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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**IA 4/2017 & TP 117-A/2016
with T.P. No. 117/397-398/NCLT/AHM/2016 (New)
CA 33/2016 with C.P. No. 8/397-398/CLB/MB/2016 (Old)**

Coram:

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.07.2017**

Name of the Company: Aum Capital Market Pvt. Ltd. & Ors.
V/s.
Jyoti Ltd. & Ors.


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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	AMRITA THAKORE	ADVOCATE	} PETITIONERS No. 1-9	
2.	KISHORE SONI, FCA.	FINANCIAL ADVISOR.		
3.	NAVAIN PAHWA	ADVOCATE		
			RESPONDENT NOS. 1-3, 10	

ORDER

Learned Advocate Ms. Amrita Thakore with Learned FCA Mr. Kishore Soni present for Petitioners. Learned Advocate Ms. Navain Pahwa present for Respondents no. 1-3 and 10. None present for other Respondents.

Order pronounced in open court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

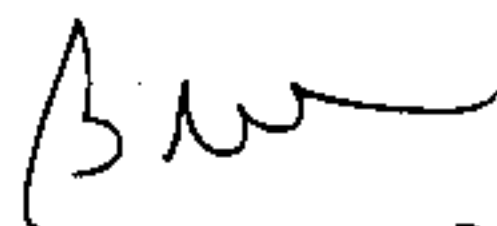
Dated this the 13th day of July, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

**TP NO. 117/397-398/NCLT/AHM/2016 (NEW)
C.P. No.8/397-398/CLB/MB/2016 (Old)
With IA 4/2017 with TP 117-A/2016 (New) CA 33/2016 (Old)**

IN THE MATTER OF:

1. Aum Capital Market Pvt. Ltd.
having its registered office at
5, Lower Rawdon Street,
Kolkata - 700 020
2. SPS Multi-Commodity Pvt. Ltd.
having its registered office at
66, Tamarind Lane
4/5 Haji Kasam Building,
1st Floor, Fort
Mumbai 400 001
3. Western India Garments Pvt. Ltd.
having its registered office at
22 (1) Bombay Cotton Mill Compound
Mumbai 400 033
4. Latin Manharlal Securities Pvt. Ltd.
having its registered office at
Viraj Building, 5th Floor,
S.V. Road, Plot No. 124
Khar (West)
Mumbai 400 052
5. Discovery Wealth Management Services P. Ltd.
having its registered office at
404 Pragati Deep
Laxmi Nagar District Centre
New Delhi 110 092
6. Runner Marketing P. Ltd.
having its registered office at
404 Pragati Deep
Laxmi Nagar District Centre
New Delhi 110 092

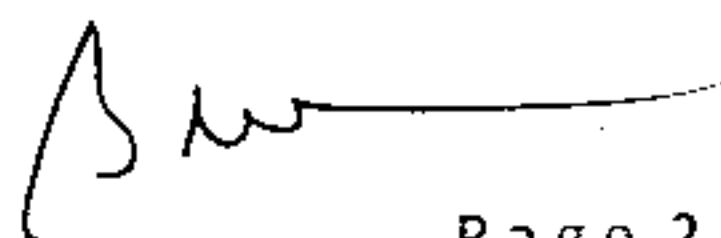


7. Signora Finance P. Ltd.
having its registered office at
603 Narmada Building No. 1
Chincholi Bunder Road
Near Bhujale Talao, Ramnagar
Malad West
Mumbai 400 064.
8. Kantilal Baldevdas Shah HUF
Flat No. 1503, 15th Floor
Shreepati Tower
Pimpalwadi, Taty Gharpure Marg
Girgaum
Mumbai 400 004
9. Mr. Rakesh Kumar Jain
B-41 Swastik Building
Sector - 3, Sristi Complex
Mira Road East
Dist. Thane
Mumbai 401 107

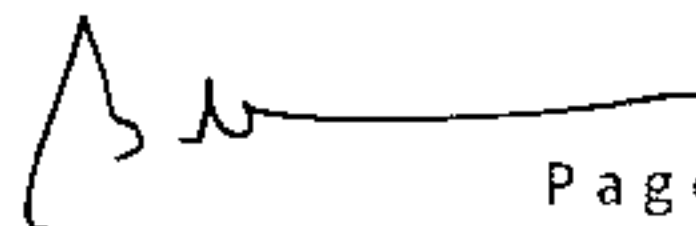
PETITIONERS

VERSUS

1. Jyoti Ltd.
having its registered office at
Nanubhai Amin Marg,
Industrial Area
P.O. Chemical Industries
Vadodara 390 003
2. Mr. Rahul Nanubhai Amin
Narikel, Bhayli-Raipura Road,
Bhayli
Vadodara 391 410
3. Mrs. Tejal Rahul Amin
Narikel, Bhayli-Raipura Road,
Bhayli
Vadodara 391 410
4. Mr. Uresh Vivekchandra Desai
28, Ganga Park
Race Course Circle
Alkapuri
Vadodara 390 015
5. Mr. Vijay Kumar Gulati
B-11, Industrial Society
New Sama Road
Vadodara 390 002

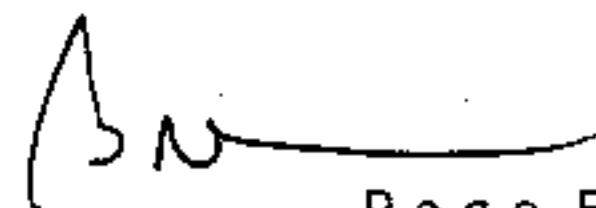


6. Mr. Shrikar Shriram Bhatt Bhatt
Ramvilas, Khedkar Falia Wadi
Vadodara 390 017
7. Mr. Tushar Charandas Dayal
Harsh, 1-A, B, SAIMEE Society No. 2
Ellora Park, Subhanpura
Vadodara 390 007
8. Dr. Rajesh Mansukhlal Khajuria
182, Sardar Nagar
Nizampura
Vadodara 390 002
9. Mr. Marut Kumar Rambhai Patel
17, Sampatrao Colony
Alkapuri
Vadodara 390 007
10. Mr. Suresh Singhal
Company Secretary, Jyoti Ltd.
Flat No. 101,
Alap. Avdhoot Complex
Nisampura
Vadodara 390 002
11. V.H. Gandhi & Co.
Chartered Accountants
404, Saffron Complex
Fategunj, Opp. Fountain Circle
Vadodara 390 002
12. MCS Limited.
Registrar & Share Transfer Agent
of Respondent No. 1 Company
Office at : Nilam Apartment
88, Sampatrao Colony, Alkapuri
Vadodara 390 007
13. Mr. Ravi Kapoor
Ravi Kapoor & Associates
Scrutinizer, Jyoti Ltd.
4th Floor, Shaival Plaza
Gujarat College Road
Ellisbridge
Ahmedabad 380 006
14. Registrar of Companies
ROC Bhavan, Opp. Rupal Park Society
Behind Ankur Bus Stop, Naranpura
Ahmedabad 380 013



Company is Rs. 17,12,89,920/- comprising of 1,71,28,992 equity shares of Rs. 10/- each.

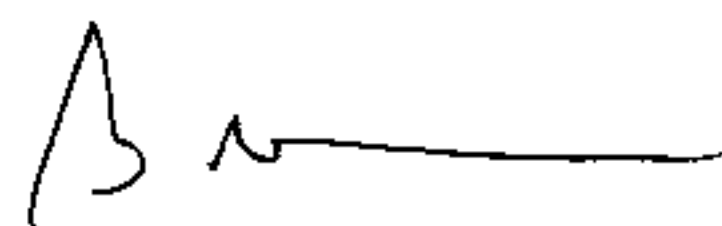
3. Petitioners No. 1, 2, 4 and 8 gave special power of attorney to petitioners No. 3 and 9 to file this petition. Shareholding of petitioners No. 1 to 9 in the 1st Respondent Company is Rs. 32,71,101/- i.e. 19.10% of the paid up share capital of the 1st Respondent Company as on 03.12.2015 which is the cut-off date fixed in the 71st Annual General Meeting held on 10.12.2015.
4. Respondent No. 2 is Chairman and Managing Director of the 1st Respondent company. Respondents No. 3, 4 and 9 are non-executive Directors of the 1st Respondent Company elected in the Annual General Meeting held on 10.12.2015. Respondents No. 5 to 8 are Independent Directors elected in the Annual General Meeting held on 10.12.2015. Respondent No. 10 is Vice President and Company Secretary of the 1st Respondent Company. Respondent No. 11 is Statutory Auditors of the 1st Respondent Company. Respondent No. 12 is Registrar and Share Transfer Agent of the 1st Respondent Company. Respondent No. 13 is scrutinizer in the 1st Respondent Company appointed in the 71st Annual General Meeting held on 10.12.2015. Respondent No. 14 is the Registrar of Companies at Ahmedabad. Respondent No. 15 is the Regional Director, Western Region.



