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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**TP No. 137/397-398/NCLT/AHM/2016 (New)  
CP No. 72/397-398/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 17.08.2017**

Name of the Company: Ruchir Radha Mohan Mittal  
V/s.  
Raghav Madhav Filaments Pvt. Ltd. & Ors

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

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


1.

2.

**ORDER**

None present for petitioner. None present for Respondents.

order pronounced in open Court. Vide separate sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 17th day of August, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AMEDABAD BENCH  
AHMEDABAD**

**TP No. 137/397-398/NCLT/AHM/2016 (New)  
CP No. 72/397-398/CLB/MB/2013 (Old)**

**In the matter of:**

1. Ruchir Radha Mohan Mittal  
"L" Tower, 7<sup>th</sup> Floor, Flat - 724  
Ashrwad Palace  
B/h. Jivokar Nagar  
Bhatar  
Surat - 7

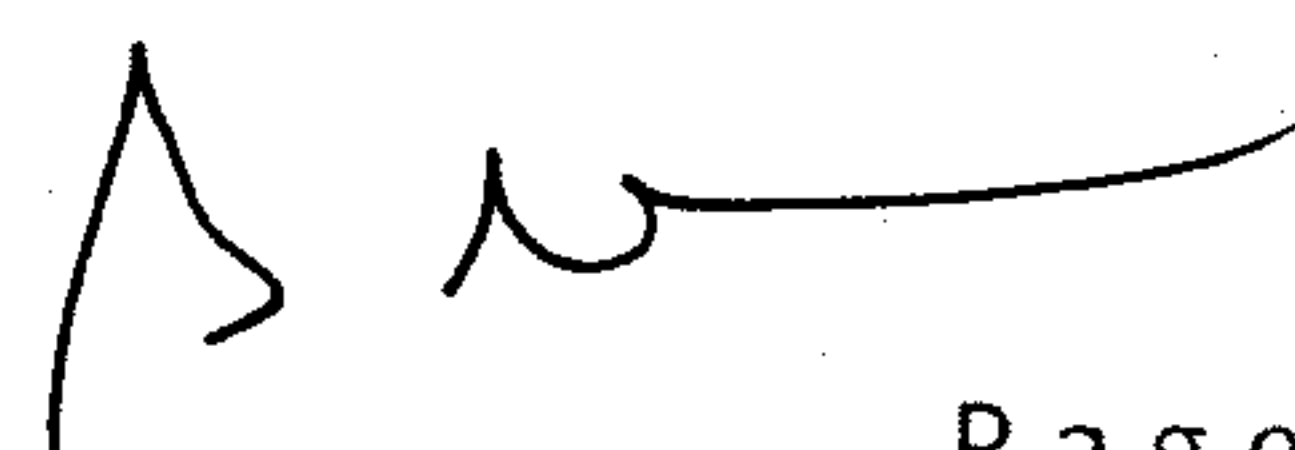
:

Petitioner

**VERSUS**

1. Raghav Madhav Filaments Pvt. Ltd.  
Shop No. 4, 2<sup>nd</sup> Floor  
Akshar Complex  
Road No. 0,  
Udhna  
Surat
2. Neeraj Sanjay Gupta  
Shop No. 40 to 56, 2<sup>nd</sup> Floor  
Akshar Shopping Complex  
Road No. 0, Nr. Udhna Railway  
Station, Udhna  
Surat
3. Ankush Sanjay Gupta  
Shop No. 40 to 56, 2<sup>nd</sup> Floor  
Akshar Shopping Complex  
Road No. 0, Nr. Udhna Railway  
Station, Udhna  
Surat
4. Anirudhha Pankajkumar Gupta  
9, Sai Anklew Bharathana  
Vesu-2, Surat

Respondents



**Order delivered on 17<sup>th</sup> August, 2017**

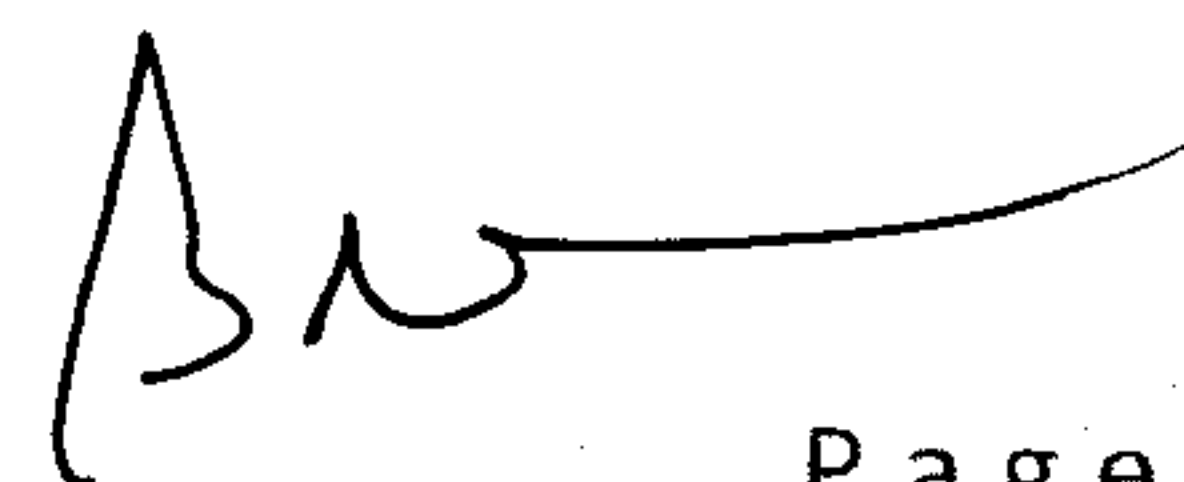
**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**

