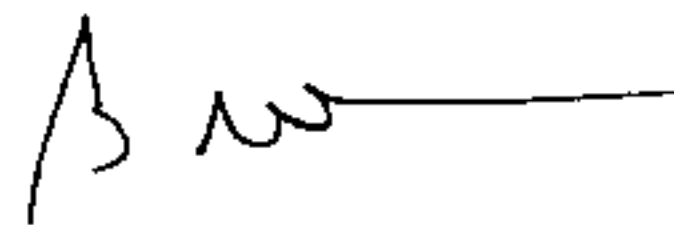
103. It is not as if the petitioner and his supporters are new to this company. They are lenders and it is with their money the company has been functioning all these days. It is admitted fact that, nominees of the petitioners and other lenders are the directors in the Board of Directors of the Company. Therefore, it cannot be said that the petitioner have no knowledge about the acts of oppression and mismanagement alleged by them. Having got knowledge about the alleged act of oppression and mismanagement they choose to become members, obviously



with an intention to file this petition. A scanning of the reliefs prayed in the petition goes to show that this petition is not an action to protect the interest of the company or the interest of the shareholders and it is only to protect themselves from the prosecution for non-compliance of statutory provisions. It is strange that the petitioners are seeking declaration from this Tribunal that the management of the company is with them. Filing of this petition is after the inquiry under section 206 (4) of the Companies Act, 2013 was commenced and concluded by ROC, Gwalior. If really petitioners are interested in the sense that they want to safeguard public interest or in the sense the acts of mismanagement would affect public interest, they would not have prayed for the reliefs of protection they have prayed in this petition. Either in the pleadings or in the written arguments or even in oral arguments they have not even suggested what should be done with the project wherein public money in the form of loans have been invested. Therefore, to say that this petition is filed to avoid prejudice to the public interest is nothing but a hallow statement. In my considered view this petition is not at all a bona fide petition which is filed either in the interest of the company or in the interest of public. All acts alleged by the petitioners against respondents 2 to 10 are concluded actions. Not even a single act alleged by the petitioners is having continuous effect. The main act alleged against respondents 3 and 8 is that they failed to infuse equity as agreed upon by them and they failed to repay the loans due to the petitioners and other lenders. For such kind of causes the jurisdiction of this Tribunal under section 241 of the

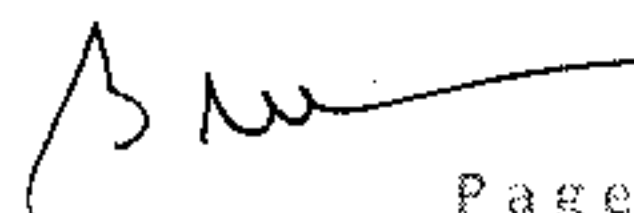


Companies Act 2013 cannot be invoked. On this aspect, learned counsel for the respondents relied upon decision of the Hon'ble High Court of Karnataka in Vijayan Rajes vs. M.S.P Plantations Private Limited. reported in [2009] 151 CompCas 413 (Karnataka). In that decision it is clearly held that the question to be looked into is as to whether the petitioners consist requisite number of members or they have requisite shareholding in the company prior to the acts complained of. On this aspect also there is another decision in Rajesh Laljibhai Vaishnav and Ors. vs. Nano Therapeutics P. Ltd. decided by this bench wherein it is held that when the petitioner is not a member as on 25.08.2011 in the first respondent company, he has no right to question about the increase in the share capital and allotment of company's shares that took place on 16.08.2001. On this aspect there is a decision of V.M. Rao and Ors. vs. Rajeswari Ramkrishnan and Ors. reported in [1987] 61 CompCas 20 (Mad.) wherein it is held that the oppression complained must affect the petitioner in his capacity as a shareholder and not as a lender. In view of the above discussions it is held that petitioner and his supporters are not entitled to agitate the alleged acts of oppression and mismanagement that took place prior to 01.06.2016 since admittedly they are not members of the company prior to 01.06.2016.



**Point No. 7 and 8 – Limitation – Delay - latches**

104. There is a plea in the reply of respondents No. 3 & 8 is barred by limitation. In the petition it is stated that the acts of oppression and mismanagement are continuing one and therefore the petition is within time.
105. Acts of oppression and mismanagement alleged are listed out in the earlier paras of this order. They all are not continuing acts and they are all concluded acts. Section 433 of the Companies Act, 2013 deals with limitation. It says that the provisions of Limitation Act shall as far as may be apply to proceedings or the appeals before the Tribunal or the Appellate Tribunal as the case may be.
106. There is no provision in the Limitation Act which governs period of limitation for petitions under section 241 and 242 of the Companies Act, 2013. Therefore, one has to fall back on the residual article 113 of the Limitation Act which says period of limitation is three years from the date when the right to sue accrues. In the case on hand all the acts of oppression and mismanagement took place in 2013. Therefore, this petition filed in 2017 is barred by limitation. Reliance is placed on the judgement of NCLT Principal Bench, New Delhi in Esquire Electronics vs. Netherlands India Communications Enterprise Ltd., reported in 2016 scc online NCLT 71.



107. Even assuming this petition is not barred by limitation, still it suffers with delay and laches. On the aspect of delay and laches learned counsel for respondent No. 3 relied upon..

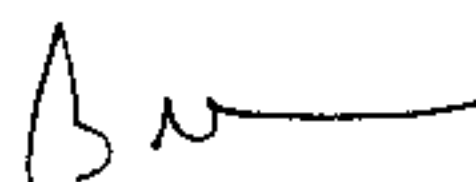
Ram Gopal patwari and Ors. Vs. Patwari Exports P. Ltd and Ors.; (2010) 160 CompCas 116 (CLB)

*"28. ....However, this does not preclude the Company Law Board from rejecting/dismissing petitions on account of delay/laches in appropriate cases. Delay and laches do apply which start from the date of knowledge. The doctrine of laches is based on equitable consideration and depends on general principles of justice and fair play. There is no presumption that delay is deliberate. To be laches delay should be such that it could be said that the Petitioner is not entitled to relief on account of gross negligence or inaction or for want of bona fides imputable to him or that he has given up (waived) his right by acquiescence or by his conduct or neglect. Even if the provisions of the Limitation Act are not applicable to proceedings before the Company Law Board, yet there is an abnormal delay in bringing the matter before the Board, and on this ground alone, the petition should be dismissed, more so when there is no plea for consideration of delay and laches on the part of the Petitioners in initiating the proceedings before the Company Law Board."*