5. The 1st Respondent Company in its meeting held on 26.07.2010 resolved that a resolution be placed before the shareholders in the forthcoming EGM for the purpose of issuing and allotting on preferential basis 12,00,000 shares to Minal Patel, 6,00,000 shares to Finquest Financial Solutions P. Ltd. and 12,00,000 shares to Nirma Chemical Works P. Ltd. which shares would rank pari passu in all respects with the existing equity shares of 1st Respondent Company. In the said Board Meeting resolution was passed that the company would execute shareholder's agreement with Finquest Financial Solutions P. Ltd. and Minal Patel.
6. In the EGM held on 24.08.2010, special resolution was passed authorising the Board to offer issue and allot 12,00,000 fully paid up equity shares at subscription price of Rs. 83/- per share to Minal Patel and 6,00,000 fully paid up equity shares at subscription price of Rs. 83/- per share to Finquest Financial Solutions P. Ltd. and 12,00,000 fully paid up equity shares at subscription price of Rs. 83/- per share to Nirma Chemical Works P. Ltd. It was also resolved in the said meeting that, all equity shares proposed to be issued and allotted shall rank pari passu in all respects with existing equity shares from the date of allotment.
7. In the Board meeting held on 07.09.2010, 12,00,000 shares of the 1st Respondent Company was allotted to Minal Patel and 6,00,000 shares to Finquest Financial Solutions P. Ltd. Minal Patel had previous holding of 1,35,834 shares of the

1st Respondent Company. In all, shareholding of Minal Patel, as on 07.09.2010 was 13,35,834 shares.

8. Shareholder's agreement was executed by Respondent No. 1 and 2 with Finquest Financial Solutions P. Ltd. which represented only itself and Minal Patel.
9. In April or June, 2013, Minal Patel had transferred 13,35,834 shares of the 1st Respondent Company to Bharat Patel.
10. In July or September, 2013, Bharat Patel transferred 13,35,834 shares of the 1st Respondent Company to Pat Financial Consultants P. Ltd.
11. In August, 2013, Finquest Financial Solutions P. Ltd. transferred 2,50,000 shares of the 1st Respondent Company to Finquest Securities P. Ltd. Finquest Securities P. Ltd. also purchased 2,50,000 shares of the 1st Respondent Company from third parties.
12. In September, 2013, Finquest Securities P. Ltd. transferred 2,50,000 shares of the 1st Respondent Company to Hypnos Fund Ltd. and 2,50,000 shares to Minal Patel. Shareholder's agreement dated 14.09.2010 was terminated by Finquest Financial Solutions P. Ltd. on 17.03.2014.



13. 1st Respondent Company wrote letter to Bharat Patel and Hardik Patel alleging that they have no right to unilaterally terminate the shareholder's agreement and, invoking Clause 6.6 thereof, proposing settlement of disputes through mediation and proposing a meeting on 31.03.2014.
14. On 25.03.2014, Finquest Financial Services P. Ltd. issued a letter to the 1st Respondent company confirming the action of termination of shareholder's agreement.
15. On 18.04.2014, the 1st Respondent Company wrote a letter to Finquest Financial Solutions P. Ltd. and Minal Patel alleging breach of shareholder's agreement dated 14.09.2010 and invoking the arbitration clause.
16. On 15.04.2015, Petitioners No. 1 and 4 purchased 12,54,960 shares out of 18,00,000 shares of the 1st Respondent Company from PAT Financial Consultants Private Limited. and Finquest Financial Solutions P. Ltd.
17. Notice for 70th AGM of the 1st Respondent Company scheduled on 11.09.2014, was issued on 31.07.2014.
18. On 22.09.2014, 70th AGM was held in which all the proposed resolutions except Resolution No. 11 tabled before the shareholders for voting were defeated, including the proposed resolution for adoption of financial statements for the year 2013-14 and reappointment of auditors. The 70th

AGM was treated as adjourned for want of adoption of financial statements in compliance with section 137 of the Companies Act, 2013.

19. On 10.11.2014, Board Meeting of the 1st respondent company was held wherein resolution was passed to the effect that all the rights arising from the shareholders' agreement dated 14.09.2010 stood terminated and all rights, including voting rights, attached to the shares issued pursuant to shareholders' agreement with Finquest Financial Solutions P. Ltd. stood terminated.

20. It is the case of the petitioners that, there is no provision in the Companies Act, 1956 or the Companies Act, 2013 empowering the Board of Directors to take away voting rights of any shares issued pari passu. According to the petitioners, shares issued on 07.09.2010 to Finquest Financial Solutions P. Ltd. and Minal Patel were not pursuant to the shareholders' agreement dated 14.09.2010 but were pursuant to the EGM held on 24.08.2010 which specified that such shares would rank pari passu in all respect with existing shares of the 1st Respondent Company. Even, according to the respondents, substantial part of the shares held by Finquest Financial Solutions P. Ltd., and Minal Patel have already been transferred to others before the Board meeting of the 1st respondent company allegedly held on 10.11.2014. It is also the case of the petitioners that, the 1st respondent company listed its shares and traded on the

stock exchanges in fungible form as per the Depositories Act and therefore it is impossible to know which shares were originally allotted pursuant to the purported shareholders agreement. It is also the plea of the petitioners that, no notice was issued to the shareholders of the 1st respondent company regarding suspension of voting rights. The 1st respondent company never disclosed about any dispute about the shareholding and validity of the shares held by the petitioners or any other shareholder. No rights attached to any shares were suspended until after the 71st AGM held on 10.12.2015. According to the petitioners, shares allotted to Finquest Financial Solutions P. Ltd. and Minal Patel were listed shares on the stock exchange and there was no intimation to the stock exchange or public at large that the rights attached to the shares, including the rights to participate in the meetings of the shareholders of the 1st respondent company or right to vote, were terminated.

21. On 18.12.2014, Bharat Patel, Hardik Patel, Finquest Financial Solutions P. Ltd. and Pat Financial Solutions P. Ltd. and Pat Financial Consultants P. Ltd. filed Special Civil Suit No. 652 of 2014 in the Court of Principal Civil Judge, Vadodara against respondents No. 1 and 2 and others seeking declaration that removal of Bharat Patel and S.N. Rajan as Directors is illegal and unauthorised and that respondents No. 1 and 2 and others have no right to reverse the decision of the shareholders taken at 70th Annual General Meeting held on 22.09.2014; to reappoint Bharat Patel and

S.N. Rajan as Directors in the 69th Annual General Meeting and passing injunction restraining the 2nd respondent herein and others for convening and holding any meeting of the Board of Directors and to direct the 2nd respondent and others to take all steps required under the provisions of the Companies Act to facilitate holding of EGM in accordance with law. The said suit is pending.

22. Trial Court rejected the injunction application filed by the plaintiffs in Special Civil Suit No. 652 of 2014.
23. Finquest Financial Solutions Pvt. Ltd., Bharat Patel, Hardik Patel and Pat Financial Consultants P. Ltd. filed AO 548 of 2014 before the Hon'ble High Court of Gujarat challenging the order of Trial Court dated 26.12.2014.
24. The Hon'ble Vacation Judge of the Gujarat High Court by order directed status quo to be maintained in regard to composition of Board of Directors of the 1st Respondent company.
25. On 20.01.2015, respondents communicated to Bombay Stock Exchange about the resolution passed in the Board Meeting to the effect that the termination of the shareholder's agreement would take away all rights in respect of the shares issued by the 1st respondent company on preferential basis under the shareholder's agreement dated 14.09.2010.

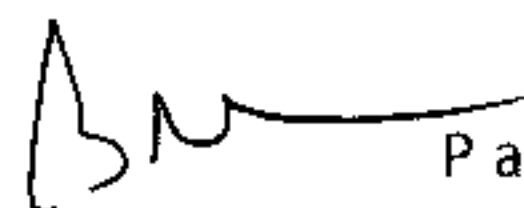
26. It is the case of the petitioners that the shares which was subject matter of termination of rights were in dematerialised and fungible form and there was nothing in the notice given to Bombay Stock Exchange that rights in respect of any particular share stood terminated or that such shares were not tradable on the stock exchange.
27. In AO 548 of 2014, Hon'ble High Court of Gujarat directed the 1st respondent company to consider requisition notice dated 18.12.2014 and it was open to Finquest Financial Solutions P. Ltd. to convene EGM but any resolution passed therein should not be given effect to without prior permission of the Court and that all the decisions would be subject to further orders of the Court. The said appeal is pending before the Hon'ble High Court of Gujarat.
28. 1st respondent company by Special Leave Petition No. 6513 and 6514 of 2015 before Hon'ble Supreme Court and Hon'ble Supreme Court quashed the said order and directed Hon'ble High Court of Gujarat to dispose of the matter on merits.
29. According to the petitioner, petitioner No. 1, 4 and one Sunidhi Securities & Finance Ltd. purchased 4,42,528, 7,86,600 and 5,80,000 shares respectively of the 1st respondent company on Bombay Stock Exchange in a bulk deal. There was no restriction on any of these shares or purchase thereof. According to the petitioner, bulk deal constitutes all transactions in a scrip on an exchange where

total quantity of shares bought/sold is more than 0.5% of the listed shares of the company.

30. On 25.04.2015, the 1st respondent company published caution notice in Economic Times and local newspaper Gujarat Samachar about a resolution passed by the Board of Directors in the meeting held on 10.11.2014. Petitioners have no knowledge of said publication of notice and they came to know only by locating a website of the said notice wherein there was no reference to the publication of notice in newspapers.
31. Hon'ble High Court of Gujarat by order dated 28.08.2015 in Arbitration Petition No. 16 of 2015 filed by the 1st respondent company, appointed Justice C.K. Buch as Arbitrator to resolve disputes arising out of shareholders' agreement dated 14.09.2010.
32. Notice of 71st Annual General Meeting scheduled to be held on 10.12.2015 was received by the petitioners on 07.10.2015 wherein approval of the shareholders in respect of financial statements for the financial year ending on 31.03.2015 was sought for. There was no caution notice in respect of alleged suspension of voting rights of shareholder holding 18,00,000 shares. Cut-off date for 71st AGM held on 10.12.2015 was taken as 03.12.2015 and by that date petitioners were evidently included in the shareholders' register.