**Appearance:**

For the petitioners : Learned PCS Mr. Dhiren Dave  
For the respondents no. 1 to 4 : Learned PCS Mr. Kunjal Dalal

**ORDER**

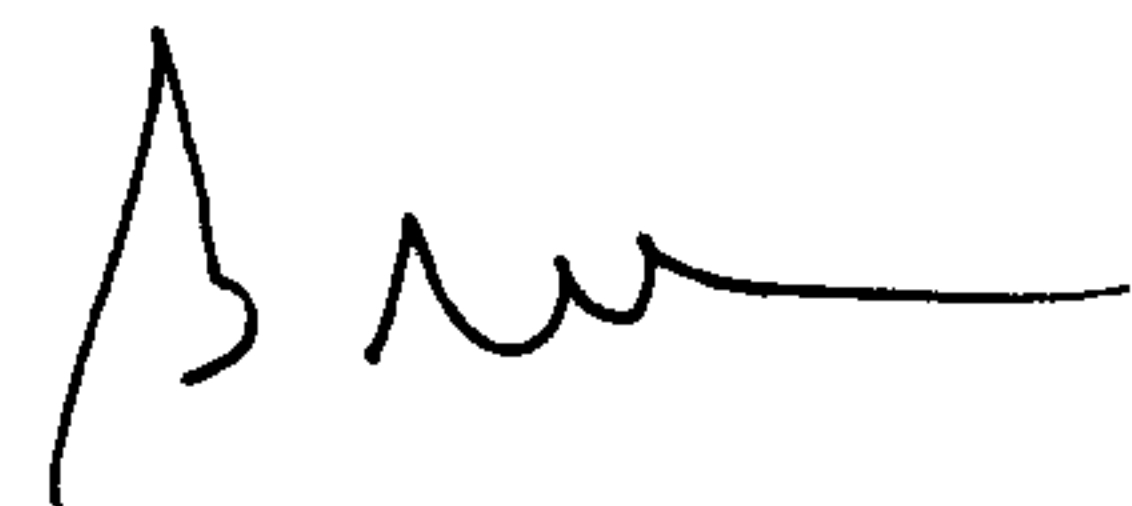
1. This petition is filed by a shareholder of the first respondent company who is holding 27.24% of the paid up share capital of the first respondent company seeking the following reliefs.
  - (a) to direct respondents to file DIR – 12 for appointment of four Directors appointed by shareholders in requisition meeting held on 06.05.2016.
  - (b) to direct respondents not to act against the interest of the first respondent company.
  - (c) to direct Directors/shareholders to act as per terms of sanction letter of the bank.
  - (d) to direct investigation in the affairs of the first respondent company under Section 235/237 of the Companies Act, 1956.
  - (e) to pass order to buy shares of the petitioner or respondent at the prevailing price of the assets of the



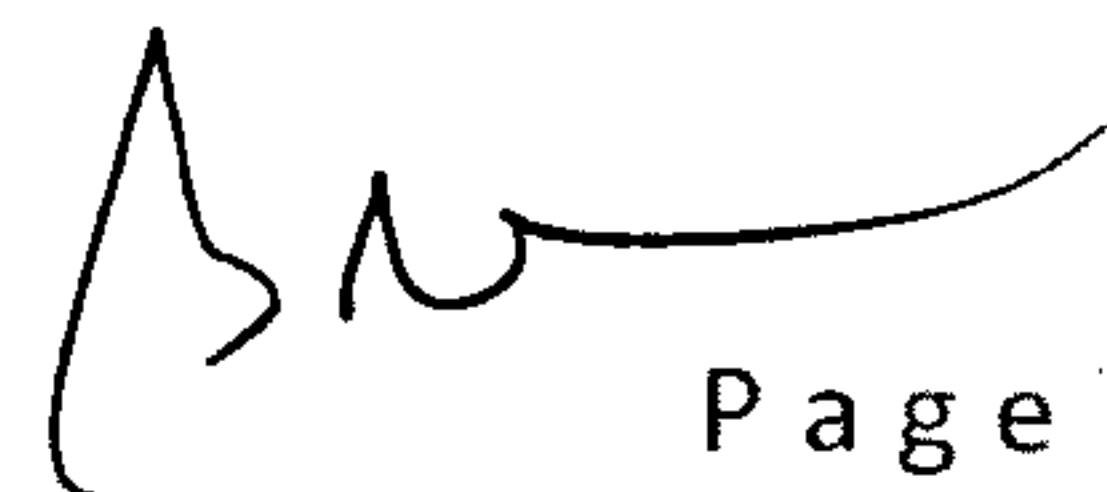
first respondent company determined by independent valuer