108. In the case on hand petitioner wants to question the concluded acts and thereby get protection to them from the statutory authorities. Moreover, the petitioner admitted that after 2005 all the decisions were taken by the Board of Directors in which the Nominee Directors of the lenders were also present. Therefore, the inaction on the part of the petitioner amounts to laches. Learned counsel for petitioner on the aspect of laches and delay relied upon the decision of the Hon'ble Supreme Court of India Chairman, U.P. Jal Nigam and Anr. Vs. Jaswant Singh and Anr. reported in AIR 2007 SC 924. In that judgement Hon'ble Supreme Court considered the right of employees who have retired about more than two years back from Nigam can also be given retirement benefits on par with the employees who earlier approached Supreme Court and got the retirement benefits. In that judgement, Lordships of Supreme Court referred to Halsburys Laws of England and held as follows . Whether there has been such delay as to amount to laches the chief points to be considered are

- (i) acquiescence on the claimants part
- (ii) Any change of position that has occurred on defendants part

In the case on hand petitioner and his supporters being lenders having full knowledge of the affairs of the company having accepted the decisions of the company till report is submitted by High Power Team, now proposed action in the form of oppression and mismanagement with a view to take

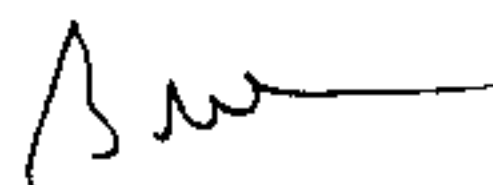


protection from this Tribunal from the prosecution against them. Therefore, it is a clear case of acquiescence on the part of petitioner and his supporters rather than on the part of respondents 2 to 10. Therefore, the delay in taking this action on the part of the petitioner is also fatal to the petition.

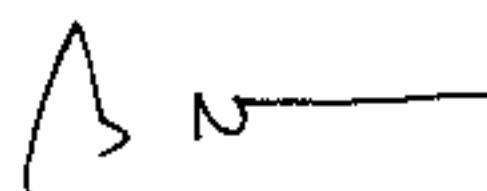
**Point No. 9 Management Control of first respondent company**

109. It is the main contention of the learned counsel appearing for respondents that the control of affairs of the first respondent company has been vested with the petitioner from the year 2005 onwards.

110. In this context, learned counsel for petitioner pointed out that on 24.04.2006, petitioner addressed a letter to State Bank of India Capital Markets Ltd. stating that the petitioner on behalf of lenders has taken initiative to revive Shree Maheshwar Hydel Power Corporation Ltd. by putting a new management in place where the respondent company introduced a new Chairman, Managing Director and Director Finance who were nominated by the lenders. In the said letter petitioner asked the promoters to amend Articles of the company to facilitate effective Management control by lenders. Learned counsel for the respondent also brought to the notice of the Tribunal another letter dated 10.08.2006 wherein Jt. Secretary, Ministry of Power, Government of India addressed a letter to Jt. Secretary, Ministry of finance stating that the management control of the project had since been taken over.



111. Learned counsel appearing for respondent 3 and 8 also pointed out another letter written by petitioner on 08.11.2005 that goes to show that Articles of respondent No.1 to empower management term of lenders. Petitioner by letter dated 08.04.2005 prescribed the milestone for disbursement stating that there shall be a Board Resolution Meeting the management team consisting of Chairman, Managing Director and Director Finance nominated by PFC on behalf of the lenders to take all operating decisions. A perusal of these letters clearly goes to show that management control of the project is sought to be taken by lenders including PFC.
112. Learned counsel appearing for the petitioner contended that the management team also comprise Vice Chairman who is none other than 3<sup>rd</sup> respondent and, therefore, it is not lenders taking over the management control of the first respondent company.
113. Learned counsel for respondent 3 contended that although respondent 3 was named as Vice Chairman he had no actual powers. He pointed out that Articles of Association of the company do not have recognition of any such position Vice Chairman in the first respondent company. He also pointed out that the issue regarding status of Vice Chairman was taken up at the Board Meeting dated 05.12.2006. A copy of the





Board Meeting dated 05.12.06 is filed as Ex. J along with sur-rejoinder at page 137. Item No. 3 of the said resolution is as follows: -

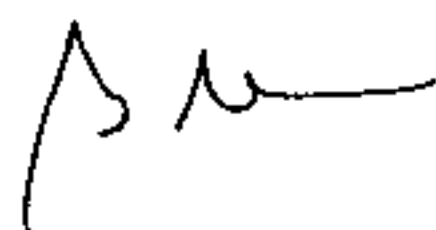
*"Chairman clarified that such a position to Shri Mukul Kasliwal is in the overall interest of the Company as his services are still being used extensively and will be used for some more time in tackling sensitive and serious issues with the Central/State Governments. The Chairman also confirmed that Shri Kasliwal will not hold any executive position."*

114. In view of the said minutes of Board of Directors meeting on 05.12.2006, still it is not possible for the petitioner to say that respondent 3 as Vice Chairman has got all the powers or exclusive control on the affairs of the first respondent company. In this context it may be added that Articles of Association of the first respondent company says that whenever Chairman for a meeting is not available, another lender nominated director would be appointed as Chairman but Vice Chairman has no role to play. Therefore, it is clear the position of Vice Chairman attached to respondent 3 is nothing but an honour without authority or control.

115. Learned counsel for the petitioner contended that respondent 3 is relative of respondent 2. It is a fact that Respondent 3 is son of respondent 2 but respondent 2 resigned



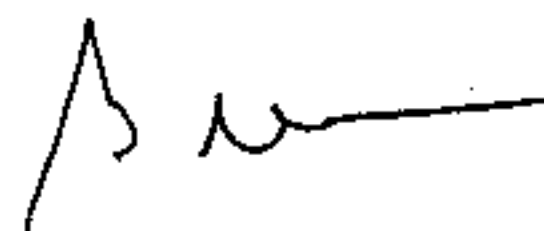
as Chairman of the first respondent company on 10.02.2005. The acts complained of in this case started from 2005. In February 2005 itself respondent 2 stepped down as Chairman. It is pertinent to note here that on that day itself i.e. on 10.02.2005 itself Shri P.V. Narsimhan, ex-CMD of IFCI was appointed as Chairman of the first respondent company on the recommendation of petitioner PFC. Therefore the relationship between Respondent 2 and respondent 3 even it is a fact it has no effect in deciding who is having control over affairs of the company. It is contended by learned senior counsel appearing for the petitioner that the annual accounts have not been signed by the petitioner or other lenders or directors nominated by the lenders. The effect remains that the annual accounts up to 2013-14 were approved by Board of Directors which consist of nominee of lenders, Managing director assuming over all management. Therefore, on the ground that lenders did not sign on the annual accounts, it cannot be said that they have no control over the affairs of the Company. No doubt, respondent 8 is a company and it is having majority of shares in first respondent company. It may be also be correct that some of the employees of respondent 8 may be employees of the first respondent company. It is to be noted that it is not the employees of the company that controls the affairs of the company. It is to be remembered that it is Board of Directors of the company that controls the affairs of the company. The employees of a company whatever position they are occupying, they have no other go except to carry out the orders/directions/instructions given by the Board of