33. On 04.12.2015, the 1st respondent company issued a letter to respondent No. 13 regarding termination of shareholders' agreement and cessation of voting rights of 18,00,000 equity shares. The 1st respondent company filed statement of claim in the arbitration against Finquest Financial Solutions P. Ltd. and Minal Patel seeking the following reliefs: -

- (a) To declare that in view of the termination of shareholders' agreement dated 14.09.2010 made by Finquest Financial Solutions P. Ltd. all rights, title and interest on 18,00,000 equity shares issued and allotted by the 1st respondent company on preferential basis pursuant to their shareholders' agreement dated 14.09.2010 also be terminated and cease to exist;
- (b) To declare that all transactions of sale/transfer of 18,00,000 shares made by Finquest Financial Solutions P. Ltd. or otherwise issued and allotted by the 1st respondent company pursuant to their shareholders' agreement dated 14.09.2010 are non-est and void ab initio;
- (c) To permit the claimant i.e. the 1st respondent company to cancel and/or re-acquire and/or re-allot the 18,00,000 shares issued and allotted by the 1st respondent company pursuant to their shareholders' agreement dated 14.09.2010

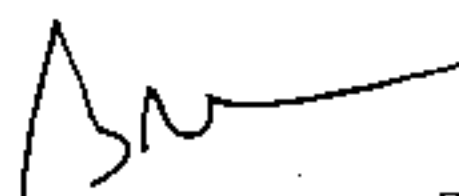


- (d) To grant order of injunction restraining Finquest Financial Solutions P. Ltd. and others from dealing with 18,00,000 shares issued and allotted by the 1st respondent company pursuant to their shareholders' agreement dated 14.09.2010

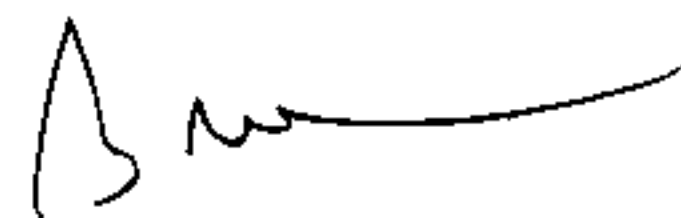
34. In the 71st AGM held on 10.12.2015 voting took place by way of e-voting. Petitioners exercised voting rights in the 71st AGM by way of e-voting. 71st AGM of the 1st respondent company was held on 10.12.2015. On 11.12.2015, scrutiniser submitted its report. In the report Scrutiniser stated as follows: -

"...I do not hold authority to determine the existence or cessation of voting rights. Therefore, I am providing report both with and without considering voting rights exercised by the members who are presently holding 17,39,960 after 18,00,000 shares leaving the decision to the Chairman of the Company...

- (a) To decide and declare the results on the basis of the existence of voting rights or
(b) To decide and declare the results on the basis of cessation of voting rights..."

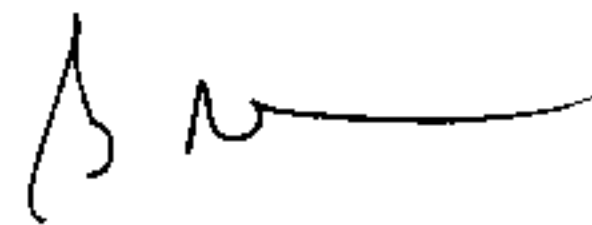


35. The report discussed that considering 17,39,960 votes as valid the results are not passed. The report without considering 17,39,960 votes resolutions are passed. In the 71st AGM, the 1st respondent company adopted accounts for the year ending on 31.03.2014 and 31.03.2015 without considering 17,39,960 votes in respect of which there was cessation of voting rights. Respondent No. 2 accepted the report of respondent No. 13 and denied voting rights exercised by shareholders in respect of 17,39,960 equity shares and declared the resolution. Petitioners No. 3 and 4 addressed letter to the 2nd respondent seeking copy of letter dated 04.12.2015 addressed by the 1st respondent company to respondent No. 13. 2nd respondent issued a reply to petitioner No. 4 confirming that the shares held by petitioner No. 4 belonged to the category of cessation of voting rights.
36. Respondent No. 2 issued reply to petitioner No. 3 refusing to give copy of letter dated 04.12.2015. Petitioner No. 4, on 01.01.2016 issued a letter to respondent No. 2 seeking reasons and applicable provisions of law for classifying petitioner No. 4's shares under the category of cessation of voting rights.



37. In this petition, petitioners have sought for the following reliefs: -

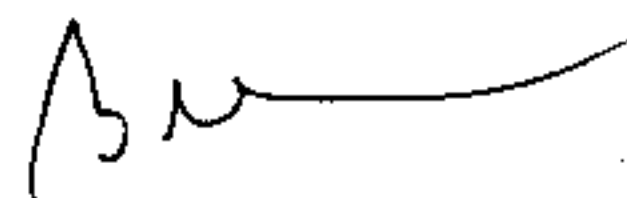
- a. to declare adjournment of 70th Annual General Meeting held on 22.09.2014 is illegal.
- b. to declare that convening of 71st Annual General Meeting for considering annual accounts for the year ended 31.03.2014 is not permissible without convening adjournment of 70th AGM if it is assumed that the 70th AGM was properly adjourned.
- c. to declare that cessation of voting rights in respect of 18,00,000 equity shares is against the provisions of the Companies Act and Articles of Association of the Company and therefore is illegal and invalid.
- d. to declare that non-consideration of votes cast by some shareholders including the petitioner No. 4 at the 71st AGM on the basis of cessation of voting rights in respect of all the resolutions is illegal and invalid.
- e. to declare the outcome of the results of the 71st AGM held on 10.12.2015 in terms of Report V(a) of the Scrutinizer as invalid.



- f. to order investigation under Section 210 of the Companies Act, 2013, Section 235 & 237 (b) of the Companies Act, 1956.
- g. to order appointment of an independent firm of Chartered Accountants to conduct investigative audit for the years 2013-14 and 2014-15 for the huge losses incurred and locking up of substantial funds in overdue debtors.
- h. to direct the removal of Chairman & Managing Director from the Board of Directors of the 1st respondent company.
- i. to declare that V(b) of the Scrutinizer's report is invalid and non est in law.

38. Following are the averments made in the reply filed by the respondents: -

39. Shareholding of petitioners No. 1 and 4 amounts to 7.25% of the paid up share capital of the respondent company. The remaining petitioners who hold 11.87% of the equity shares have no grievance against the respondents in the present petition and they have been arraigned only to claim threshold requirement of 10% of paid up share capital. The present petition is only in respect of petitioners No. 1 and 4



whose voting rights of 18,00,000 shares have been curtailed.

40. In view of the pending Arbitration Proceedings between Respondent No. 1 & 2 and original allottees, any disputes raised by them are to be raised before the Arbitration Tribunal. The disputes between the 1st respondent company and original allottees with respect to the mala fide and illegal transfer of 18,00,000 equity shares is sub-judice before the Sole Arbitrator. The petitioners have malafidely approached this Tribunal in an attempt to circumvent the Arbitral Proceedings. The claim made by Respondent No. 1 and 2 against Minal Patel and Finquest Financial Solution P. Ltd. and relief claimed in the Arbitration Proceedings vis-à-vis reliefs sought by the petitioners in this petition are almost identical.

41. It is specific case of the respondents that petitioners No. 1 and 4 have acquired equity shares of the 1st respondent company from the original allottees in a mala fide, illegal and surreptitious manner and in clear violation of shareholders' agreement (SHA). Respondents denied statement of the petitioners that they have purchased 18,00,000 equity shares allotted under the SHA have been purchased from open market. According to the respondents, transfer of shares was not an open market purchase but negotiated deal amongst entities known to each other. Respondents filed a

chart showing transfer of shares from the original allottees to petitioners No. 1 and 4 vide annexure A-16.

42. According to the respondents, there is a relationship between original allottees as transferors and petitioner No. 1 and 4 as transferees in the synchronized transaction through broker in a negotiated deal and it is elaborated in the chart Annexure R-1.
43. It is the version of the respondents that there is a possibility of conflicting decisions in Arbitration Proceedings and in this proceedings. According to the respondents, Section 10 of the Civil Procedure Code 1908 read with Regulation 44 of Company Law Board Regulations, 1991 proceedings in this matter has to be stayed.
44. Further, it is the case of the respondents that, SHA dated 14.09.2010 came to be executed between Respondent No.s 1 and 2 on one hand and Finquest Financial Solution P. Ltd., Minal Patel on the other hand. By virtue of the SHA, the 1st respondent company issued and made a preferential allotment of 18,00,000 equity shares of Rs. 10/- each in favour of original allottees i.e. Finquest Financial Solution P. Ltd. and Minal B. Patel. Bharat Patel is husband of Minal Patel who is the original allottee. He was nominated as director of the 1st respondent company in terms of SHA and



he is Nominee Director in the company for Finquest Financial Solution P. Ltd.