(f) to award cost of the petition

2. Facts in brief that are necessary to adjudicate the controversies involved in this petition as narrated in the pleadings are as follows: -
3. The first respondent company had four Directors originally and they are petitioner, respondent No. 2 to 4. The loan account of the first respondent company with Bank of Baroda became NPA from March 2015. It is alleged by the petitioner that annual return for the year 2013 has not been filed by the first respondent company. It is also alleged by the petitioner that respondents filed false criminal case against him and harassed him. Therefore, in order to purchase peace, the petitioner resigned as Director of the first respondent company on 14.09.2015.
4. Bank of Baroda initiated action under SARFAESI Act. First respondent company filed OA before DRT. Petitioner always wanted to repay loan amount to the Bank. Respondents have been playing all delaying tactics in settling dues of the first respondent company and dragging the company to unnecessary litigation.

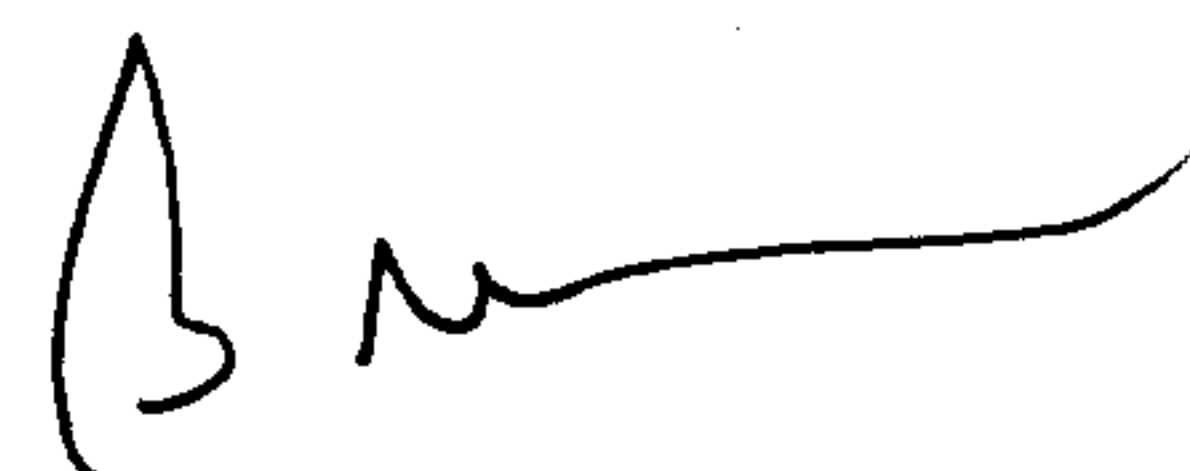


5. Petitioner in order to overcome the situation with a positive frame of mind to run the company according to the provisions of the Companies Act, sent a valid and legal notice of requisition to the Board of Directors with a request to convene Extra Ordinary General Meeting (EOGM) for appointment of four Directors on the Board of the first respondent company. Respondents, instead of convening a meeting of the shareholders, raised unnecessary issues and wrote a letter dated 08.04.2016 stating that the Board of Directors came to the conclusion that the declarations of the proposed Directors have not been enclosed to the requisition and, therefore, the requisition is not in conformity of the requirements of Section 152 (4) of the Companies Act, 2013 and, therefore, decided not to consider the requisition for convening EOGM of the members. Further, respondents issued notice for conducting EOGM on 30.05.2016 with agenda to increase authorised capital. Respondents also issued right issues without filing any return of allotment of rights issue. Respondents without prior approval of the bank attempted to make changes in the capital structure. Respondents have been denying shareholders democracy and trying to create illegal majority in a manner prejudicial to the petitioner and other shareholders. Respondents excluded the petitioner from the management of the company. By making aforesaid averments, petitioner allege oppression and mismanagement in the conduct of the affairs of first respondent company by the respondents.
6. Respondents, in their reply took the following pleas: -