Directors. Therefore, it does not lie in the mouth of the petitioner that the employees related to respondent 2, respondent 3 and respondent 8 are actually heading various units of the company cannot be taken as a factor to come to a conclusion that they are controlling affairs of the first respondent company. Another argument of learned senior counsel for the petitioner is that any lender who lends huge sums of money to a privately managed project will take all necessary precautions to secure and recover the amount of loan given by them.

116. There is no dispute about the said aspect. Lenders are certainly entitled to see that affairs of the company are going on proper lines so that there would be timely repayment of their amounts. In that direction lenders are certainly entitled to claim participation in the affairs of the company. In fact, in that view of the matter, PFC took lead role on behalf of other lenders also and came forward to extend loan facility when the company was in need of money.

117. In this context it is necessary for us to see what are the amendments made to the Articles. The following are the articles of Association of the first respondent company with amendments carried out in the year 2005 which is as follows:



(a) Article 105(d):

*"The Board shall consist of 12 Directors which shall include:*

*-four (4) permanent (non-retiring) nominees of Lenders and*

*-other eight (8) on retirement basis.*

*Of these, two (2) will be full time Directors,*

*one (1) nominated by government of Madhya Pradesh,*

*one (1) nominated by S. Kumars,*

*one (1) nominated by the Power Infrastructure India*

*and*

*three (3) independent directors approved by*

*PFC/Lenders".*

(b) Article 108:

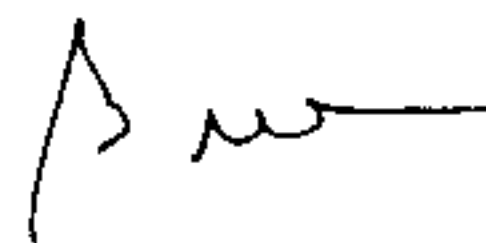
*Subject to Article 105 (d), in accordance with section 260*

*of the Act, the Board may appoint Additional Directors.*

*Provided, that the appointment of additional directors will*

*require approval/consent of majority of the lenders and*

*PFC.*



(c) Article 109:

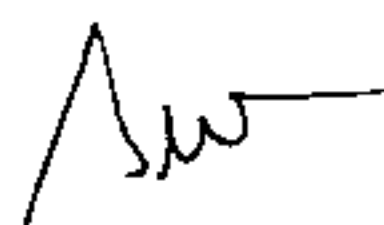
*Subject to Article 105 (d), the casual vacancies among the directors may be filled up by the Board as per section 262 of the Act. Provided further that such casual vacancies can be filled up only with the consent of PFC and majority of lenders.*

(d) Article 134:

(a) *The quorum of any meeting of the Board shall be six directors and shall require the attendance of the Chairman and three (3) nominee directors of lenders. At any meeting, if the Chairman is not present within 30 minutes after the appointed time for holding the same, Directors present may choose one of the Directors nominated by lenders to be the Chairman of that meeting.*

(b) *All decisions taken by the Board either at the meeting or by circulation shall require the affirmative vote of the meeting/Chairman and majority of directors appointed by lenders.*

(c) *All matters requiring approval of the Shareholders at the General meeting must necessarily first be placed and approved at the Board Meeting before being placed at the Meeting of the Shareholders for their approval.*

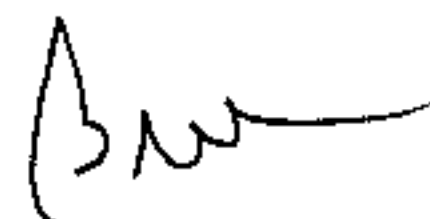


[{Pg. 23@26,27,28,46,48,50,52 & 54 of  
respondent No.3's reply}]

118. A perusal of those amendments clearly goes to show that the control of the lenders over the affairs of the company. Further, on 02.03.2005 petitioner issued a letter stating out the terms and conditions for the loan. Those conditions included ..

- (i) Appointment of Chairman, Managing Director and Director Finance by the petitioner
- (ii) Exercise of full management, control by lenders nominee directors.
- (iii) Periodical review of transactions by lenders' auditors
- (iv) All fund flow to be through Trust and Retention Accounts

119. The said letter is available at page 76 and 79 of reply of respondent 3. If you see the Board Resolution dated 07.03.2005, which is available at item No. 2 of page 50 of the sur-rejoinder that the promoter respondent No. 3 briefed the Board that PFC suggested that in consideration of relinquishment of management control of the company including amendments to the Articles of Association to be carried out in line with the decision of PFC, in his capacity as promoter a greater role has to be played for resolving many issues to facilitate the construction of the project. Therefore, from this it appears that there was a proposal to Respondent No. 3 to relinquish control of management.



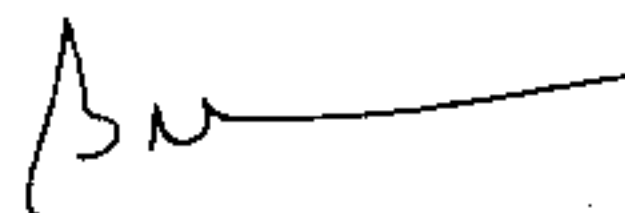
120. On this aspect it is necessary to find out that on 18.04.2005, petitioner brought the letter to the first respondent company to pass Board Resolution for improving management team consisting of Chairman, Managing Director and Director Finance nominated by PFC.

121. In the Board meeting held on 28.06.2005, management team was constituted and it was given power to control even the day to day affairs of the company. Managing Director was appointed by the petitioner. This could be seen at page 53, 57, 58, 59 of the sur-rejoinder of respondent 3.