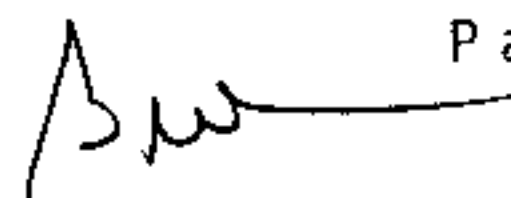
45. As per the terms of SHA if the original allottee desired to sell all or any part of the 18,00,000 equity shares, they were obligated to give the right of first refusal to Respondent No. 2. Original allottees without complying the conditions of SHA including that of affording right of first refusal to Respondent No. 2 and in total contravention of the SHA terms, sold and transferred 18,00,000 shares of the 1st respondent company to petitioner No. 1 and 4 in a synchronized transaction through Stock Exchange. The sale and transfer of 18,00,000 shares by original allottees to the transferees i.e. Petitioner No. 1 and 4 is in violation of SHA and transferees have no valid rights in such shares.

46. Since July, 2011, the original allottees started acting contrary to the terms and conditions of SHA. The original allottees in a mala fide and surreptitious manner in collusion with Bharat Patel, husband of Minal Patel and Director of Finquest Financial Solution P. Ltd., in complete breach of terms and conditions of SHA, have transferred equity shares of the 1st respondent company to intermediaries who were acting in concert with the original allottees. 1st respondent company also alleged that, transfer of 18,00,000 equity shares allotted under SHA were in violation of the SEBI Insider Trading Regulations.

47. Original allottees Finquest Financial Solution P. Ltd. vide e-mail dated 17.03.2014 unilaterally terminated the SHA and the same was reconfirmed by letter dated 25.03.2014.
48. The 1st respondent company having failed to resolve the dispute through the process of mediation, invoke Arbitral Clause contained in Clause 6.6 of SHA by issuing letter dated 18.04.2014.
49. Finquest Financial Solution P. Ltd. held 6,00,000 equity shares of the 1st respondent company. M/s. PAT Financial Consultants P. Ltd. held 13,36,265 equity shares of the 1st respondent company making total of 19,36,265 equity shares. Out of 13,36,265 shares of PAT Financial Consultants P. Ltd., 12,00,000 equity shares were acquired from Bharat Patel, husband of Minal Patel, who in violation of SHA sold 12,00,000 equity shares to her husband Bharat Patel. Thereafter, out of 19,36,265 equity shares of the 1st respondent company held by Finquest Financial Solution P. Ltd. and PAT Financial Consultants P. Ltd. 18,00,000 equity shares were transferred to petitioners No. 1 and 4.
50. On 15.04.2015, Finquest Financial Solution P. Ltd. and PAT Financial Consultants P. Ltd. transferred 19,36,265 equity shares to JHP Securities P. Ltd. which is a broking company owned and controlled by Pankaj Jayantilal Patel who is real

brother of Bharat Patel. On 15.04.2015 itself JHP Securities P. Ltd. transferred 19,36,265 equity shares of the 1st respondent company to Latin Manharlal Securities P. Ltd., 8,12,432 equity shares to Sunidhi Securities & Finance Limited, 5,80,000 shares to Aum Capital Market Private Limited and 4,42,528 shares to Aum Capital Market Private Ltd. Aum Capital Market P. Ltd. and Latin Manharlal Securities P. Ltd. have maintained the present vexation petition after allotment.

51. Respondents, in order to safeguard interest of the company against the unilateral termination of SHA resolved that all the rights, entitlements, privileges arising from the SHA with respect to 18,00,000 equity shares ceased to exist in the hands of original allottees vis. Minal Patel and Finquest Financial Solution P. Ltd. as on 10.11.2014.
52. The original allottees did not raise any objection to the decision of Board of the 1st respondent company and on the contrary they tried to circumvent the contractual obligation by disposing off and transferring the said 18,00,000 shares which eventually landed in the hands of petitioner No. 1 and 4 and another company Sunidhi Securities and Finance Ltd. Petitioner No. 1 and 4 have not come to this Tribunal with clean hands and they are not entitled for any reliefs. It is stated that 1st respondent company was constrained to file Arbitration Petition No. 16 of 2015 before the Hon'ble High



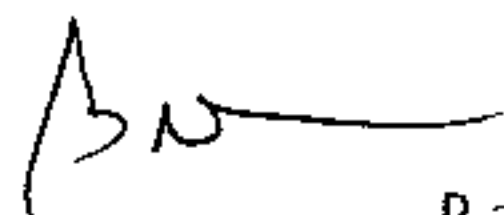
Court of Gujarat seeking appointment of Arbitrator for adjudication of the disputes with respect to the 18,00,000 equity shares of the 1st respondent company allotted under the SHA. 1ST respondent company published advertisements in the local newspapers notifying the public at large that voting rights with respect to 18,00,000 equity shares stands ceased to exist vide notice dated 25.04.2015. Hon'ble High Court of Gujarat was pleased to allow the petition of the 1st respondent company and appointed Mr. Justice C.K. Buch as Sole Arbitrator to resolve disputes arising out of SHA.

53. Respondents No. 1 and 2 filed Company Application 33 of 2016 with a request to dismiss or adjourn the petition till completion of final Arbitral proceedings and avoid conflicting decisions inspite of the fact that Petitioners No. 1 and 4 are not parties to the Arbitration agreement. It is settled law that the disputes shall be resolved by Arbitral Proceeding than by adjudication. It is also stated that the petitioners misguided the Tribunal and suppressed material facts and have approached this Tribunal with unclean hands.

54. It is stated that provisions of Sections 6 and 106 of the Companies Act, 2013 are not applicable in this matter because the provisions of these sections find a place where there is a right originally created under the Companies Act or its Memorandum of Association or its Articles of Association. Contractual obligations have their own separate

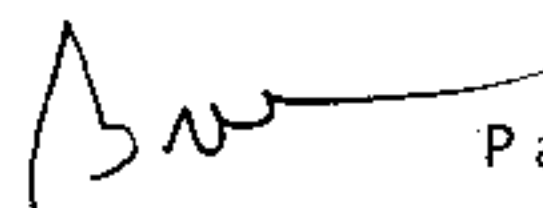
legal binding impacts and are in legally. The provisions of the Indian Contract Act will prevail over any other provisions of the Companies Act, 1956 for the simple reason that the holders of 18,00,000 shares gained and got their rights and duties derived in the affairs of the company, exclusively from SHA under the Indian Contract Act.

55. It is stated that there is no collusion between respondent No. 2 and 13. Respondent No. 13 made full disclosure of the voting pattern at the AGM and that same report was disclosed in the website of Bombay Stock Exchange.
56. It is stated that neither the original allottees nor the petitioners have challenged the cessation of consequential voting and other rights despite coming to know of it almost one year before the date of filing this petition.
57. It is stated that the petitioners have not disclosed material facts about the dates of obtaining the shares in the 1st respondent company. It is relevant to determine the locus standi of the petitioners to claim reliefs through this petition. Petitioners referred two AGMs of the 1st respondent company vis. The 70th AGM of the year 2014 and the 71st AGM of the year 2015.



58. Petitioners were not shareholders in the 1st respondent company at the time of 70th AGM or at the time of BSE website uploading or at the time of public notice by the respondent company. Petitioners are only front entities of Bharat Patel. Seven out of nine petitioners are companies incorporated in India. Action of petitioners would result into irreparable prejudice to about 21,000 stakeholders of the 1st respondent company.

59. It is stated in the rejoinder that the parties to the dispute before the Arbitration Tribunal are totally different from the parties to the present dispute before the Hon'ble Company Law Board/National Company Law Tribunal. The only common party before the Sole Arbitrator and the NCLT is Jyoti Ltd. (Respondent No. 1). Mr. Rahul Amin, respondent No. 2 is named as a respondent in the company. The 9 petitioners in the company petition have absolutely no connection or relation with the respondents in the Arbitration Proceedings. Petitioners in the Company Petition are either parties to the alleged SHA dated 14.09.2010 nor are parties before the Arbitral Tribunal. Petitioners do not fall within the definition of "party" under section 2 (h) of the Arbitration Act and are also not parties for the purpose of Section 7 of the Arbitration Act. Petitioners never signed and/or executed any arbitration agreement with the answering. Petitioners are not bound by any Arbitration proceedings going on between the parties to such agreement. It is said that,



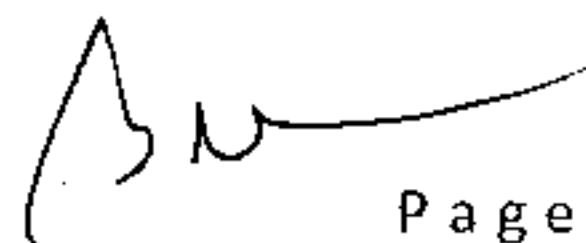
arbitral award if any passed in the Arbitral Proceedings are binding on the respondents and Finquest Financial Solution P. Ltd. and Minal Patel. The statutory rights and grievances of the petitioners being shareholders of the 1st respondent company can only be adjudicated before this Tribunal under the provisions of the Companies Act. The powers conferred upon the Company Law Board under section 402 and 403 while adjudicating a petition brought under Section 397 & 398 of the Companies Act, 1956 have very wide and such powers cannot be exercised by an Arbitral Tribunal as has been repeatedly held. The reliefs sought in arbitration proceedings and before this Tribunal are altogether different. The basic essence of the reliefs in Clause (c) in the Company Petition leaves Clause (a) in Arbitration proceedings is quite opposite to each other. The issue of mismanagement has been raised in this petition and there cannot be any such issue before the Arbitration Tribunal. The conduct of respondent No. 2 in collusion with respondent No. 13 pertaining to non-consideration of the votes polled by several shareholders including petitioner No. 4 in the 71st AGM and the fraudulent and partisan declaration of voting results by the Chairman (Respondent No. 2) as to the outcome of the polling in respect of various resolutions tabled before the shareholders, based on the Scrutinizer's report dated 11.12.2015 amounts to denial of some of the basic rights granted to shareholders under the Companies Act. Adoption of financial accounts for the year ended 31.03.2014, in the Minutes of the 71st AGM of the members

of Jyoti Ltd. held on 10.12.2015 without the item being there on the agenda and despite the fact that these very annual accounts were rejected by the shareholders in the earlier 70th AGM held on 22.09.2014, needs to be looked into by NCLT as blatant misuse of power and oppressive conduct of the management of the company.

