

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH: GUWAHATI

I.A. No.18 OF 2017

(T.P.NO. 25/397/398/GB/2016)

(CP No. 992/ 2011)

In the matter of:

Sri Deba Kumar Hazarika,
Citizen Apartment,
1st Floor, D-Type, Six Mile,
Guwahati – 781 022 and others.

... Petitioners

-versus-

Assam Chemicals & Pharmaceuticals (P) Ltd.,
Regd. Office – House No.16, Santipur Main Road,
Near Pragjyotish College, Bharalumukh,
Guwahati – 781 009 and others

... Respondents

And

In the matter of:

Sri Tapan Chandra Bhuyan,
Vill. & P. O. Gopalpur,
P. S. Rangia, Dist. Kamrup
Assam (PIN -781 354)

... Applicant

Coram:

Hon'ble Mr. Justice P. K. Saikia, Member (J)

For the Applicant:

Shri A. Das Gupta, Advocate

For the Petitioners/Respondents:

Shri A. K. Srivastava, Advocate

Date of hearing: 15.06.2017

Date of pronouncement: 03.07.2017

ORDER

Per Hon'ble Mr. Justice P. K. Saikia, Member (J):

This application has been filed seeking the following relief/s: -

"I. Reliefs sought

- i. *The Company Petition, being T. P. No.25 of 2016 (Deb Kumar Hazarika & Ors. Vs. Assam Chemical & Pharmaceutical Pvt. Ltd.) be dismissed.*
 - ii. *The proceeding and/or further proceedings and/or hearing of the company petition being T.P. No.25 of 2016 (Deb Kumar Hazarika & Ors. Vs. Assam Chemical & Pharmaceutical Pvt. Ltd. Be stayed until and unless the instant application is disposed off.*
 - iii. *An interim order in terms of prayed above.*
 - iv. *Cost of and/or incidental to this application be paid by the company petitioners.*
 - v. *Such further order or orders be passed and/or direction or directions be made as to this Hon'ble Tribunal may deem fit and proper.*
2. *Interim order, if prayed for: Pending decision of application/petition/appeal, the applicant/petitioner/appellant prays for the following interim relief(s):*
- i. *The facts and circumstances of the case clearly show that the company petition has been filed by the petitioners in a most misconceived, illegal, frivolous and a malicious manner and also in an abuse of process of law. The petitioner is proceeding in a hot haste with the said company petition before this Hon'ble Tribunal and in the event the instant application is not allowed valuable rights of the applicant will be prejudiced and/or jeopardized as the said company petition is not maintainable on several counts as stated above.*
 - ii. *Unless reliefs are granted as prayed for herein, the applicant will suffer irreparable loss, prejudice and injury.*
 - iii. *In the facts and circumstances of the case, the applicant humbly prayed for following interim reliefs:*
 - iv. *The said company petition being T. P. No.25 of 2016 (Deb Kumar Hazarika & Ors. — Versus- Assam Chemical & Pharmaceutical Private Limited) be dismissed.*
 - v. *The proceeding and /or further proceedings and/or hearing of the company petition being T.P. No.25 of 2016 (Deb Kumar Hazarika & Ors. — Versus- Assam Chemical & Pharmaceutical Private Limited) be stayed until and unless the instant application is disposed off.*
 - vi. *Ad interim orders in terms of prayed above;*
 - vii. *Cost of and/or incidental to this application be paid by the company petitioners.*
 - viii. *Such further order or orders be passed and/or direction or directions be made as to this Hon'ble Tribunal may deem fit and proper."*

2. The facts, necessary for disposal of this proceeding, in short campus, are that Shri Deba Kumar Hazarika along with 18 others had filed a petition under section 397/398 of the Companies Act, 1956 (in short, the Act of 1956) against Assam Chemical and Pharmaceutical Pvt. Ltd. and 4 others before the Company Law Board, Kolkata (hereinafter referred to as "CLB"), seeking various relief/s enumerated therein alleging mismanagement and

oppression having been perpetuated on the petitioners by the majority shareholders. Said proceeding was registered and numbered as C P No.992/2011. In due course, notice was served upon all the respondents therein.