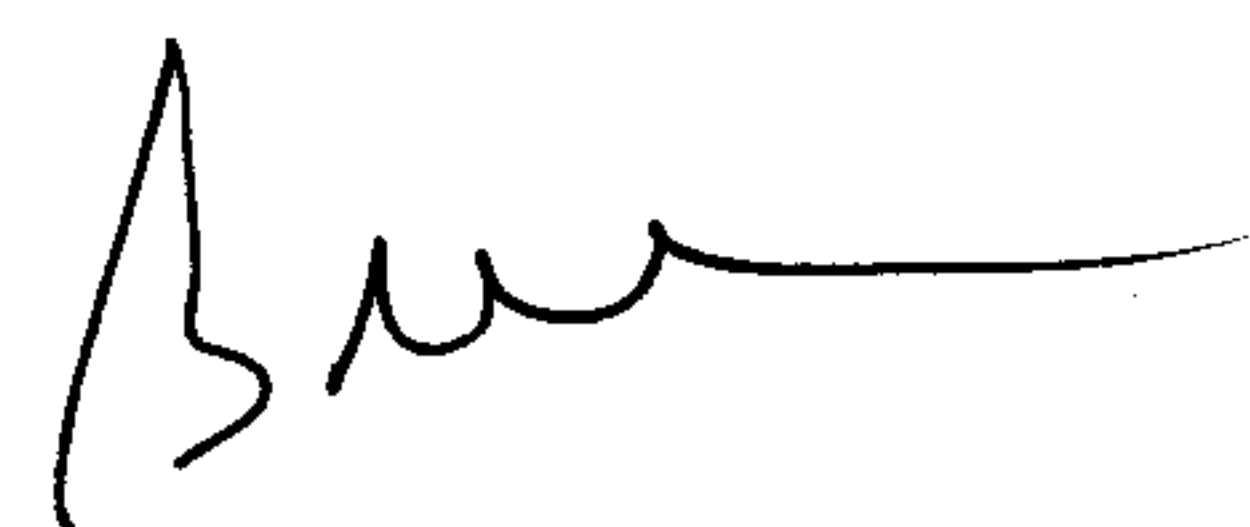


7. Petitioner suppressed the fact of his earlier resignation dated 27.01.2015 in the petition. It is further stated that petitioner misused his powers as Director of the first respondent company and took away machinery of the company that has been mortgaged with the bank in respect of which criminal case has been registered against the petitioner by Surat Police. Petitioner proposed to appoint four Directors including himself and took over management of the first respondent company by way of requisition meeting. It is stated that requisition filed by the petitioner is invalid and illegal and not in accordance with Section 154 (2) which mandates that a person proposed to be appointed as Director shall furnish a declaration that he is not disqualified to become a Director under this Act. Requisition given by the petitioner is not accompanied by such declaration by the proposed Directors. Therefore, according to the respondents, Board after considering the requisition decided not to call the shareholders meeting on the ground that the requisition is not valid. It is further stated that, the resolution should have the support of at least two members to propose and second the same for consideration at General Meeting and such requisite members are not there.
8. Respondents pleaded that EOGM held by the petitioner is invalid on the ground that notice of the EOGM held by the



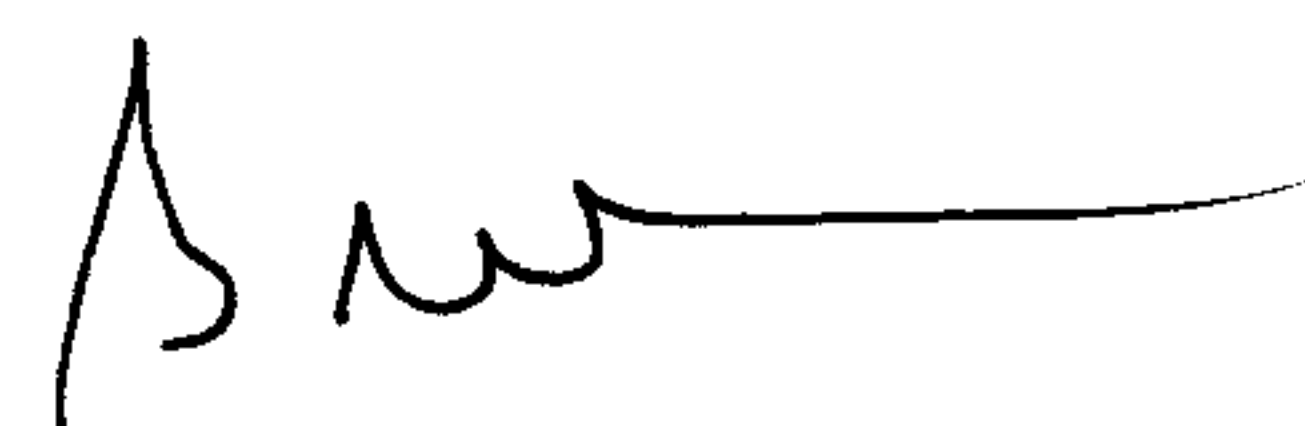
petitioner was not given to all the shareholders at their present registered office address as required under Rule 17 (6) of the Companies Management and Administration Rules 2014. It is also stated that agenda of notice of calling EOGM is not as per the business to be transacted. Notice of EOGM held by the petitioner has been issued for considering a single resolution for appointment of petitioner and other three persons as Directors of the first respondent company. According to the respondent there must be four such resolutions separately for appointment of four Directors. The fact that the notice of EOGM is invalid was intimated to all the Directors and members vide letter of the respondents 26.04.2016. Further, appointment of four Directors is nothing but to take over management of the first respondent company without the consent of bankers which is against the Loan terms.

9. Respondents further pleaded that no specific act has been alleged to show that respondents are indulging in oppression and mismanagement caused by or against the interest of the company. Respondents also pleaded that no allegations have been made against the creditors or members relating to siphoning of funds by the petitioner and, therefore, there are no grounds to direct investigation into the affairs of the company. Respondents pleaded that it is the petitioner who is guilty of oppression and mismanagement. Respondents also pleaded that they have offered their personal properties as guarantee and they invested amounts in the company whereas



the petitioner has withdrawn Rs. 58,42,846/- being the unsecured loan from the first respondent company.