60. Petitioner denied claim of the respondents that the sale of shares to petitioner No. 1 and 4 was not an open market purchase and it was a negotiated deal amongst the entities known to each other. It was a synchronised transaction through broker. It is stated that it was a block deal at the stock exchange. According to the petitioner, it was not block deal but a bulk deal as it can be seen from the BSE website for Jyoti Ltd. On 15.04.2015 in the master circular issued by Stock Exchange and Clearing Corporation issued by SEBI bulk deals and block deals are described as below: -

Bulk Deal

A "bulk" deal constitutes all transactions in a scrip (on an exchange) where the total quantity of shares bought/sold is more than 0.5% of the number of equity shares of the company listed on the exchange. The quantitative limit of 0.5% can be reached through one or more transactions executed during the day in the normal market segment.



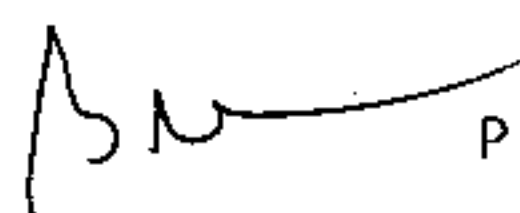
Block Deal

Block deal is execution of large traders through a single transaction without putting either the buyer or seller in a disadvantageous position. For this purpose, stock exchanges are permitted to provide a separate trading window. The said trading window may be kept open for a limited period of 35 minutes from the beginning of trading hours i.e. the trading window shall remain open from 9.15 a.m. to 9.50 a.m. The orders in block deal may be placed at a price not exceeding +1% from the ruling market price/previous day closing price, as applicable. In case of block deal order may be placed for minimum quantity of 5,00,000 shares or minimum value of Rs. 5.00 crores. The stock exchange shall disseminate the information on block deals such as the name of scrip, name of the client, quantity of shares brought/sold, traded price etc. to the general public on the same day, after the market hours.

61. Petitioners No. 1 and 4 purchased shares of the 1st respondent company on 15.04.2015 on the BSE in accordance with the Stock Exchange Mechanism and the same is mentioned in Annexure A-16. Petitioner No. 1 and 4 were unaware about the resolution dated 10.11.2014 passed by the Board of Directors of the 1st respondent company. On 10.11.2014 no public notice was issued in respect of suspension of voting rights nor any communication was sent to BSE. No public notice in respect

of suspension after communication was sent to stock exchange on 20.01.2015. Caution notice was issued to public at large on 24/25.04.2015. No restrictions were declared on voting of the shares in the e-voting held on 07.12.2015. SHA was not made a part of Articles of Association of the 1st respondent company. SHA is a private contract between the specified parties therein as compared to Articles of Association of the Company, which is a public document. Reference is made by the 1st respondent company before AAIFR and Miscellaneous Application seeking restraining orders against the takeover bid and change of management. There is no mention in the order of BIFR and AAIFR about 18,00,000 shares and voting thereof.

62. In the sur-joinder it is stated that, the term "suit" as used in the CPC is a broad term with wide connotations, and in fact include within its ambit, proceedings before this Tribunal. It is further stated in the sur-joinder that even though Section 10 of the Civil Procedure Code, 1909 uses the expression "suit", the principle behind Section 10 would be applicable even to proceedings in view of Section 141 of CPC. The Companies Act, 2013 has also recognised the proceedings before NCLT as a suit. This Tribunal is a permanent body constituted under a statute and any order passed by this Tribunal is deemed to be a decree passed by a Civil Court. BIFR by its letter dated 15.09.2015 ordered to maintain status quo on controlling stake and management of the

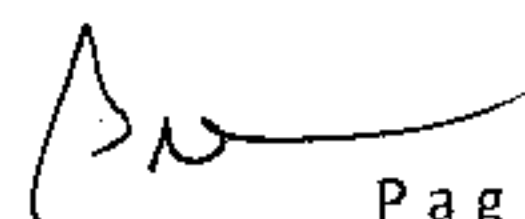


company and directed that no change of management should take place. Appeal filed against the impugned order dated 15.09.2015 of the BIFR, was dismissed by AAIFR. In view of Regulation 44 of the CLB Regulations, this Tribunal has power to stay its own proceedings pending the adjudication of a dispute in a previously instituted suit. The inherent power under Regulation 44 encompasses within itself, a power to do something, which finds an expression in specific terms in Section 10 of the Code.

63. In the sur-rejoinder respondents denied the allegations made in the rejoinder parawise.

64. Basing on the pleadings and the rival contentions, the following points emerge for determination in this petition: -

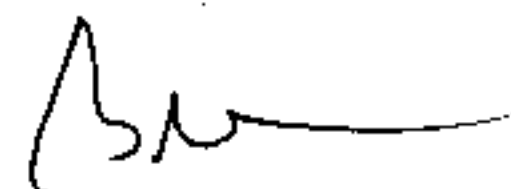
- (1) Whether the petitioners are eligible to file this petition?
- (2) Whether the petition is maintainable in view of pendency of arbitration proceedings?
- (3) Whether the petition is maintainable in view of pendency of Special Civil Suit No.652 of 2014 and A.O. No.548 of 2014?



- (4) Whether on account of the revocation of shareholders' agreement dated 14.9.2010 by Minal B. Patel and Finquest Financial Solutions Pvt. Ltd., all the rights attached to 18,00,000 shares ceased to exist and the transfer of 18,00,000 shares by Minal B. Patel and Finquest Financial Solutions Pvt. Ltd. is non est?
- (5) Whether there are acts of oppression and mismanagement which give rise to a conclusion that it is just and equitable to wind up the company and whether it is not in the interest of the company and its shareholders to wind up the company?
- (6) What relief?

65. Point No.1

This petition is filed by as many as 9 petitioners. According to the petitioners, the total shareholding of petitioners 1 to 9 is 19.10% of the paid up capital of the 1st Respondent Company as on 3.12.2015. The petition is instituted through petitioners 3 and 9, in whose favour power of attorneys have been executed by petitioners 1, 2, 4 to 8, which are annexed to the petition from pages 74 to 77.



66. It is the plea of the respondents that the real grievance in this petition is that of petitioners 1 and 4 and the other petitioners have no grievance that should be redressed in this petition and, therefore, the shareholding of petitioners 1 and 4 alone shall be taken into consideration and, in which event, their shareholding is only 7.25% of the paid up capital of the 1st Respondent Company, which is far below the required 10% paid up share capital of the company in terms of Section 399 of the Companies Act, 1956.

67. In this context, if we look into Section 399 of the Companies Act, 1956 or Section 244 of the Companies Act, 2013, it would go to show that any one or more members of the company having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them as contemplated under sub-section (2) of Section 244. Therefore, in the case on hand, the main grievances are that of petitioners 1 and 4. They are entitled to make an application with the consent of other shareholders. If the contention of the learned counsel for the respondents that all the petitioners must have a grievance in order to file a petition alleging oppression or mismanagement were to be accepted, then a shareholder having shares less than 10% of paid up share capital can never question the acts of oppression and mismanagement. In order to question the acts of oppression and mismanagement, the law requires members having 10% of paid up share capital shall file a petition. This threshold requirement is contemplated in

order to avoid small shareholders unnecessarily filing frivolous and vexatious petitions questioning the affairs of the company on the grounds of oppression and mismanagement. But, members, who are having less than 10% paid up share capital if they are able to obtain the consent of other members and if thereby they have 10% or more than 10% of the paid up share capital of the company, they are certainly eligible to file a petition under Section 397 or 398 of the Companies Act, 1956 irrespective of the fact that whether all the petitioners were having any grievance or not.

68. In view of the above discussion, it can only be held that the petitioners are eligible to file this petition under Section 244(2) of the Companies Act, 2013 (Section 399(3) of the Companies Act, 1956).

69. Point No.2

To decide this point, it is necessary to state, in brief, what necessitated the initiation of arbitration proceedings by the 1st Respondent Company.

70. The 1st Respondent Company, when it was in need of finance, by a resolution passed in Extraordinary General Meeting held on 24.8.2010, allotted 6,00,000 shares to Finquest Financial Solutions Pvt. Ltd (FFS Pvt. Ltd.), 12,00,000 shares to Minal B. Patel (MB Patel) and 12,00,000 shares to Nirma Chemical Works Pvt. Ltd. Thereafter, the

1st Respondent Company entered into a shareholders' agreement dated 28th August, 2010 with Nirma Chemical Works Pvt. Ltd. and another shareholders' agreement dated 14.10.2010 with FFS Pvt. Ltd. and Shri MB Patel.