3. The respondents therein entered appearance and raised a preliminary objection as to the maintainability of the present proceeding having filed an application. The CLB, on hearing the parties, initially vide its order dated 09.05.2013 in C.A. No.215/2012 held that the proceeding was maintainable. Subsequently, the respondents filed reply alleging, amongst other things, that the petition was not maintainable. The objection, raised on the point of maintainability, was upheld and the proceeding was dismissed on that ground alone vide order dated 20-03-2014 in CP No.992/2011.

4. Said judgment was challenged before the Hon'ble Gauhati High Court having filed an appeal u/s 10 F of the Act of 1956. In course of time, Hon'ble Gauhati High Court heard both the parties and framed as many as 9 (nine) law points (including a point as to whether the CLB could review its order dated 9.5.2013 wherein it had held that the CP No.992/2011 was maintainable) for discussion as well as for its decisions thereon. The law points framed by Hon'ble High Court are as follows: -

"14. In the course of hearing, it was noticed that questions of law as is the requirement under Section 10 F of the Act were not framed. Accordingly, by order dated 17.03.2016 the following questions of law were framed on the basis of which learned counsel for the parties made their respective submissions: -

I. Can there be an arbitration agreement between the shareholders on one hand and the Managing Director, Director or Manager on the other hand given the mandate of Company Law Board under section 402 (d) of the Companies Act, 1956?

2. Whether the Arbitration Court has jurisdiction to decide the right of shareholders to appoint or remove directors from the Board irrespective of the fact of existence of an arbitral award as such or otherwise?

3. Whether the Company Law Board failed to exercise its jurisdiction vested under Sections 397, 398 and 402 of the Companies Act, 1956?

4. Whether the Company Law Board has any right to review its own order?

5. Whether the Hon'ble High Court has jurisdiction to entertain and hear an appeal under Section 10F of the Companies Act, 1956, arising out of refusal of the Company Law Board to exercise the jurisdiction vested in Sections 397 and 398, read with Section 402 of the Companies Act?

6. Whether majority of the shareholders have legal and proprietary right to exercise in appointing and removing Directors to control and manage their Company?

7. Whether shareholders holding 28% of the paid up capital in the Company has right to remove and appoint Directors, who were removed and appointed by majority shareholders holding 64% of shares?

8. Whether the outsiders other than the existing shareholders of the Company, who were allotted shares on 20.02.2010 and 15.09.2010 were entitled to members of the Company given the prohibition of allotment and transfer of shares to outsiders as per Article 28 of the Articles of Association of the Company?

9. Whether allotment of shares on 20.02.2010 and 15.09.2010 to the minority shareholders holding 28% of shares of the paid up capital of the Company to the exclusion of majority shareholders including the State of Assam

(which is supposed to be holding 25% in the paid up capital of the Company as per Article 51 of the Articles of Association for all time to come otherwise remaining their rights) are invalid and void ab initio?"

5. On hearing both the parties, the Hon'ble Gauhati High Court had rendered its opinions on as many as 3 law points, they, being point No 3, 4 and 5 and that too in favour of the appellant (non-applicant / petitioner herein) and in deciding point No. 4, it had also held that the CLB had no power to review its order dated 9.5.2013. Hon'ble High Court, however, remanded the proceeding to CLB for its decision on the remaining 6(six) law points, framed by it. For ready reference, the relevant part of the Judgment is reproduced below: -

"25. On this aspect reference may be made to articles 5 & 28 of the articles of association of the company. According to article 5, the shares of the company shall be under the control of the Board of Directors who may classify, allot or otherwise dispose of the same to such person on such terms and conditions as the Board thinks fit and proper. Article 28 says that unless all the members of the company agree, no shares shall be transferred or issued to a person who is not a member of the company so long as a member is willing to purchase the same at a fair value. Therefore, the question for consideration before the Company Law Board was legality and validity of issuance of 6715 equity shares of the company on the anvil of articles 5 & 28 of the articles of association which had a bearing on the allegation of mismanagement and oppression in the company by the present management. This was a decision of the management of the company represented by respondent No.5. The allottees are only beneficiaries of the said shares. Therefore, the view taken by the Company Law Board that the allottees are necessary parties does not appear to be the correct view. Be that as it may, since this is the core of the lis the allottees could have been put on notice by issuance of newspaper advertisement to have enabled them to make their submissions. Instead of doing so, Company Law Board declined adjudication which perhaps was not the proper approach. In paragraph 10 of the final order Company Law Board made certain sweeping statements, such as, company petition suffering from many defects, company petition being filed to take revenge for removal of appellant No.1 as employee of the company by respondent No.5 by making false allegations against respondent No.5, initiating various illegal actions for removal of respondent No.5 without following the due provisions of law and making appointment of appellant No.1 as Director of the company against mandatory provisions of law.