10. Counsel of both the sides filed written arguments. Considering the pleas of both the sides and contentions made in written arguments, the following points emerge for determination in this petition.
11. Admittedly, petitioner was Director of the first respondent company till he resigned on 14.09.2015. Admittedly, petitioner issued notice dated 17.03.2016 to the Board of Directors of the first respondent company with a request to convene EOGM of the company as per section 100 (4) of the Companies Act, 2013 to appoint petitioner, M/s. Dharmendra Rampravesh Singh, Ravindra Pasupati Mishra and Maheshkumar Manharbhai Parmar as Directors of the first respondent company.
12. The first respondent company having received the requisition issued by petitioner under Section 100 (2) (a) of the Companies Act a meeting of the Board of Directors were called for and the Board of Directors in their meeting after due deliberations came to the conclusion that the proposed Directors have not furnished the requisite declaration to the effect that they are not disqualified for appointment as Director of the first respondent company as required by provisions of Section 152 (4) of the Companies Act, 2013 and, therefore, decided not to consider the requisition for convening the EOGM





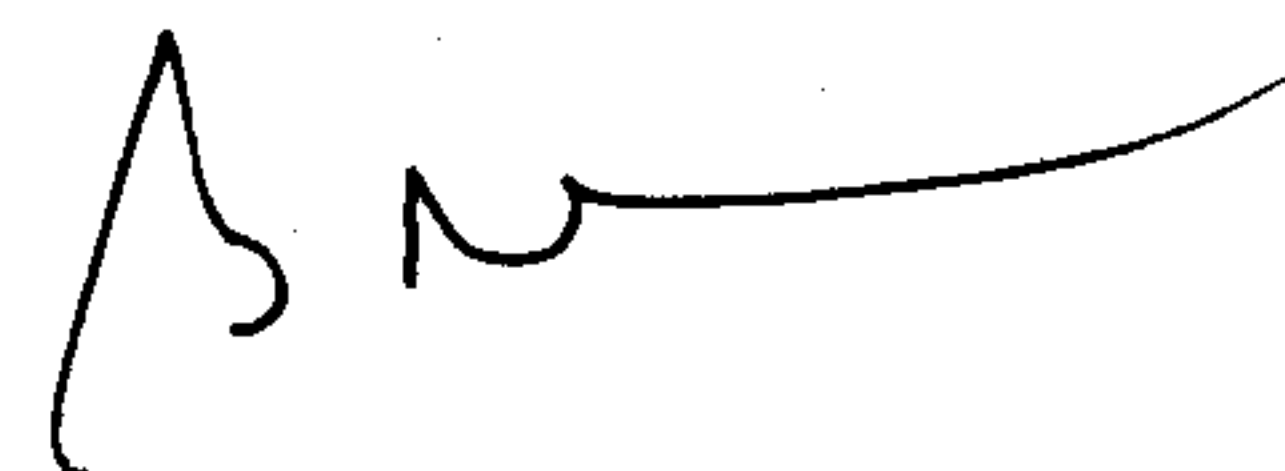
of the shareholders and the same was conveyed to the petitioner by letter dated 08.04.2016.

13. The first and foremost issue is whether the requisition given by the petitioner is valid or not and the first respondent company not conducting EOGM on the basis of requisition given by the petitioner is legally valid or not. In order to resolve the said aspect, it is necessary to consider Section 100 of the Companies Act, 2013 and Section 152 of the Companies Act 1956.
  
14. Admittedly, petitioner is a shareholder having 1,55,000 shares in the first respondent company which comes to 27.24% of the total shareholding of the company. Sub section 2 of section 100 says that in case of a company having share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one tenth of such of the paid up share capital of the company as on that date carries the right of voting rights is entitled to call EOGM of a company within the period specified in sub-Section 4. No doubt in section 100 (2) the words "such number of members" have been used but that does not mean that a single member holding more than one tenth of the paid up share capital is not eligible to give a requisition to call EOGM of the company. In the case on hand, no doubt, the requisition is given only by the petitioner but he is having shareholding of more than 10% of the paid up share capital of the first respondent company. Therefore, it cannot