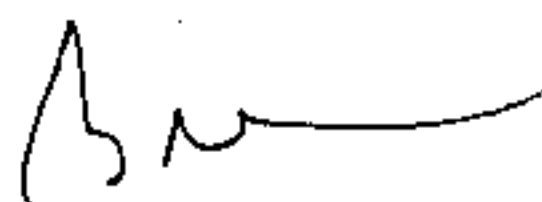
71. There is no dispute about the fact that the shareholders' agreement was revoked by FFS Pvt. Ltd. and MB Patel by a mail dated 17.3.2014 and confirmed the same by a letter dated 25.3.2014. Thereafter, there was correspondence between the 1st Respondent Company, on the one hand, and FFS Pvt. Ltd. and Shri MB Patel, on the other hand. Ultimately, the 1st Respondent Company filed Arbitration Petition No.16 of 2015 before the Honourable High Court of Gujarat, which was disposed of on 28.8.2015 by appointing Honourable Mr. Justice C.K. Buch, a Retired Judge of the High Court of Gujarat, as the sole Arbitrator and the arbitration proceedings are pending.

72. It is the contention of the petitioners that the shares were allotted to FFS Pvt. Ltd. and Shri MB Patel not under the shareholders' agreement dated 14.9.2010, but by way of a resolution of the General Body of the 1st Respondent Company passed on 24.8.2010. It is also the contention of the petitioners that no application is filed by the respondents under Section 8 of the Arbitration and Conciliation Act, 1996 referring the parties to the arbitration. It is also contended that referring the disputes between the parties to the arbitration is subject to fulfilment of various conditions such

as arbitrability of the disputes and the disputes between the same parties and it must relate to the subject matter. It is contended by the learned senior counsel appearing for the petitioners that the petitioners are not parties to the shareholders' agreement dated 14.9.2010, which was between respondents 1 and 2 and FFS Pvt. Ltd., which represents itself and MB Patel. It is also contended that the petitioners are not assignees of FFS Pvt. Ltd and MB Patel and are not transferees of their rights and interest under the shareholders' agreement dated 14.9.2010. It is the contention of the learned counsel for the petitioners that the disputes raised by the petitioners cannot be resolved by the arbitral proceedings and no arbitral proceedings can be initiated against the petitioners. It is also contended that the reliefs sought in the arbitral proceedings between the 1st Respondent and FFS Pvt. Ltd. and MB Patel cannot be granted to the 1st Respondent since it also affects third parties. At best, the 1st Respondent may claim damages. It is also contended that what is pending in the arbitral proceedings is the effect of revocation of shareholders' agreement by FFS Pvt. Ltd. and MB Patel on the shares allotted to them. It is also contended that shareholders' agreement does not contemplate restriction of voting rights. It is also contended that dismissal of application under Section 16 of the Arbitration and Conciliation Act by the learned Arbitrator does not mean that the Arbitrator can grant reliefs contrary to law or affecting the third party interest. In fact, the respondents did not ask for interim

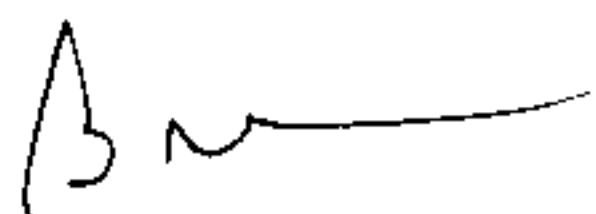
relief either under Section 9 or under Section 17 of the Arbitration and Conciliation Act, 1996 regarding suspension of voting rights in the arbitral proceedings. It is also contended that the matters under Sections 397 and 398 are not arbitral in nature and the Arbitrator does not have powers to grant wide reliefs which this Tribunal is empowered to grant. In support of the said contention, learned counsel for the petitioners relied upon the following decisions: -

- (1) ***SN Prasad, Hitek Industries (Bihar) Limited v. Monnet Finance Limited & Others***, reported in (2011) 1 SCC 320.
- (2) ***Apex FRP Chemicals Private Limited & Another v. Om Prakash Gupta & Others***, reported in 2016 SCC Online Del 2312.
- (3) ***Indowind Energy Limited v. Wescare (India) Limited and Another***, reported in (2010) 5 SCC 306.
- (4) ***Rakesh Malhotra v. Rajinder Kumar Malhotra and Others***, reported in 2014 SCC Online Bom 1146.
- (5) ***Sadbhav Infrastructure Project Limited v. Company Law Board***, reported in 2014 SCC Online Guj 9159.



73. On the other hand, learned counsel appearing for the respondents contended that in the arbitral proceedings, respondents have sought declaration that transfer of shares made in favour of petitioners 1 and 4 is a nullity and that the rights of 18,00,000 shares ceased to exist. The application filed by FFS Pvt. Ltd. under Section 16 of the Arbitration and Conciliation Act was dismissed by the learned Arbitrator on 20th August, 2016 and, therefore, the Arbitral Tribunal is alone having jurisdiction to decide the validity of the shares allotted under shareholders' agreement. It is contended that the issue whether transfer of shares by FFS Pvt. Ltd. and Shri Bharat Patel, which ultimately acquired partly by petitioners 1 and 4, is subjudiced before the Arbitral Tribunal and the outcome of the said proceedings will have direct bearing on the locus of petitioners 1 and 4. In support of the contentions, learned counsel for the respondents cited the following decisions: -

- (1) **Anup Agarwalla v. Castron Mining Limited**, reported in MANU/CL/0083/2009.
- (2) **HB Stockholdings Limited v. DCM Shriram Industries Ltd. and Others**, reported in IA 12820/2008 (Delhi High Court) CS (OS) No.2011/2008.
- (3) **Jindal Vijaynagar Steel Limited v. Jindal Praxair Oxygen Company (P) Limited**, reported in (2005) 68 CLA 295 (CLB).



(4) ***Guljarilal Kanoria and Another v. Loptchu Tea Company Ltd.*** and others, reported in MANU/CL/0026/2000.

74. First of all I would like to refer to the arguments made by learned counsel for the petitioners that no application is filed by the respondents No. 1 & 2 under Section 8 of the Arbitration and Conciliation Act, 1996, referring the parties to Arbitration.

75. It is needless to state that, refer the parties to Arbitration means referring the disputes between the parties to Arbitration. Section 8 of the Arbitration and Conciliation Act, 1996 was amended by Arbitration and Conciliation Act, 2015 which came into force from 23.10.2015. The amended Section 8 of Arbitration and Conciliation Act, 1996 says that a party to Arbitration Agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgement, decree or order of the Supreme Court or any Court, refer the parties to Arbitration.

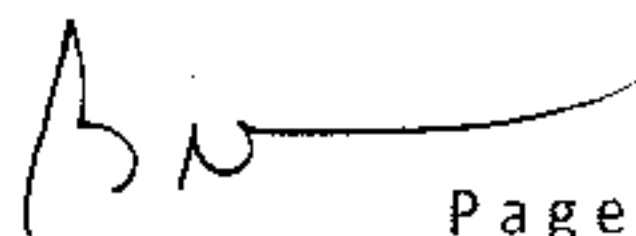
76. In the case on hand the Arbitration Proceedings commenced with issuance of notice dated 08.04.2014 by the 2nd respondent as Chairman & Managing Director of the 1st respondent company to Finquest Financial Solution P. Ltd.

and Minal B. Patel. In fact, the Hon'ble High Court of Gujarat by its order dated 28.08.2015 made in Arbitration Petition No. 16 of 2015 requested Hon'ble Justice Mr. C.K. Buch, retired Judge of High Court to act as Sole Arbitrator to resolve the disputes between petitioners and respondents arising out of the shareholders' agreement dated 14th September, 2010. It is a fact that, proceedings are pending before the said Arbitral Tribunal. Therefore, Section 8 of the Arbitration and Conciliation Act of 1996 as amended by Act 3 of 2016 which came into force on 23.10.2015 is not applicable to the Arbitration Proceedings in the case.

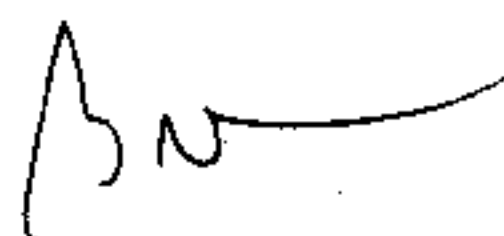
77. In this context it is necessary to refer clause 6.6 of the SHA which reads as under: -

"6.6 – Dispute Resolution

Any dispute, difference, controversy or claim by, between or amongst the parties hereto arising out of or relating to this Agreement or the construction, interpretation, breach or validity thereof shall be resolved firstly by the process of mediation, in writing, failing which the same shall be resolved and finally settled under the Arbitration and Conciliation Act, 1996 with the place of arbitration, being Vadodara and language being English."