26. I am afraid, the materials on record do not support such sweeping conclusions arrived at by the learned Member of the Company Law Board. There was no justification to record such findings.

27. In the light of the above discussion, impugned order of the Company Law Board dated 20.03.2014 cannot be sustained and is accordingly set aside and quashed. Matter is remanded back to the Company Law Board, Kolkata Bench for fresh decision on merit in Company Petition No.992/2011. As a measure of abundant caution, appellants may be permitted to issue newspaper advertisement to bring it to the notice of the allottees of 6715 equity shares of the company about Company Petition No.992/2011 to be heard afresh by the Company Law Board, Kolkata Bench. Consequently, the questions of law framed except question Nos. 3,4 and 5 are returned unanswered awaiting adjudication on merit. In view of the foregoing discussions question Nos. 3, 4 and 5 are answered in the affirmative, negative and in the affirmative respectively."

6. After the remanding of the proceeding to the CLB, the Companies Act, 2013 came into being. The CLB was abolished and in its place National Company Law Tribunal (in short, NCLT) was brought into existence and, therefore, the said proceeding was transferred to this Tribunal for disposal in accordance with law. In terms of the order rendered by the Hon'ble Gauhati High Court on 09.05.2016 in Co. App. No.3/2014, the petitioners have made necessary paper publication and in pursuance thereto, several shareholders who have purchased 6715 equity shares from the company which is alleged to have been issued in violation of provisions of law, had applied before this Court to get themselves impleaded as party respondents. The present applicant who had reportedly purchased 400 shares out of the above 6715 equity shares of the company, was also impleaded as party respondents.

7. Having been impleaded as one of the party respondents, the applicant herein, has preferred the present application seeking the relief/s aforementioned. It has been alleged that the present proceeding is not maintainable for the reasons more than one. They are –

(i) That the petition does not disclose any oppression or mismanagement having been committed by the respondents in administering the affairs of the company.

(ii) That the basis of the allegations made in the petition is newspaper report which is hear-say in nature and, therefore, cannot be made the basis of the proceeding under section 397/398 of the Act of 1956.

(iii) That the allegations made in the petition are basically against the respondent No.5 only. More importantly, such allegations are also very personal in nature and, therefore, those allegations cannot be made basis for a proceeding u/s 397/398 of the Act of 1956.

8. In support of such contention, my attention has been drawn to paragraphs XIII, XIX, XX, XXII, XXIII, XXV, XXVI, XXVII, XXVIII, XXIX and XXX of the petition. For ready reference, the same are reproduced herein below: -

“XIII. That while taking over the charge, the respondent No.5, was reported to be absconding and avoided to hand over the charge to the newly constituted Board of Directors and it was informed by his supporters about issue of a Court order issued from the Court of Addl. District Judge, Kamrup, Guwahati, dated 13.11.2009.

...

XIX. That the respondent No.5, remained abscond from his office, and did not handed over the charge to the newly constituted Board of Director and tried to create obstacles to the Board of Director for smooth functioning of the Company’s day-to-day affairs.

XX. That the shareholders took a serious view on the attitude and activities of the respondent, created obstacle in smooth functioning of the day-to-day affairs of the company. Keeping in view the unlawful activities and attitudes of the respondent No.5, the shareholders convened another Extra-Ordinary General Meeting in presence of an Executive Magistrate deputed by the district administration on 5th January, 2010 at the Registered Office of the Company to transact the company’s business. The respondent No.5 absconds on the date of the Extra-Ordinary General Meeting held on 5th January, 2010 but created disturbance and prevented through outsiders not to hold the Extra-Ordinary General Meeting. However, in presence of the Executive Magistrate the Meeting concluded confirming removal of the respondent No.5 from the Office of the Board of Directors of the Company. Further, it was resolved by the majority of the votes, that all the activities conducted by the respondent No.5 on behalf of the company after 14.11.2009 shall not be binding on the Company and respondent No.5 shall be personally liable for the losses to caused out of his unauthorized activities.