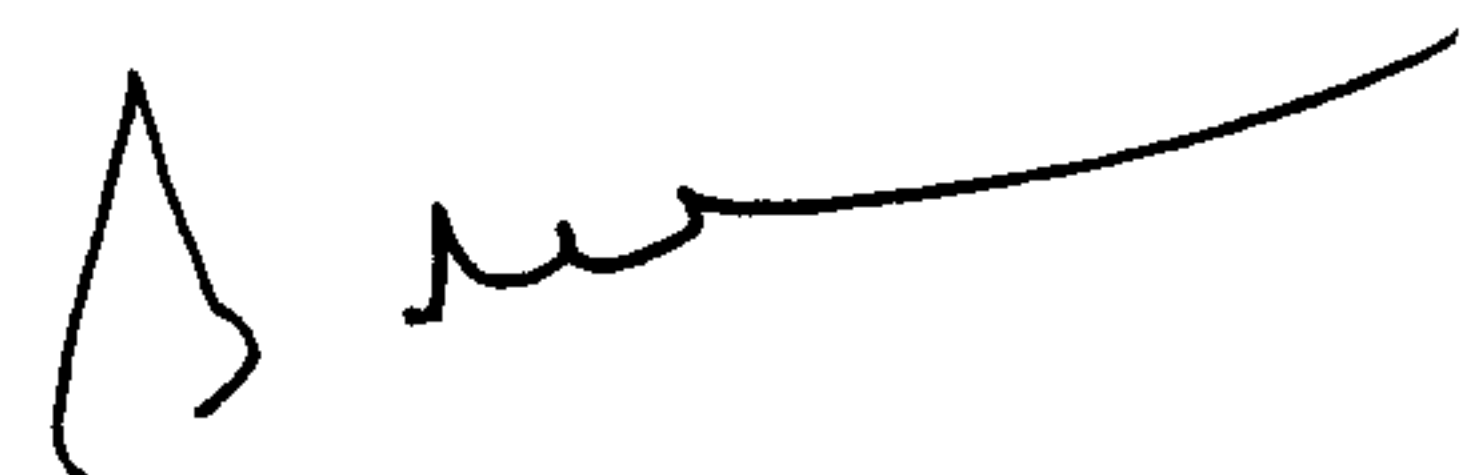


be said that the petitioner is not eligible to give requisition to call for EOGM of the first respondent company.

15. Sub-section 3 of Section 100 says that the requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by requisitionists and sent to the registered office of the company.
16. A perusal of the requisition dated 17.03.2016 issued by the petitioner clearly goes to show that the requisition is given to call for a EOGM to consider the appointment of petitioner and three other persons who are not shareholders as regular Directors of the first respondent company.
17. The requisition is given to the Board of Directors of the first respondent company. Whenever a requisition is received by the Board of Directors of the Company, the Board shall, within 21 days from the date of receipt of valid requisition, shall proceed to call a meeting for consideration of the matters mentioned in the requisition on a day not later than 45 days from the date of receipt of the requisition.
18. In the case on hand, on receipt of valid requisition, if the Board fails to call for EOGM of the company within 45 days on receipt of the requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of requisition.

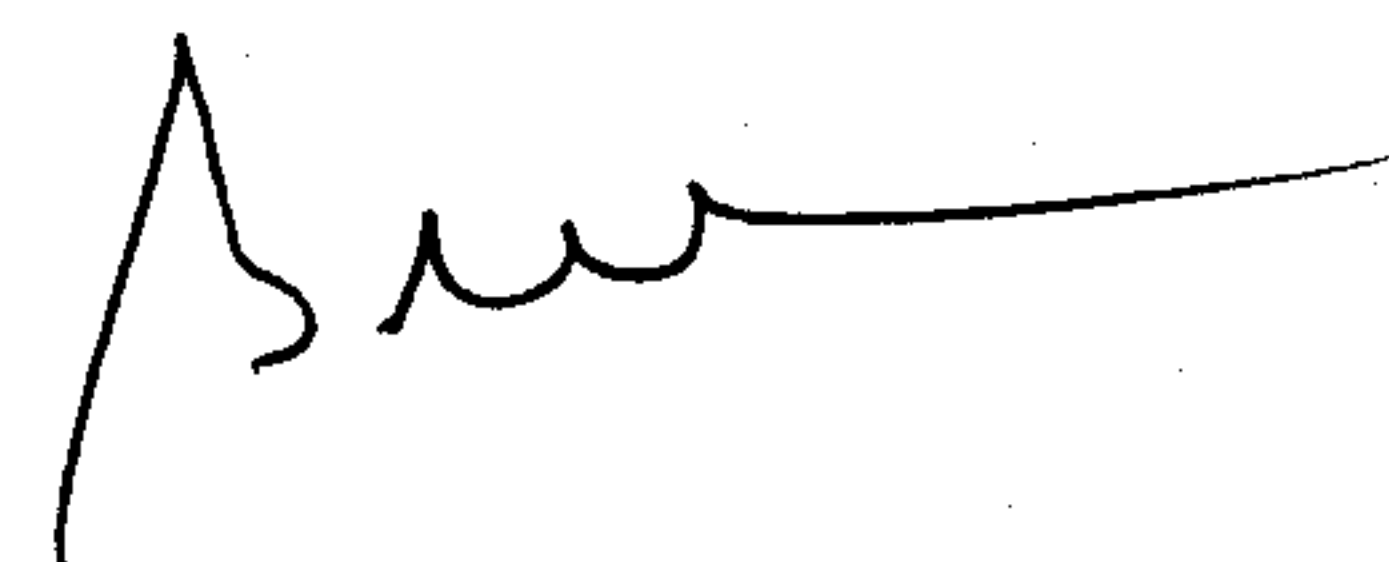


19. Sub section 4 of Section 100 enjoins upon the Board of Directors of the Company to call for a meeting of the Board of Directors to consider valid requisition given by the shareholders to convene EOGM to consider the matters mentioned in the requisition.
20. In this case, the Board of Directors proceeded to consider the requisition given by the petitioner is valid or not. The Board of Directors came to the conclusion that the requisition is not valid only on the ground that the proposed Directors did not enclose a declaration that they are not disqualified to become Directors under the Act. This can very well be seen from the letter of the company sent by one of the Directors to the petitioner dated 08.04.2016. It is not mentioned in the letter dated 08.04.2016 that, there is any other ground not to act upon the requisition given by the petitioner shareholder. Now it has to be seen whether not filing of the declaration by the proposed Directors that they are not disqualified to become Directors under the Act would come within the meaning of valid requisition. No doubt the Board of Directors have to consider whether the requisition is valid or not. In doing so, whether the Board of Directors are entitled to find out whether the proposed Directors are qualified or disqualified and whether they can be appointed as Directors or not. The word "valid" used in sub-section 4 of Section 100 it is explained in Appendix II as follows: -