78. Reading of said clause goes to show that, all disputes arising out of or relating to the agreement shall be resolved by Arbitration on failure of mediation. Hon'ble High Court of Gujarat in its order dated 28.08.2015 clearly held that Finquest Financial Solution P. Ltd. and Minal Patel did not cooperate for mediation inspite of efforts made by the respondents. Therefore, Hon'ble High Court of Gujarat, under Section 11 of the Arbitration and Conciliation Act, 1996 appointed Sole Arbitrator.
79. It is contended by the learned counsel appearing for the petitioners that the nature and scope of issues arising for consideration in application under Section 11 of the Act for appointment of Arbitrator are far narrower than those arising in an application under Section 8 of the Act seeking reference of the parties to a suit to Arbitration.
80. In this aspect, learned counsel for the petitioner relied upon the decision of Hon'ble High Court of Delhi in the matter of Apex FRP Chemicals Pvt. Ltd. Vs. Om Prakash Gupta. In that judgement a reference was made to the judgment of Hon'ble Supreme Court in case of Booz Allen and Hamilton Inc. In that judgement Apex Court considered the scope and the ambit of the term "Arbitrability" and has inter-alia held that the said term has different meaning in different contexts. Para 32 to 34 may be extracted as under: -



"32. The nature and scope of issues arising for consideration in an application under Section 11 of the Act for appointment of arbitrators, are far narrower than those arising in an application under Section 8 of the Act, seeking reference of the parties to a suit to arbitration. While considering an application under Section 11 of the Act, the Chief Justice or his designate would not embark upon an examination of the issue of "Arbitrability" or appropriateness of adjudication by a private forum, once he finds that there was an arbitration agreement between or among the parties, and would leave the issue of arbitrability for the decision of the Arbitral Tribunal. If the Arbitrator wrongly holds that the dispute is arbitrable, the aggrieved party will have to challenge the award by filing an application under Section 34 of the Act, relying upon sub-section 2 (b) (i) of that section.

33. But where the issue of "arbitrability" arises in the context of an application under Section 8 of the Act in a pending suit, all aspects of arbitrability will have to be decided by the court seized of the suit, and cannot be left to the decision of the Arbitrator. Even if there is an

arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court where the civil suit is pending, will refuse an application under Section 8 of the Act, to refer the parties to arbitration, if the subject-matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal.

34. The term "arbitrability" has different meanings in different contexts. The three facets of arbitrability, relating to the jurisdiction of the Arbitral Tribunal, are as under: -

- (i) whether the disputes are capable of adjudication and settlement by arbitration? That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the Arbitral Tribunal) or whether they would exclusively fall within the domain of public for a (courts).*
- (ii) Whether the disputes are covered by the arbitration agreement? That is, whether the disputes are enumerated or described*

in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the "excepted matters" excluded from the purview of the arbitration agreement.

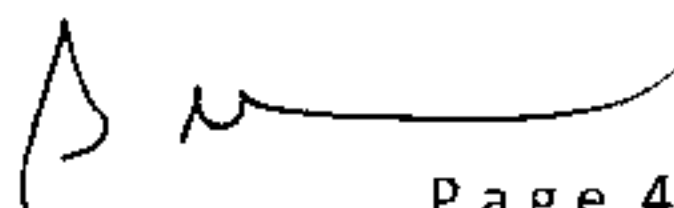
(iii) Whether the parties have referred the disputes to arbitration? That is, whether the disputes fall under the scope of the submission to the Arbitral Tribunal, or whether they do not arise out of the statement of claim and the counterclaim filed before the Arbitral Tribunal. A dispute, even if it is capable of being decided by arbitration and falling within the scope of arbitration agreement, will not be arbitrable if it is not enumerated in the joint list of disputes referred to arbitration, or in the absence of such joint list of disputes does not form part of the disputes raised in the pleadings before the Arbitral Tribunal."

81. Therefore, on the ground that Hon'ble High Court of Gujarat under Section 11 of the Arbitration and Conciliation Act, 1996 appointed a Sole Arbitrator, it is not proper to conclude that the said dispute is capable of adjudication by the Arbitration Tribunal and the dispute exclusively fall outside

the domain of public fora. In fact, in the above referred case, decision of the Company Law Board was upheld on the ground that the matter of dispute is capable of adjudication only by a public forum. The above decision was rendered basing on the reliefs prayed in that Company Petition.

82. In that case the petitioner in the Company Petition prayed for the following reliefs.

- (a) to remove the 2nd respondent as Director of the 1st respondent company.
- (b) to direct the 1st respondent company to furnish all relevant details pertaining to the Goa Project like total apartments sold, amount received from the sale of flats etc.
- (c) to appoint a receiver for looking after the state of affairs of the 1st respondent company and to manage the funds of the company till the petition is disposed of.
- (d) direct the 2nd respondent to purchase the shares of the petitioner company at a price to be determined by an Independent Chartered Accountant firm.



(e) pass such further and other orders as this Hon'ble Company Law Board may deem fit and necessary in the circumstances of the case"

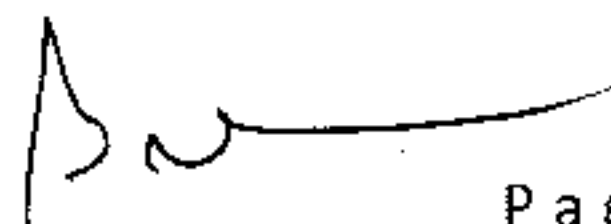
83. But in the case on hand the reliefs prayed in this petition are briefly stated in para 37 of this order.

84. Here it is pertinent to mention here that, what are the reliefs claimed by the 1st respondent company in the statement of claim filed before the Arbitration Tribunal have also been briefly stated in para 33 of this order.

85. Learned counsel for the petitioner relying upon the judgement of Apex Court in S.N. Prasad, Hitek Industries (Bihar) vs. Monnet Finance Ltd. and others contended that reference to Arbitration is valid only if there is an arbitration agreement between the parties. In that judgement, Hon'ble Apex Court held that when there is a dispute between a party to an arbitration agreement, as also non-parties to the arbitration agreement, reference to arbitration or appointment of arbitrator can be only with respect to the parties to the arbitration agreement and not the non-parties. In that decision a party who gave a letter of guarantee on 27.10.1995 prior to the dates of the two loan agreements which did not contain a provision for arbitration was also referred to arbitration. In that case, loan

agreements contained a provision for arbitration whereas letter of guarantee did not contain a provision for arbitration. In those facts and circumstances, Hon'ble Supreme Court held that disputes between the parties alone shall be referred to arbitration. In the case on hand SHA is between the company and the original allottees of shares i.e. Finquest Financial Solution P. Ltd. and Minal Patel. By the date of SHA, petitioners No. 1 and 4 are not at all in the picture and they are not shareholders of the 1st respondent company. It is the case of petitioners No. 1 and 4 that they have purchased shares of the 1st respondent company through stock exchange and through notified agents. It is the case of respondents No. 1 & 2 that the shares purchased by petitioners No. 1 and 4 are the shares allotted to Finquest Financial Solution P. Ltd. and Minal Patel on preferential basis as per SHA dated 14.09.2010. It is the version of the petitioners that shares were allotted to Finquest Financial Solution P. Ltd. and Minal Patel on 07.09.2010 as per the resolution passed by EOGM of the 1st respondent company on 24.08.2010. In this context, it is necessary to determine whether the shares allotted to Finquest Financial Solution P. Ltd. and Minal Patel on preferential basis has got anything to do with the SHA dated 14.09.2010 or not. No doubt the shares were allotted to Finquest Financial Solution P. Ltd. and Minal Patel and Nirma Chemical Works Pvt. Ltd. as per resolution of EOGM dated 24.08.2010. In this context it is necessary to refer to the minutes of Board Meeting dated 26.07.2010. Resolution 4 and 6 of the Board Meeting dated

26.07.2010 would show that the allotment of shares is subject to determining the terms of allotment and approval and execution of SHA. Even in the EOGM dated 24.07.2010, Board is authorised to decide other terms and conditions of the issue of allotment of shares. It is not even the case of the petitioners 2 and 4 that matter it is not even the case of Finquest Financial Solution P. Ltd. and Minal Patel that the shares allotted as per EOGM dated 24.08.2010 are different from the shares referred to in SHA dated 14.09.2010. It is a fact that even before SHA was executed shares were allotted to the original allottees Finquest Financial Solution P. Ltd. and Minal Patel. Following on the heels of the resolution passed in the EOGM dated 24.08.2010 and the allotment made on 07.09.2010 SHA was entered into between the original allottees and the company. SHA contains certain restrictions on the transferability of the shares and in the SHA there is a clause which says that on failure of mediation parties shall be referred to arbitration in connection with any matter with regard to rights of the shares. To say that SHA has nothing to do with the allotment of shares to original allottees on preferential basis is not acceptable in the facts and circumstances of this case. If the SHA is not connected with the shares allotted to the original allottees there is no reason to enter into SHA when shares were already allotted by virtue of resolution passed in EOGM of the company as per the procedure laid down in Articles of Association and Companies Act.