Copy of the EOGM dated 5th January, 2010 is enclosed and marked as Annexure- C and copy of the order of the Deputy Commissioner, Kamrup (Metro), Guwahati, is enclosed as Annexure-E for reference.

XXII. That the respondent No.5, knowing fully well his cessation of Directorship and Managing Director in the Company’s management, with mala fide intention, circulated fabricated news in the local newspaper in “The Dainik Asom” dated 27th March, 2010 and in “The Assam Tribune” published on 22nd May, 2010 declaring the respondent No.5 as the Managing Director of the Company and the Registered

Office remains at its old situation and misled the public, badly affecting the company's goodwill and economy. The customers lost faith on the company due to regular unhealthy incidents and improper functioning caused by the respondent No.5.

Copy of the newspaper cut is enclosed and marked as Annexure – U for reference.

XXV. That the respondent No.5, with criminal intention, ulterior motive, by conspiracy and illegal altered company's records and documents in the Office of the Registrar of Companies, Shillong, by electronic filing system, removed Sri Deba Kumar Hazarika, as Managing Director and Sri Bhupen Chandra Kalita as Director and misled the public as well as staff and employees of the company by circulating illegal documents declaring the respondent No.5, continuing to be the Managing Director of the company. The activities of the respondent No.5 are the act of forgery, cybercrime as well as criminal breach of trust, punishable under the Indian Penal Code and the Companies Act, 1956.

Copy of the letter issued to all sales Staff of the company dated 22.03.2010 along with Form 32 and Form 18 is enclosed and marked as Annexure- X for reference.

XXVI. That the respondent No.5 tempered documents in the Office of the Registrar of Companies, Shillong and illegally and unauthorized issued shares of 1,455 nos. of Equity Shares favouring him and his associates without the consent of the existing shareholders of the company. The matter of illegal fresh issue of shares came to the knowledge of the petitioner-shareholders, and they immediately referred the matter to the Bureau of Investigation Economy Offence (BIEO), Govt. of Assam, for investigation into the matter against the respondent for forgery of documents, which is under investigation before the concerned authority.

Copy of the complaint filed before the BIEO dated 17.05.2010 is enclosed and marked as Annexure – Y for reference.

XXVII. That the anomalies in the functioning of the company's business committed by the respondent No.5 has been referred to the Central Vigilance Commission, Satarkta Bhawan, G.P.O. Complex, Block-A, NIA, New Delhi 110 023 to take adequate action on the illegal activities of the respondent.

Copy of the complaint lodged to the Central Vigilance Commission dated 08.07.2010 and acknowledgement letter dated 30.07.2010 is enclosed as Annexure –Z for reference.

XXVIII. That the respondent No.5, during the pendency of Company Petition No.972/2010 before this Hon'ble Forum, having ulterior motive and mala fide intention and without obtaining any approval/authority from the majority of the existing shareholders removed the name of Sri Deba Kumar Hazarika as Managing Director of the Company from the ROC records and appointed himself as Managing Director of the Company and ROC records were unlawfully changed in contravention of the provisions of the Companies Act, 1956.

Copy of the Form No.32 is enclosed and marked as Annexure – ZA for reference.

XXIX. That the respondents, during the pendency of Company Petition No.972/2010 before this Hon'ble Forum has altered the Authorized Capital Clause of the Memorandum of Association of the Company and increased the Authorized Capital of the company to 10,000 Equity Shares of Rs.100/- from the existing Authorized Capital of the Company 5,000 Equity Shares of Rs.100/- each as on 14.11.2009 without approval of the existing shareholders of the Company and illegally amended the capital Clause in the Memorandum of Association as well as Article of Association of the Company in ROC records and

committed criminal breach of trust by unlawfully occupying the office of the Managing Director of the Company. The respondent No.5, with mala fide intention, and to deceive the existing shareholders, converted the majority share holdings to minority and by fresh issue of equity shares in his name and his associate's names, by forged documents and trying to cheat the existing petitioner shareholders.

Copy of Altered MOA, AOA and Form No.5 filed in the office of ROC and letter sent to the Govt. of Assam showing majority is enclosed and marked as Annexure- ZB for reference.

XXX. That respondent No.5 illegally and fraudulently issued 6,715 Nos. of fully paid Equity Shares of Rs.100/- each of the company in his name and in the name of his supporters (w. e. f. 20.02.2010 – 1,455 shares w. e. f. 15.09.2010 – 5,260 Nos. of Equity Shares) and illegally filed Return of Alotment in the office of the ROC in contravention of the provisions of laws.