"The word or the adjective 'valid' in section 169 (6) of the 1956 Act (corresponding to Section 100 (4) of the 2013 Act) has no reference to the object of the requisition but rather to the requirements in that section itself. If these requirements indicated in the earlier part of the section are satisfied, then the requisition deposited with the company must be regarded as a valid requisition on which the directors of a company must Act."

21. In view of the said judicial interpretation given to the word 'valid' in Appendix II to the Companies Act, 2013 Board of Directors in order to satisfy whether the requisition is valid or not, have to see whether the requirements indicated in sub-Section (1) (2) and (3) of Section 100 are satisfied or not. It is not the job of the Board of Directors at that stage to see whether the Directors have enclosed declaration that they are not disqualified to be appointed as Directors. Therefore, the Board of Directors acted beyond the scope of their authority while considering the validity or otherwise of the requisition given by the petitioner to conduct EOGM. In view of the above discussion, it can only be concluded that not to call EOGM on the requisition given by the petitioner, by the Board of Directors of the first respondent company, is not a valid act.
22. Learned counsel appearing for the petitioner relied upon the decision in the matter of Life Insurance Corporation of India vs Escorts Ltd. reported in 1985(0) GLHEL-SC 15612 decided on

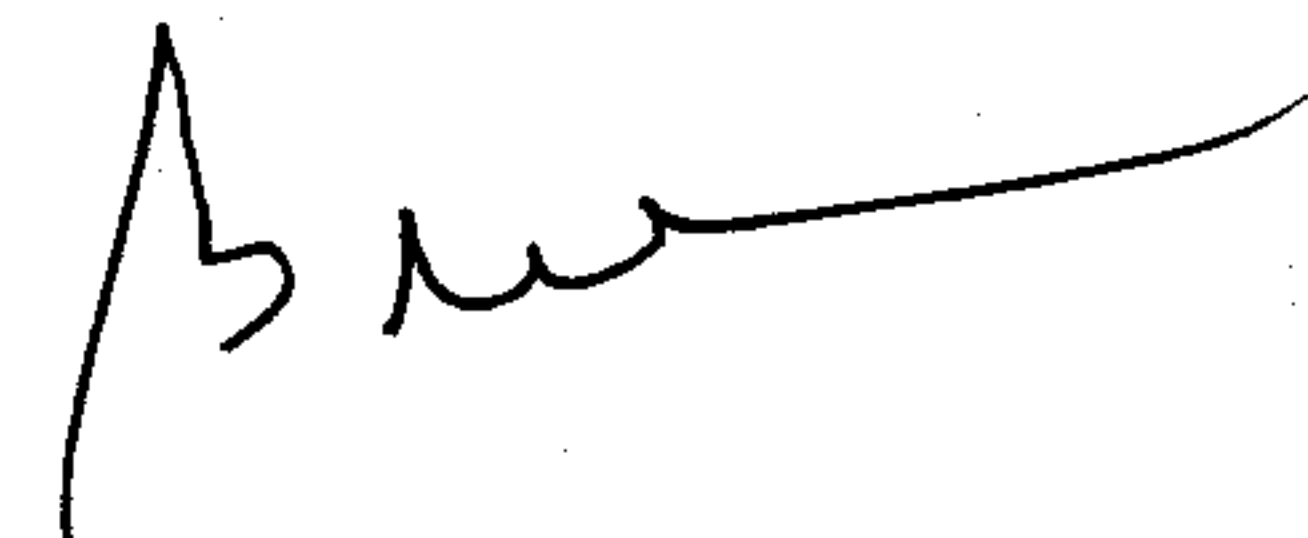




19<sup>th</sup> December, 1985. In that decision, Hon'ble Supre Court held as follows: -

"The notice requisitioning a meeting of the Company by the Life Insurance Corporation of India was not liable to be questioned on any of the grounds on which it was sought to be questioned in the writ petition"

23. In the case on hand also the ground on which the requisition given by the petitioner was not acted upon is not a valid ground.
24. In view of the above said finding, the next controversy is about sub-section (4) of Section 100 of the Companies Act, 2013 is to call EOGM by the petitioner himself within a period of three months from the date of requisition. Sub-section (5) of Section 100 states that "a meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board".
25. Therefore, now it has to be seen whether the EOGM of the first respondent company held by requisitionist (petitioner) under section 100 (4) of the Companies Act, 2013 is validly convened and held. Respondents questioned the validity of EOGM held on 06.05.2016 mainly on the ground that notice of EOGM is not issued according to law. The notice of EOGM issued by the requisitionist (petitioner) for the EOGM to be held on 06.05.2016 is as follows: -



“(Requisition u/s 100 (4) of the Companies Act, 2013)

NOTICE OF EXTRAORDINARY GENERAL MEETING

OF

RAGHAV MADHAV FILAMENTS PRIVATE LIMITED.