122. The important terms of the amendatory and Restated agreement dated 16.09.2005 are as follows: -

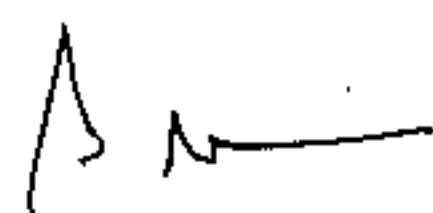
(i) *"Board of Directors/ Board" includes the Director Finance recommended by PFC/lenders and Nominees of the Lenders.*

(ii) *"Management Team" means the selected members of the Board of SMHPCL comprising of PFC nominated and appointed members on the Board and the nominees of any other Lenders and GoMP/ MPSEB appointed by SMHPCL to exercise full management control for the smooth implementation of the project including the funds flow till the entire Loan is repaid.*



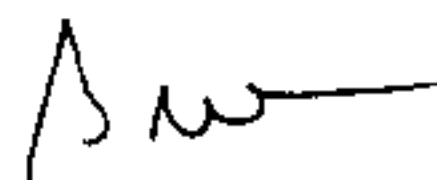
- (iii) *"Trust and Retention Account (TRA)" refers to the Bank Account that SMHPCL will open in consultation with the Lenders before financial closure for receiving all Equity, Project Loans, Bond Money after retention of funds to cover the interest servicing requirements for 4 years in the Trust Account, receivables from sale of power and any other money.*
- (iv) *As per Recital C, PFC revalidated its financial assistance for the Project vide letter of Sanction No. 03.02.SMHPCL.05 dated 02.03.2005. It also assumed the role of facilitating early financial closure. Further, as per stipulation by PFC, there has to be a smooth implementation of the Project till the entire debt is repaid.*
- (v) *Clause 2.3 provides that after commencement of operations, the balance funds lying in the trust Account shall be transferred to the TRA for utilization by SMHPCL for operations purposes. However, Servicing of OFCD will be ensured from Receivables in TRA from sale of power.*
- (vi) *Clause 2.4 states that the Management Team shall ensure due, proper and economic utilization of funds for timely completion and proper operation of the Project and no part of the amount is diverted or utilized for any other purposes".*

123. It is also necessary to see supplementary agreement dated 25.11.2005 wherein the key terms are as follows: -





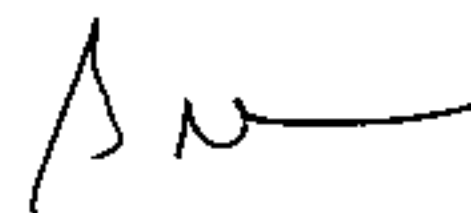
- (i) *Recital (1)(c) AND Clause 1(i) (c) provide that for the release of the initial amount of Rs. 10 core to be made on immediate basis, the Borrower shall, to the satisfaction of PFC, amend the Articles of Association to empower the Management Team of the lenders to exercise effective management control till the entire debt is serviced and rapid.*
- (ii) *Recital (2) AND Clause 1(ii) provide that all funds will flow into the stated TRA account and release of all funds under Recital (1) and (2) will be on compliance of conditions stipulations as mentioned in PFC's letter dated 8<sup>th</sup> November, 2005.*
- (iii) *Clause 2 provides that the Borrower undertakes that it shall not amend the Memorandum and Articles of Association except as required by PFC.*
- (iv) *Clause 3 states that the interest rates applicable for the disbursement to be made shall be as per the revalidation letter of PFC dated 2<sup>nd</sup> March, 2005, that these rates are subject to agreement of all Lenders, and that the rates will be revised from time to time in the absolute discretion of PFC.*
- (v) *Clause 5 provides that PFC shall be entitled to nominate member(s) on the Board of SMHPCL.*



- (vi) *Clause 6 states that the Chairman, Managing Director and Director (Finance) shall be appointed/removed with the prior approval of the Lenders.*
- (vii) *Clause 7 states that the Borrowers shall implement/give effect to such instructions as the lenders may in the circumstances consider expedient, in regard to/for appointment or removal of key personnel including one or more Directors for the appointment/removal of whom, consent/approval of lenders is required.*
- (viii) *Clause 8 provides that the Borrower is to give effect to such instructions/directions or Lenders in regard to the management of affairs of SMHPCL, as the lenders may consider expedient.*

124. A perusal of those agreements clearly goes to show that the control that has been taken over by PFC and other lenders is almost complete and effective control over the affairs of the first respondent company by reducing the promoters to one Director and a Company Secretary who the petitioner alleged is the man of 3<sup>rd</sup> and 8<sup>th</sup> respondent.

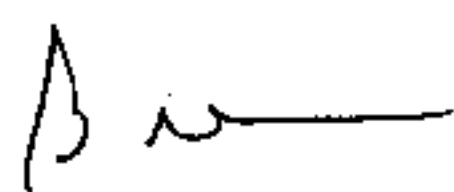
125. In this context it is necessary to answer the contention of learned senior counsel for the petitioner that PFC has nothing to do with



other lenders and directors nominated by other lenders and they never acted as per the instructions of PFC.

126. The sequence of events that took place right from 2005 till the date of filing of this petition goes to show that the lenders are going by one voice and one slogan lead by PFC. An attempt is made in the written arguments filed by the petitioner to point out stray incidents whereby the PFC wants to appoint a director which was not agreed by one of the lenders nominee. Barring this stray incident all other acts and findings of the lenders are in one line and in one way. There is no rule that prevent lenders going together. No court can find fault with the lenders formed into a team of lenders or consortium of lenders. But when the question who is in control of company is put, it is not fair on the part of the petitioner to say that nominees of lenders would not act as per the instructions of PFC. Therefore, the argument that the PFC has got only one nominee Director and he has nothing to do with the nominee directors of and other lenders and PFC and he has nothing to do with the Chairman, do not merit acceptance.

127. Material on record shows that Maheshwar Committee is led by PFC. Respondent 3 in his reply asked PFC to produce minutes of the Maheshwar Committee but PFC did not choose to produce the minutes of Maheshwar Committee. Of course, it did not even choose to deny formation of Maheshwar Committee. It is the case of the respondents that decisions taken by Maheshwar Committee are being implemented through the Chairman, Managing Director



and nominee Directors of the lenders. The non-production of the minutes and records of Maheshwar Committee also leads to adverse inference against the statement of the petitioner he has no control over the affairs of the company.

128. In fact, in page 33 of the petition itself, it is mentioned that on 27.11.2013 there was a joint lenders meet in Mumbai to discuss about this project and lenders unanimously agreed that the present management is not capable to bring in equity, lenders should explore the possibility of change of management/promoter to a central or public sector who can be resourceful to infuse funds in the project. This thought came in the mind of lenders as back as in November, 2013.