Copy of detailed list of fraudulent issue of Equity Shares is enclosed and marked as Annexure –ZC for reference. “

9. In support of his contention that the allegations incorporated in the petition does not disclose any oppression/mismanagement having been committed by the respondents therein, the applicant has drawn my attention to the decision of the Hon'ble Apex Court rendered in the case of Chatterjee Petrochem (India) Pvt. Ltd. Vs. Haldia Petrochemicals Ltd. and others reported in (2011) 10 SCC 466 wherein the Hon'ble Apex Court in Para 133, 140 and 141 has held as under: -

“133. The law relating to grant of relief on a petition under Sections 397, 398 and 402 of the Companies Act, 1956 has been crystalized in various decision of this Court, including those cited on behalf of the parties. The common refrain running through all these decisions is that in order to succeed in an action under Sections 397 and 398 of the Companies Act, the complainant has to prove that the affairs of the Company were being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. For better appreciation of the above, Section 397 of the above Act is extracted hereinbelow: -

“397. Application to Tribunal for relief in cases of oppression. – (I) Any member of a company who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of Section 399.

(2) If, on any application under sub-section (I), the Tribunal is of opinion –

(a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.”

140. It will be evident that in order to pass orders under Section 397 of the Companies Act, 1956, the CLB has to be satisfied that the Company's affairs are being conducted in a manner oppressive to any member or members and that the facts would justify the making of a winding-up order on the just and equitable principle, but that such an order would unfairly prejudice the applicant before the CLB.

141. As was discussed by this Court in Needle Industries case unwise, inefficient or careless conduct of a Director cannot give rise to claim for relief under Section 397 of the Act. For relief under this Section, the applicant would have to prove that the conduct of the majority of the shareholders lacked probity and was unfair so as to cause prejudice to the applicant in exercising his legal and proprietary rights as a shareholder. This, in fact, is the golden thread of the various decisions in relation to petitions under Section 397, 398 and 402 of the above Act. All the various decisions cited by the learned counsel for the various parties are ad idem on this issue and applying the said principles, each complaint under Section 397 will have to be judged on its own merit for the CLB to arrive at a conclusion as to whether the ingredients of Section 397 were satisfied and pass appropriate orders thereafter.”

10. My attention was also drawn to the decision of the Hon’ble Supreme Court reported in AIR 1988 SC 1274 rendered in the case of Laxmi Raj Shetty and another Vs State of Tamil Nadu to contend that newspaper information, being hear-say in nature, cannot be made the basis of any proceeding including a proceeding U/s 397/398 of the Act of 1956. The relevant part of the judgment can be found in Para 25 and 26 thereof. For ready reference, same are also reproduced hereinbelow: -

“25. As to the first, the accused Laxmi Raj Shetty was entitled to tender the newspaper report from the Indian Express of the 29th and the regional newspapers of the 30th along with his statement under S.313 of the Code of Criminal Procedure, 1973. Both the accused at the stage of their defence in denial of the charge had summoned the editors of Tamil dailies “Malai Murasu” and “Makkal Kural” and the news reporters of the Indian Express and Dina Thanthi to prove the contents of the facts stated in the new item but they dispensed with their examination on the date fixed for the defence evidence. We cannot take judicial notice of the facts stated in news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A newspaper is not one of the documents referred to in S. 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under S.81 of the Evidence Act to a newspaper report cannot be treated as proof of the facts reported therein.

26. It is now well-settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported. The accused should have therefore produced the persons in whose presence the seizure of the stolen money from appellant No.2’s house at Mangalore was effected or examined the press correspondents in proof of the truth of the contents of the news item. The question as to the admissibility of newspaper reports has been dealt with by this Court in Samant N. Balakrishna v. George Fernandez, (1969) 3 SCR 603: (AIR 1969 SC 1201). There the question arose whether Shri George Fernandez, the successful candidate returned to Parliament from the Bombay South Parliamentary Constituency had delivered a speech at Shivaji Park attributed him as reported in the Maratha, a widely circulated Marathi newspaper in Bombay, and it was said:

“A newspaper report without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.”