86. To say in other words if the allotment of shares is completed in all aspects without any restrictions, then there is no need for SHA at all. Therefore, to contend that since the shares were allotted as per the resolutions passed in the EOGM, the conditions laid down in SHA including arbitration clause cannot be invoked do not merit acceptance. Therefore, to conclude the arbitration clause in SHA should be taken into consideration for deciding the disputes between the parties. Whether the restrictions contemplated in the SHA which are contra to the Articles of Association binds the allottees and transferees of shares is a matter which should be decided at a later stage before a public forum or by Arbitral Tribunal.
87. In this context it is also necessary to determine whether the shares now in the hands of the petitioners No. 1 and 4 were the shares allotted to Finquest Financial Solution P. Ltd. and Minal Patel or those shares are different from the shares allotted to original allottees.
88. On this aspect, learned counsel for the petitioner contended that the shares listed in stock exchanges are fungible in nature and there cannot be any restriction of transfer of such shares and anyone can purchase such shares.
89. In this context it is the contention of the learned counsel for the respondents that chart at page 47 and 48 of the reply

disclose that the last transaction was executed through JHP Securities P. Ltd., a broker company owned by Pankajbhai Patel, real brother of Bharat Patel. A perusal of the chart at page 47 and 48 of the reply goes to show that the flow of shares originally allotted to the original allottees was purchased on 15.04.2005 from JHP Securities P. Ltd. by petitioners 1 and 4. Simply because there are some other transfers and simply because the shares were purchased through BSE it cannot be said that the shares purchased by the petitioners No. 1 and 4 are totally different from the shares allotted to the original allottees on preferential basis. Therefore, petitioners No. 1 and 4 are holding shares allotted to original allottees in respect of which SHA was executed which contain arbitration clause and, therefore, Arbitration proceedings before Arbitral Tribunal cannot be avoided.

90. It is also pertinent to refer that original allottees filed a petition under Section 16 of Arbitration and Conciliation Act, 1996 before the Arbitral Tribunal stating that since the shares were already sold away by them, the Arbitral Tribunal has no jurisdiction to proceed with the proceedings. The said application was dismissed by Arbitral Tribunal and it became final.

91. On this aspect, learned counsel for the petitioner contended that simply because the Arbitral Tribunal held that it can

continue arbitral proceedings, it does not mean that the Arbitral Tribunal has got authority to deal with the reliefs prayed by the petitioner in the Company Petition.

92. A close reading of reliefs prayed in Arbitration and the reliefs prayed in this petition would go to show that the reliefs directly or indirectly or impliedly relate to the transferability of shares and revocation of SHA. The crux of the dispute is whether the restrictions placed on transferability of the shares allotted to the original allottees contemplated in the SHA are valid or not and whether they would bind on the original allottees and the subsequent transferees of such shares in view of revocation of SHA by original allottee. Such dispute has already been referred to the arbitral tribunal and the Arbitral Tribunal has taken cognizance and proceeding with the proceedings.

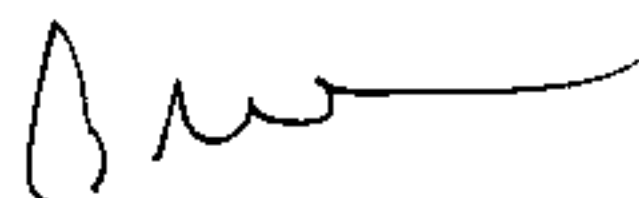
93. In view of the above discussion, the decision relied upon by petitioner reported in (2011) 1 Supreme Court Cases 320 is not applicable to the facts of this case.

94. It is contended by the learned counsel for petitioner that cessation of voting rights of the petitioners in the 71st AGM held on 10.12.2015 cannot be decided by the Arbitral Tribunal. It is true that the Arbitral Tribunal cannot directly decide whether the cessation of voting rights of the

petitioners in the 71st Annual General Meeting is valid or not. When once the Arbitral Tribunal decides whether the restrictions placed on the shares allotted to the original allottees as per SHA are valid or not, basing on the said decision the controversy relating to cessation of voting rights could be decided.

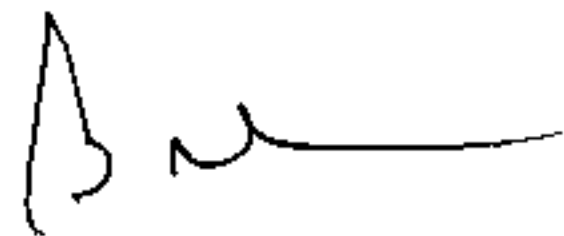
95. Coming to the reliefs relating to postponing of 70th AGM held on 22.09.2014 and adopting financial statements relating to financial year ended on 31.03.2015 in the AGM held on 10.12.2015, it is argued by learned counsel for the petitioner that, it cannot be decided by Arbitral Tribunal and therefore the matter cannot be referred to Arbitral Tribunal. It is also canvassed that in the 70th AGM that voting rights in respect of the shares allotted to the original allottees that were transferred to some other persons, has not been restricted.

96. It is a fact that the voting rights in respect of shares allotted to the original allottees have not been restricted in the 70th AGM held on 22.09.2014. It is to remember that cessation of voting rights was by virtue of resolution passed by Board of Directors of the 1st respondent company on 10.11.2014 i.e. after the 70th AGM. Therefore, to contend that no cessation of voting rights was imposed in the 70th AGM do not merit acceptance.



97. Postponement of 70th AGM and adopting of annual accounts for the financial year ending 31.03.2014 in the 71st AGM is according to the provisions of the Companies Act. Moreover, by the date of 70th AGM, petitioners 1 and 4 are not shareholders. They have no scope to vote in the 70th AGM. Therefore, on the ground that reliefs relating to the validity of adopting the accounts of the financial year 2013-2014 in the AGM held on 10.12.2015 is not arbitrable, the jurisdiction of Arbitral Tribunal to deal with the validity or otherwise of rights of the parties with reference to SHA cannot be taken away. Therefore, in view of the above discussion, Arbitral Tribunal has to decide about the disputes in connection with SHA.

98. In case if this Tribunal decides about the cessation of voting rights in one way or the other way and Arbitral Tribunal took a different view from the view taken by this Tribunal, then there would be conflict of decisions. When the parties can resolve their disputes by Arbitration, it would be always better to go before Arbitral Tribunal than before a public forum unless it is found that Arbitral Tribunal has no authority to decide controversies or dispute. When the dispute relates to the SHA and when it is arbitrable in nature, there is no reason for this Tribunal to decide about the cessation of voting rights.



99. The decision of Arbitral Tribunal in respect of the restrictions contemplated in SHA are applicable to the shares allotted to the original allottees or not will have some bearing in deciding other reliefs prayed in this petition which are not arbitrable. When some of the reliefs prayed in this petition are directly or indirectly arbitrable and some of the reliefs are not at all arbitrable, it is just and expedient for this Tribunal to postpone its decision on the issues both arbitrable and not arbitrable, till arbitrable issues are decided by the Arbitral Tribunal which has already commenced its proceedings, since the decision of Arbitral Tribunal would have some bearing on the result of non-arbitrable issues also, I answer the point accordingly.

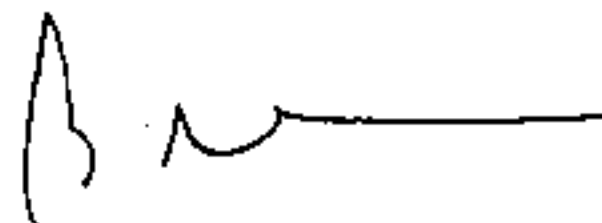
100. In view of the above discussion it may be not appropriate in this order, for this Tribunal, to decide the aspect whether this petition is dressed up petition to avoid arbitral proceedings or not.

Point No. 3

101. Further, the fact remain that the Finquest Financial Solutions P. Ltd., Bharat J. Patel and others filed a Civil Suit No. 652 of 2014 and the original allottee in the said Civil Suit did not ask for relief of cessation of voting rights inspite of notice dated 14.11.2014 issued by 1st respondent

company to Finquest Financial Solutions P. Ltd., Bharat J. Patel and others. The original allottee in the Civil Suit prayed the relief in respect of removal of Bharat Patel and S.N. Rajan from the directorship of the 1st respondent company and for injunctions. Moreover, the original allottee failed in their attempt to get injunction order. The said Civil Suit is pending and the appeal filed by Bharat Patel and others against refusal to grant injunction is also pending before the Hon'ble High Court of Gujarat. The petitioners No. 1 and 4 who are the subsequent purchasers of the shares of Finquest Financial Solution P. Ltd. and Minal Patel are now in this petition seeking relief against cessation of voting rights on the ground such action has not been contemplated under the provisions of the Companies Act and it had been done in illegal manner. This issue can only be resolved, as already said, depending on the decision of the Arbitral Tribunal on the validity or otherwise about the restrictions placed on transfer of shares allotted to the original allottees on a preferential basis coupled with the plea of the respondents that the relief of cessation of voting rights is barred in view of the bar under O.2 R.2 of CPC and on the ground of acquiescence, waiver etc.

102. In view of the above discussion, the following are the findings of this Tribunal.



- (a) Decision on the reliefs "C", "D", "E" and "I" shall depend upon the findings of Arbitrary Tribunal regarding the restrictions contemplated on the transfer of shares in SHA and its binding nature.
- (b) The decision on reliefs relating to "A", "B", "F", "G" and "H", "J" and "K" is postponed till the decision of Arbitral Tribunal.
- (c) Petitioners are at liberty to approach the Arbitral Tribunal and contend in respect of reliefs "C", "D", "E" and "I" prayed in this petition.

103. In view of the aforesaid findings, Company Petitions and applications are kept pending. List the Company Petition and Applications after disposal of Arbitration Proceedings by the Arbitration Tribunal. No order as to costs.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced in the open court on 13th July, 2017

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