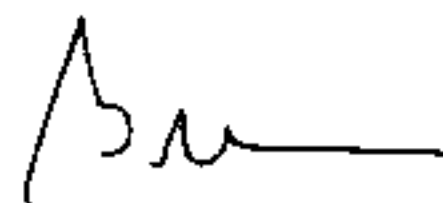
129. Further, the correspondence made by the respondent company with several government authorities in relation to the funding of the management being carried out by the petitioner is there right from the year 2006 which is filed along with sur-rejoinder of respondent 3. Respondents also stated that delinquent officials were appointed in the respondent company like Mr. K.S. Sahu. Respondents filed inquiry report of retired District Judge who conducted inquiry on the allegations against K.S. Sahu. It is also stated that Mr. K.S. Sahu who was Chief Accounts Officer of Haryana Power Generation Corporation was charge sheeted by that organisation and despite the same, PFC appointed him in important and challenging position as Director (Finance) of the first respondent company. This incident clearly goes to show that

generalised argument the lenders group would appoint an independent, sincere and honest people to occupy the key position may not always be correct.

130. In view of the above discussions it is clear that effective control of the affairs of the first respondent company was in the control of lenders including PFC. That does not mean that the Board of Directors in which the third respondent is also a director has no say in the affairs of the company. But majority of the directors are following dictates of lenders as can be seen from the resolutions passed. This point is also answered accordingly.

Point No. 10, 11 & 12 Delay in commissioning of generation of power in the Project Maheshwar Dam, Failure to bring equity. Syphoning of funds

131. Maheshwar Dam was originally planned in the year 1978. State Government of Madhya Pradesh in the year 1993 awarded the Maheshwar Hydro Power to S. Kumars Ltd. (Respondent 8) for execution on operation and own basis. On 7<sup>th</sup> January, 1994, conditional environmental clearance certificate was issued. On 27.05.1996, amendment to power purchase agreement was executed. On 24.02.1997 agreement for rehabilitation and resettlement works was executed between the first respondent company and Madhya Pradesh Electricity Board. On 10<sup>th</sup> October, 1997 PFC sanctioned Rs. 100.00 crores loan and foreign currency



loan of USD 34 million. Again on 24<sup>th</sup> November, 1998 PFC sanctioned USD of 18.9 million.

132. In May, 1998 M/s. Pacific Generation and Development Company, USA proposed to be a financial collaborator of respondent 8 but had withdrawn. On 23.03.2000 US Power Utility, USA signed MOU to invest 49% of the project equity but on 13.12.2000 it exit. On 1<sup>st</sup> March, 2001 Bharat Heavy Electricals Ltd. made an offer to supply equipment.

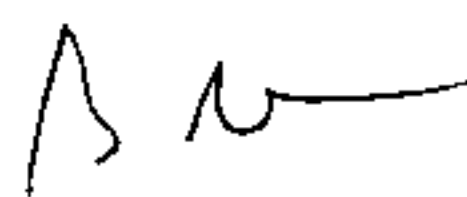
133. On 30<sup>th</sup> March 2001 Madhya Pradesh Government accorded approval for stand-by guarantee facility of 4000 million so as to enable the first respondent company to raise optionally convertible bonds.

134. On 1<sup>st</sup> May, 2001 there was revalidating sanction of term loan to the extent of Rs. 325.00 crores which includes already disbursed default payment guarantee for optionally fully convertible debentures. First respondent company raised Rs. 400.00 crores on OFCD. That is how the delay took place till the year 2005. After 2005 as per the agreement it is the first respondent company that has to infuse equity and bring promoters. Thereafter it is the grievance of the first respondent company that the funds given by lenders was mostly used for service of debts without caring for construction of the dam. The version of the lenders that the first respondent company and 3<sup>rd</sup> respondent failed to infuse equity



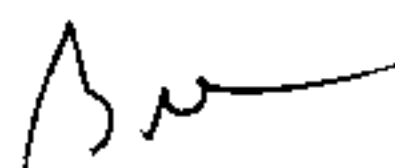
and failed to secure equity partners or fresh lenders. Again it is the version of first respondent company that due to attitude of PFC lenders, no other lenders came forward. It is the case of the first respondent that inspite of efforts made to infuse funds from LIC of India and other organisations, he could not do so. Therefore, the delay in project up to 2005 is because of variety of reasons for which no one can be blamed. After 2005, as already said, the effective control of the company was taken over by the lenders. No doubt, there was default on the part of the respondents in service of debts, in bringing equity or other promoters. Inspite of the intervention of Government of Madhya Pradesh, Ministry of Power and Ministry of Finance and inspite of several rounds of talks with lenders and promoters, even in the year 2013 conclusion has been reached that respondents are unable to infuse equity and bring funds for the company. It is on record that High Power Legal Committee was constituted and it has chalked out three scenarios. As per the first scenario, the first respondent company within 90 days' time to infuse funds in any form including bringing investors.

135. On the ground that respondents failed to infuse funds and comply with scenario I of Ajaynath Committee Report dated 2.5.2015, scenario II was invoked. It is nowhere suggested in scenario II that action has to be taken against the respondents for the alleged acts of oppression and mismanagement. On the other hand, scenario II suggest that in no case equity of the promoters shall not be reduced to less than 26% with certain conditions regarding liabilities and revenue returns.



136. Therefore, in the above said facts and circumstances, it appears that respondents failed to infuse funds in the form of equity or by bringing investors and they failed to service the debts in time. It is not as if the promoters did not infuse any funds of their own. May be the promoters failed to infuse funds as agreed upon. Therefore, it is a case of breach of agreement or failure to honour to infuse funds which cannot be by any logic or stretch of imagination can be concluded as acts of oppression or mismanagement that too when all those events took place when lenders are in effective control of the affairs of the first respondent company.