We need not burden the judgment with many citations. There is nothing on record to substantiate the facts as reported in the newspaper showing recovery of the stolen amount from the residence of appellant No.2 at Mangalore. We have therefore no reason to discard the testimony of PW 50 and the seizure witnesses which go to establish that the amount in question was actually recovered at Madras on the 29th and 30th as alleged.”

11. Further, the decision of the Hon’ble Supreme Court reported in AIR 2011 SC 906 rendered in the case of Joseph M. Puthussery Vs. T. S. Jophn & Ors. has also been relied on to bring home same point wherein the Hon’ble Supreme Court in Para 12 of the said judgment has held as under: -

“12. The finding that there is overwhelming and satisfactory oral evidence on the point that the distribution had taken place on May 8, 2001 and May 9, 2001, to say the least is contrary to the evidence on record. What is the value of oral evidence while deciding issue of corrupt practice within the meaning of Section 123(4) of the Act will have to be considered? So far as election law is concerned by now it is well-settled that it would be unsafe to accept the oral evidence on its face value without seeking for assurance from other circumstances or unimpeachable document. It is very difficult to prove a charge of corrupt practice merely on the basis of oral evidence because in election cases, it is very easy to get the help of interested witnesses. In *Abdul Hussain Mir v. Shamsul Huda and another* (1975) 4 SCC 533: (AIR 1975 SC 1612), the Three Judge Bench of this Court held that oral evidence, ordinarily is inadequate especially if it is of indifferent quality or easily procurable. According to this Court, the oral evidence has to be analyzed by applying common sense test. It must be remembered that in assessing the evidence, which is blissfully vague in regard to the particulars in support of averments of undue influence, cannot be acted upon because the court is dealing with a quasi-criminal charge with serious consequences and, therefore, reliable, cogent and trustworthy evidence has to be led with particulars. If this is absent and the entire case is resting on shaky ipse dixits, the version tendered by witnesses examined by election petitioner cannot be accepted. Before recording the above finding, the learned Judge has not adverted to the evidence of any witness nor taken into consideration the positive evidence of DW-10 that he himself had distributed Ext. X4 in the month of March, 2001. This Court does not find from the impugned judgment as to why the High Court was inclined to prefer testimony of a particular witness as against the reliable evidence tendered by the appellant himself and the evidence tendered by DW-10. The finding that contemporaneous newspaper publications produced at Exts. P-5 and P-6 corroborate the testimony of the respondent No.1, is also not supported by the evidence on record. If one examines newspaper publications produced at Exts. P-5 and P-6, it becomes at once clear that the reports were entirely hearsay. The reports of Exts. P-5 and P-6 were examined in this case. They have categorically, and in no uncertain terms, stated that they had no personal knowledge of the events published in Exts. P-5 and P-6. Therefore, what was reported in the newspapers could not have been regarded anything except hearsay. There is no manner of doubt that the High Court has misdirected itself in placing reliance on the hearsay evidence, which was produced before the Court in the form of Exts. P-5 and P-6. In view of clear proposition of law laid down by this Court in *Quamarul Ismam v. S. K. Kanta and others*, 1994 Supp. (3) SCC 5: (AIR 1974 SC 1733) and *Laxmi Raj Shetty and another v. State of Tamil Nadu* (1988) 3 SCC 319: (AIR 1988 SC 1274), the hearsay evidence could not have been used by the learned Judge for coming to the conclusion that contemporaneous newspapers publications Exts. P-5 and P-6 corroborate the testimony of the respondent No.1.”

12. In addition to above, it has also been alleged that in order to convince the court, the plaint must give detailed particulars as to the allegation of fraud. Vague and bald statement cannot require the Court to come to a decision that fraud has been committed by a particular person. In that connection, the decision of the Hon’ble Calcutta High Court rendered in the case of *Clive Mills Co. Ltd.* reported in 68 C.W.N 884 [Para 82 and 83 and the decision of the Hon’ble Calcutta High Court reported in (1969) 1 Calcutta Law Times 263 (HC) have also been relied upon by the applicant before me. Therefore, the applicant has urged this Court to dismiss the connected proceedings.

13. Such plea was however, objected to by the non-applicants /petitioners having filed reply to the application stating that matter relating to maintainability of the present proceeding has already been adjudicated upon by Hon’ble Gauhati High Court in its judgment dated 09.05.2016 rendered in Co. App. No.3/2014 and therefore, this Court is not competent enough to reopen such matter once again, more so, when the Hon’ble High Court after deciding several issues including maintainability point in favour of the petition in CP No.992/2011 had already remanded petition to the CLB (and ultimately to this Tribunal) for taking decision on remaining 6 (six) points already framed by it and, therefore, this Court cannot grant relief, prayed for, in the present application. In this connection, my attention has also been drawn to paragraphs 22, 23 and 24 of the aforesaid order.

14. For ready reference, relevant part of the judgment is reproduced below: -

“22. From a perusal of the above it transpires that Company Law Board noticed that in the Company petition, Assam Chemicals and Pharmaceutical Private Ltd. was mentioned twice as respondent Nos.1 & 3 with two different addresses without explaining existence of two different companies whereas Managing Director, Assam Chemicals and Pharmaceutical Private Ltd. was also mentioned twice with the above two different addresses as respondent Nos. 2 & 4, further stating that appellant No.1 had himself appeared on earlier occasion as respondent No.2.

23. On this basis Company Law Board held that appellants had tried to mislead the Bench by becoming the petitioner and the respondents at the same time. At this stage, it may be noticed that the main issue is between appellant No.1 on the one hand and the respondent No.5 on the other hand as to holding the office of Managing Director of the Company. While appellant No.1 would assert that he was illegally removed from the Managing Directorship of the company where after respondent No.5 took over charge, respondent No.5 on the other hand would content that his appointment as Managing Director was fully legal and valid. This issue is intricately connected with the main grievance raised in the company petition, namely, issuance of additional shares to the extent of 6715 numbers of equity shares of Rs.100.00 each to new shareholders. The lis in question is primarily between the appellants and respondent No.5. Therefore in the considered opinion of the Court; Company Law Board was not justified in observing that appellants had tried to mis-lead the Bench by making false and misleading submissions. It is on record that at one point of time, there was temporary shifting of the registered office of the company. Regarding injunction order of the Civil Court the finding of the Company Law Board was contrary to its previous finding recorded in the order dated 09.05.2013 while rejecting the preliminary objection of the respondents as to maintainability of the company petition. In any case on withdrawal of the Civil Suit the injunction order automatically stood vacated on 01.03.2011. Therefore, there was no bar at all for Company Law Board to examine the grievance raised by the appellant in the company petition on merit.

24. Regarding prayer of the appellants to cancel the issuance of 6715 numbers of equity shares of the company, Company Law Board declined to adjudicate on this issue on the ground that concerned allottees were not made parties to the proceeding in the company petition. It was observed that they were necessary parties and in the absence of necessary parties, it was not possible to adjudicate the said issue.

15. The counsel appearing for the non-applicant/petitioner, further contends that the allegations made in the present application are also without any basis since it is not correct to say that the basis of Company Petition is newspaper information only. The petitioner has premised **his case** also on some indisputable facts. Again, it is not correct to say that the allegations made in the petition against the respondent No.5 are all personal in nature. Rather, the allegations are against the other respondents and such allegations clearly show the affairs of the company having been conducted in total disregard to the provisions of law, provisions incorporated in the AOA resulting in mismanagement and oppression in the company. The non-applicant/ petitioner, therefore, prays for the dismissal of the present proceeding.

16. I have considered the materials on record having regard to the arguments, advanced by the counsels for the parties. On making such an exercise, it is found that the question regarding the maintainability of the connected proceedings as to the frame up of the same in particular, has already been adjudicated upon by the Hon'ble High Court in its judgment dated 09-05-2016 in Comp. Appl. No. 3/2014 (vide its decision on point No. 4) and therefore, same question cannot be examined by this court once again and to that extent, I have no difficulty in upholding the claim of the counsel for the non-applicant/petitioner.

17. But then, the question whether the petition in question is premised on hear-say evidence or whether the allegations in the petition are personal in nature and are directed only against the respondents No. 5 etc. and none

else etc. can be examined while scrutinizing the case of the petitioner on merit in the main proceeding and not in the present proceeding since such questions involve question of facts as well.

18. Resultantly, this proceeding is liable to be dismissed.

19. Accordingly, the present proceeding is disposed of.

20. A certified copy of this order be furnished to all concerned.

Sd/-

Member (Judicial)
National Company Law Tribunal
Guwahati Bench: Guwahati.

Deka/03.07.17