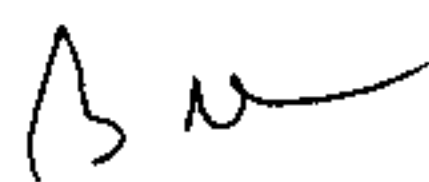
137. Lenders having now turned out as members suddenly jumped to a conclusion to take legal action in the form of oppression and mismanagement. There is no need to reproduce again here the reliefs prayed for by the petitioner which are already stated in the earlier paras of this order. On scanning of the prayers it goes to show that there is any amount of apprehension in the mind of PFC and other nominee directors that they will be prosecuted by one or the other agency of the government and therefore they must seek some protection from this Tribunal which they thought can be achieved by making allegations of oppression and mismanagement against the respondents. Can this kind of action on the part of the lenders who claims to have been members, as a bona fide action which warrant interference by this Tribunal on





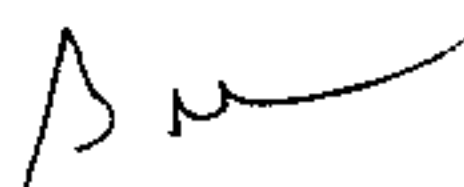
principles of equity while exercising its jurisdiction under section 241 and 242 of the Companies Act, 2013.

138. In this context, it is necessary to refer to the decisions of Hon'ble Supreme Court in AIR 2012 SC 2753 IN Chatterjee Petrochem (I) P. Ltd. vs. Haldia Petrochemicals Ltd. and Ors. In that judgement it is clearly held that failure to bring in funds and non-payment of debt and loans do not constitute oppression and mismanagement as they are matters outside the scope of the affairs of the company. On this aspect there is also another decision in Dewrance Macneill and Co. Ltd. (in liquidation) vs. Padam Kumar Khaitan reported in [2011] 161 CompCas 402 (Cal.). In that decision Calcutta High Court held that it is difficult to ascertain how investments, loans, debts etc. would automatically treated as losses of the company caused by any deliberate and wilful mismanagement by the respondents in a case where there is general allegations of mismanagement of company where no particulars with respect to the persons who mismanaged and nature of such mismanagement were provided. In this case an attempt is made to show that respondents siphoned funds. There are no specific allegations of siphoning of funds. The allegations regarding siphoning of funds relate to the period prior to 2013 and they are well within the knowledge of the petitioner and other lenders. Petitioner now claiming to be member is not permitted to raise those issues.
139. One of the allegations of siphoning of funds made in the petition is the default in servicing of OFCD with effect from September,



2011 and in that connection IDBI Trustee Services Ltd. as trustee to OFCD bond holders raised the issue of default committed by the first respondent. In that connection petitioner remitted amounts in the designated bank account titled as Trust Account of OFC special account is required to be spent only for the purpose of payment to OFD holders. PFC state that extra amount was paid to IDBI Trustee Services Ltd. and the amounts refunded was used by the respondents. The answer given by the respondents is that excess amount paid to IDBI which comes to Rs. 2.30 crores was used by the respondents. In this context it has to be ascertained whether the amount was paid for business activities of the first respondent company. Though the amounts were used for a purpose other than for which they were meant, it cannot be treated as case of siphoning of funds.

140. Another allegation of siphoning of funds of Rs. 48.00 crores that was provided by M/s. M.P. State Industrial Development Corporation Ltd. to Integra Infrastructure Ltd. owned by respondent No. 2 which is a company of S. kumar Group, for implementation of Hydal power project. The said amount was settled at Rs. 77.37 crores in July 2004. It has to be repaid as per settlement terms by March 2007 and interest thereon by June 2007. To repay the same shares were pledged which were already pledged with Madhya Pradesh State Industrial Development Corporation Ltd. Warji Kelsiwal and Mukul Kelsiwal personally guaranteed but they were unable to pay that amount and the cheques issued by them were also dishonoured. The abovesaid facts only reveal it is only



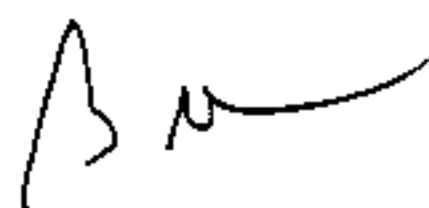
a case of default, if any, and it cannot be equated with siphoning of funds.

141. Regarding sale of scrap it appears that the said task was taken up by respondent 10. From the statement made by respondent 10, it is clear that after constituting a Committee the scrap was sold and the amount realised was used for payment of salaries, insurance premium etc. and that too with the knowledge of the lenders. The correspondence in respect of the same has been filed by respondent No. 10.

142. In view of the above discussion the delay in commissioning the project is not on account of one reason and it is on account of variety of reasons which can be attributed to more than one institution including the lenders and promoters. The failure to repay the debts or service the debts or failure to infuse or bring promoters cannot be termed as oppression and mismanagement. The vague and un-substantiated allegations of siphoning of funds also extend no help to the petitioners. Non payment of taxes, statutory deductions etc. are not acts of mismanagement considering the financial condition of 1<sup>st</sup> respondent company.

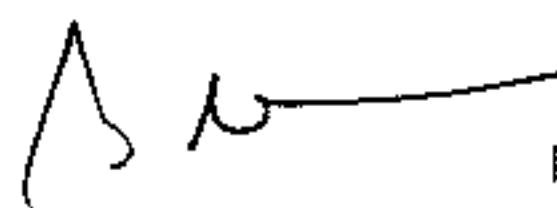
Point No. 13

143. **ROC report and pending applications IAs 68/17 to 72/17, 92/17, and 93/17**



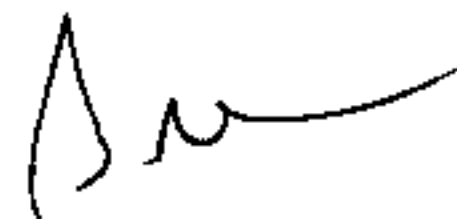
In this case on the complaint given by respondent, Registrar of Companies, Gwalior issued show cause notice dated 30.05.2016 and initiated inquiry u/s 206, sub section (1) (4) of the Companies Act, 2013. A perusal of the show cause notice goes to show that ROC, Gwalior inquired the following issues –

- a. *The Petitioner's insistence on drafting minutes of board meetings without recording the Promoter/respondent's objections and manipulation of the minutes.*
- b. *the Petitioner's insistence on retaining illegal appointee on the board of directors subsequent to 17.12.2015 and taking actions which would destroy the respondent No. 1 Company's interest;*
- c. *The irresponsible attitude of officials in the Maheshwar Committee who have placed an investment of over Rs. 3100 crores in great jeopardy;*
- d. *The Petitioners actions in depriving the respondent No. 1 Company from commencing power generation from 2011;*
- e. *the Petitioner's takeover of the respondent No. 1 Company by illegally coercing majority shareholders and modifying articles of association without owning a single*



*share. Further, the Petitioners actions after its illegal takeover of the Respondent No. 1 Company's management have placed the company at great risk;*

- f. The petitioner declared the Respondent No. 1 power project or its main asset as a NPA which caused great harm to the Respondent No. 1 company;*
- g. The Petitioner has taken over all the decision making in relation to the Respondent No. 1 Company, including decisions that were to be taken by shareholders,*
- h. The Petitioner's refusal to implement the restructuring of existing debt of the Respondent No. 1 company recommended by Ajaynath Committee and its refusal to either infuse funds itself or allow new capital into the Respondent No. 1 company;*
- i. The Petitioner's actions in illegally converting shares pledged to it and then illegally transferring the same shares to itself;*
- j. The issue of whether the Petitioner, through the pledged shares, controlled more than 50% shareholding therefore making the Respondent No. 1 Company its subsidiary;*



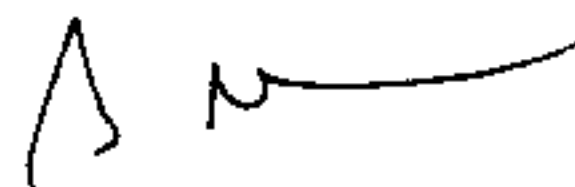
k. *The issue of the extent of control that the Petitioner enjoyed over the Respondent No. 1 Company's board of directors, including the power to appoint additional directors and filling casual vacancies;*

l. *Whether the Petitioner's nominees on the Board are the officials in control of the affairs of the Respondent No. 1 Company given the extensive control it enjoys.*

144. Respondent 3 filed IA 68 of 2017 seeking direction to add ROC, Gwalior as a party to this petition and direct ROC, Gwalior to produce the report prepared by it after conducting inquiry under section 206 (1) (4) of the Companies Act.

Respondent No 10 filed IA 69/2017 seeking reliefs that petition is not maintainable and to direct petitioner to implead ROC and other Government Authorities as parties.

Respondents 6, 8 and 9 filed IA 71 of 2017 seeking reliefs that the petition is not maintainable under section 241 and 242 and to direct the petitioner and ROC and other government authorities as parties to this petition.



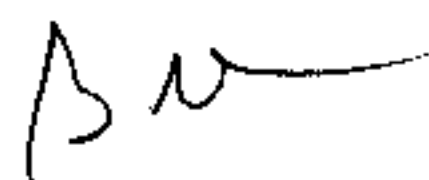
Respondent 3 filed another IA 70 of 2017 questioning the maintainability of the petition and direction to impede ROC and other authorities accordingly.

Respondent 2 filed IA 72 of 2017 questioning maintainability of this petition and to give direction to the petitioner to implead ROC and other Government Authorities as parties to this petition.

Respondent 3 filed IA 92/17, Respondent No. 6, Respondent No. 8 and Respondent No. 9 filed IA 93/17 seeking reliefs to give access to the report of ROC submitted to this Tribunal and seeking time to file sur-rejoinder/Additional reply .

145. In this connection it is necessary to refer the order passed by this Tribunal on 18.04.2017 which is as follows: -

“Having heard learned counsel for both sides it came to light that Registrar of Companies, Gwalior Madhya Pradesh conducted inspection of the Respondent No. 1 company in June 2016 on the basis of the complaint preferred by the one of the respondents. Without going into the controversy whether the report of the ROC, if any, may or may not throw any light on the controversies involved in the petition it is better to call for said report of



the ROC in a sealed cover. The parties to the proceedings may have access to the said report of ROC with the permission of this Tribunal only.

It is decided that all the pending applications shall be taken up for hearing along with the main petition.

There shall be direction to Registrar of Companies, Gwalior, Madhya Pradesh to send the report of inspection of respondent 1 company with its enclosures to this Tribunal in a sealed cover on or before 02.05.2017. The said sealed cover shall not be opened without the permission of this Bench."

ROC submitted report to this Tribunal in a sealed cover stating not to part with the report with any party. It is also stated by ROC that report was sent to Ministry of Corporate Affairs and it is under consideration of the Ministry.

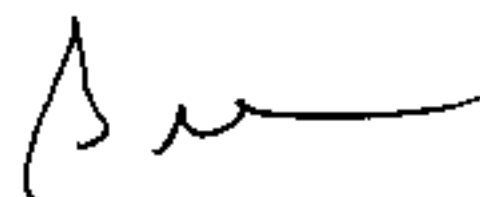
146. It is not stated in the letter of ROC dated 28.04.2017 that the report is privileged one or confidential in nature or is inter-departmental communication. It has to be borne in mind that inquiry was initiated on complaints given by the shareholders of first respondent company. It can be seen from the letter of



ROC that inquiry was initiated as per instructions of Ministry of Corporate Affairs. ROC, as a part of inquiry given show cause notice to all the stake holders in the company. Obviously it could be said that ROC might have taken into consideration the records of the company and the explanation given by all the stake holders and prepared report. Said report is in a sealed cover. It is not known why from the beginning petitioner is opposing to call for the report, to see the report and to have copies of the report by anybody.

147. Even without looking into ROC report, this Court come to the conclusions on the material available on the record, contentions of both side and legal aspects. But the fact remain ROC report is neither privileged one nor confidential one nor inter departmental communication. Generally, in any government department when an inquiry is conducted, inquiry report would be published unless it is privileged report.

On this aspect, learned counsel appearing for respondent 3 referred the decision of Central Government vs. Premier Automobile reported in [2005] CC 508 CLB. In that judgement it is observed that there is no precedent and past practice for nondisclosure of contents of inspection report conducted by the Government.



148. Therefore, the parties to this proceeding are entitled for copies of ROC report from the office of ROC since the report is generated from the office of ROC. To record this finding, this Tribunal is of the view that there is no need to hear ROC, Gwalior.

149 In view of the findings in this order there is no need to pass separate orders on the applications filed questioning the maintainability of the petition and IAs 92/17 and 93 of 2017.

Point No. 14

150. Non-joiner of parties – Prayers E,G,H,I,L

In this petition petitioner prayers D, E, G, H, I and L are in respect of directions to Registrar of Companies, Gwalior, Industrial Labour Department, Income-tax Department and Ministry of Corporate Affairs without imploding those authorities as party to this petition.

On this point, leaned senior counsel for the petitioner pointed out that section 242 (2) gives enormous and unfettered powers to pass any order and, therefore, there is no need to implede those government authorities as party. Petitioner also placed reliance on the some of the orders passed by CLB. Those orders are interim orders. Moreover, under section 242 (2) powers of this Tribunal can be extended to any other matter which in the opinion of this Tribunal is just and equitable. This

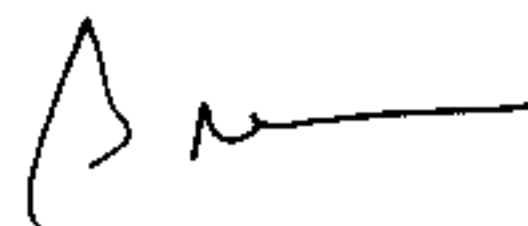


Tribunal is of the view that by exercising the powers under section 242 (2) without hearing the Government Authorities it cannot prevent them from exercising their duties and statutory obligations in various enactments including prosecution. In spite of plea of non-joinder of parties taken by respondents No. 3 and 8 petitioner did not come forward to rectify the same. First of all, the reliefs D, E, G, H, I, L prayed are misconceived. On just and equitable grounds such kinds of reliefs cannot be granted. In view of above said findings prayers made in E, G, H, I and L are held to be misconceived prayers and petitioner is not entitled for those reliefs.

Point No. 15

**151. Relief (C) prayed in the petition :-**

The reliefs prayed in the petition is to declare that respondents 2 to 6 and respondent 10 indulge in serious acts of fraud punishable under section 447 of the Companies Act. Section 447 of the Companies Act provide punishment for any person found to be guilty of fraud. In order to found a person guilty of fraud in a matter relating to company affairs there must be intention on the part of company to conduct the business with intention to defraud the creditors, members and other members with a guilt mind to have unfaithful gain. Failure to bring equity, mere default in repayment of loans cannot be equated to fraud, more so, guilty of fraud. Hence petition is not entitled for this relief.



Point No. 16152. Whether the petition is bona fide or not

In this case the High Level Committee constituted by Madhya Pradesh Government suggested three scenarios one after the other. Petitioner on the ground that respondents 2 to 8 failed to comply with scenario I invoked scenario II. There is nothing in any of the meeting of the lenders, high level committee and other meetings held in connection with progress of project that would indicate that respondents 2 to 10 are committing acts of oppression or mismanagement, and or siphoning of funds except failure to infuse equity, failure to bring promoters, failure to service debts in time. From the correspondence placed on record by respondent No. 3, from the beginning he has been accusing that PFC is responsible for, no outside investor to accept for infusing equity. Lenders now having taken over Management of the respondent company and having invested funds it is not known why they invoked the jurisdiction of the Tribunal under section 241 and 242 of the Companies Act, 2013 making unfounded allegation of oppression and mismanagement. From the reliefs prayed by petitioner, it is clear that the petitioner, other lenders and nominee directors are under severe threat of prosecution for violation of several statutory provisions in conduct of affairs of the first respondent company during their control from 2005 to 2016. Obviously, this petition is designed to gain such reliefs from this Tribunal but it is not with a good intention for putting



and end even to the alleged acts of oppression and mismanagement and to recover the funds of company said to have been siphoned. Therefore, this petition is not a bona fide petition.

Point No. 17

153. **Row over records of the Company**

Coming to row over records of the first respondent company, both parties filed copies of resolutions of company that are useful to them certifying them as true. Both parties are accusing the other that the records and registers of company are with the other one. The Registrar of Companies conducted inquiry and filed reports with Ministry of Corporate Affairs. Unless there is records of company, it may not be possible to ROC to conduct inquiry. The material on record show that resignation of respondent No. 210 accepted without indicating to whom he has to handover charge. Therefore, accusing respondent 10 that he has not handed over records is an allegation for the sake of allegation and it is not worth considering.

Point No. 18

154. In view of the above discussion the following are the findings arrived by this Tribunal.

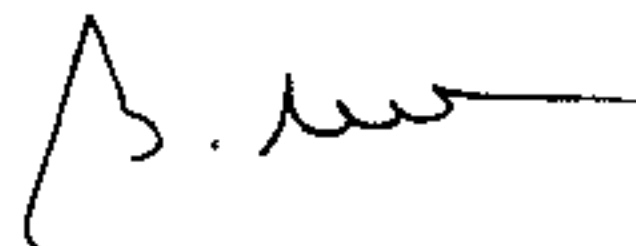
- (1) There is no valid invocation of pledge of shares and transfer of shares do not take place as per law.
- (2) Petitioner and his supporters are not entitled to agitate about

the alleged acts of oppression and mismanagement that took place prior to 01.06.2016.

- (3) Effective control of management of the first respondent company was with PFC and other lenders.
- (4) This petition is barred by limitation and petitioner is disentitled for reliefs on grounds of delay and laches.
- (5) Failure to repay debts etc. and failure to infuse equity do not amount to acts of oppression and mismanagement.
- (6) Allegation of siphoning of funds is vague and there is no material to substantiate the same.
- (7) Parties are entitled for copies of ROC report from the office of ROC, Gwalior.
- (8) Petitioner is not entitled for reliefs C, D, E, F, G, H, I specifically.
- (9) Petition is not a Bona fide petition.
- (10) Row over records is raised as a pretext.

155. In view of the aforesaid findings, petitioner is not entitled for any of the reliefs prayed by it in this petition.

156. Learned senior counsel Mr. U.K. Chaudhari appearing for the petitioner contended that this Tribunal has got all the powers under the sun under section 242 (2) of the Companies Act, 2013. The powers given to the Tribunal under section 242(2) of the Companies Act, 2013 can be exercised even in the absence of finding of oppression and mismanagement, if it is



in the interest of all stake holders and in the interest of the company and public interest.

157. This Tribunal has given its anxious thought what would be the direction to be given to safeguard interest of the project, interest of the lenders, interest of the promoters by exercising the power under section 242(2) of the Companies Act, 2013. I find no workable solution by way of orders/directions of this Tribunal except with the consent of all the stakeholders, in the given fact situation that emerge due to the filing of this unwarranted petition by PFC having taken over the management of the company.
158. Therefore, it is for all the stake holders to evolve a scheme with the consent of all the stake holders including promoters so as to help speedy completion of the project which is the desire of the people of Madhya Pradesh.
159. Findings of this Tribunal given in this order may not come in the way, if any, settlement is evolved and approved with the consent of all the stakeholders including promoters.
160. In the result this petition is dismissed. Parties are directed to bear their own costs.
161. IAs 68/17, 69/17, 70/17, 71/17, 72/17, 92/17 and 93/17 are disposed of accordingly.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

Pronounced by me in open court on this 15<sup>th</sup> day of June, 2017.  
kmn