(issued by the Requisitionist u/s 100 (4) of the Companies Act, 2013)

NOTICE is hereby given that an Extra Ordinary General Meeting (EGM) of Raghav Madhav Filaments Private Limited (CIN:u17120GJ2011PTC067110) having its registered office situated at 1027, World Trade Centre, Ring Road, Surat-395 002 will be held on Friday, the 6<sup>th</sup> day of May, 2016 at 10 AM at E-4210 Millennium Textile Market, Ring Road, Surat 395 002. This notice is issued by Mr. Ruchir Radha Mohan Mittal, the requisitioner by virtue of powers/authority aroused under section 100 (4) of the Companies Act, 2013 on the failure of the company to duly proceed with the convening of Extra Ordinary General Meeting within 21 days of deposit of requisition by requisitionists holding 1,55,000 equity shares of Rs. 10/- each constituting 27.24% of the paid up capital of the company having voting right in regard to the matter proposed for the transaction.

The Extra Ordinary General Meeting proposes to transact the following business: -

To consider & if thought fit, to pass, with or without modification(s), the following resolution as an ORDINARY

RESOLUTION: -



"RESOLVED THAT pursuant to Section 152 and other applicable provisions of the Companies Act, 2013, Mr. Ruchir Radhamohan Mittal (DIN 00669291), Mr. Dharmendra Rampravesh Singh(DIN 07466362), Mr. Ravindra Pasupati Mishra (DIN 07471899) and Mr. Maheshkumar Manharbhai Parmar (DIN 07468585) (declaration of proposed directors that they are not disqualified to be directors are attached) be and are hereby appointed as regular directors of the company"

Date: 11.04.2016

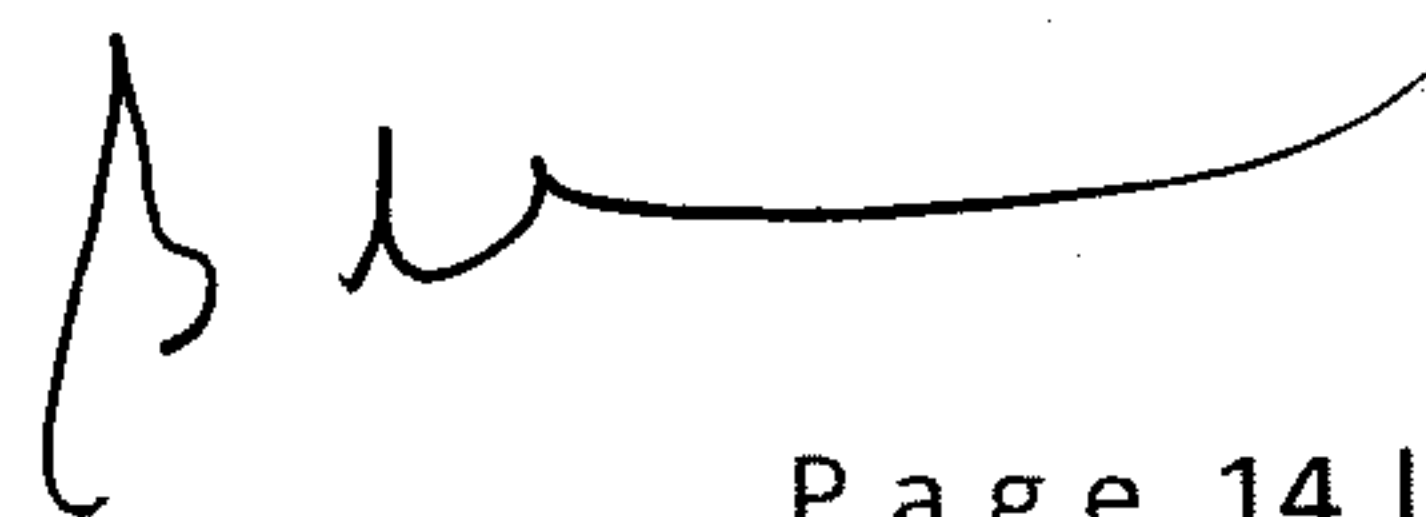
Place: Surat

Sd/-

Ruchir Radha Mohan Mittal

Requisitionists

26. In the said notice the proposed business is mentioned as appointment of petitioner and three other persons as Directors in one agenda item. There is no separate agenda for appointment of four persons as Directors. Therefore, the agenda mentioned in the EOGM are not as per the established procedure of sending notice of EOGM where resolution has to be passed regarding appointment of Directors.
27. Learned PCS appearing for the respondents contended that in view of Section 162 of sub-Section (1) a motion for the appointment of two or more persons as Directors of the company by a single resolution is not valid. On the other hand, learned PCS appearing for the petitioner relying upon



notification dated 05.06.2015 issued by Ministry of Corporate Affairs contended that what is specified in column (3) of the said Table is not applicable or applicable with exceptions to private companies. Therefore, it cannot be said that Section 162, sub-section (1) is applicable. The first respondent company is a private company, therefore, notice of EOGM issued by requisitioner is not invalid notice on the ground that a common motion was moved for appointment of four Directors.

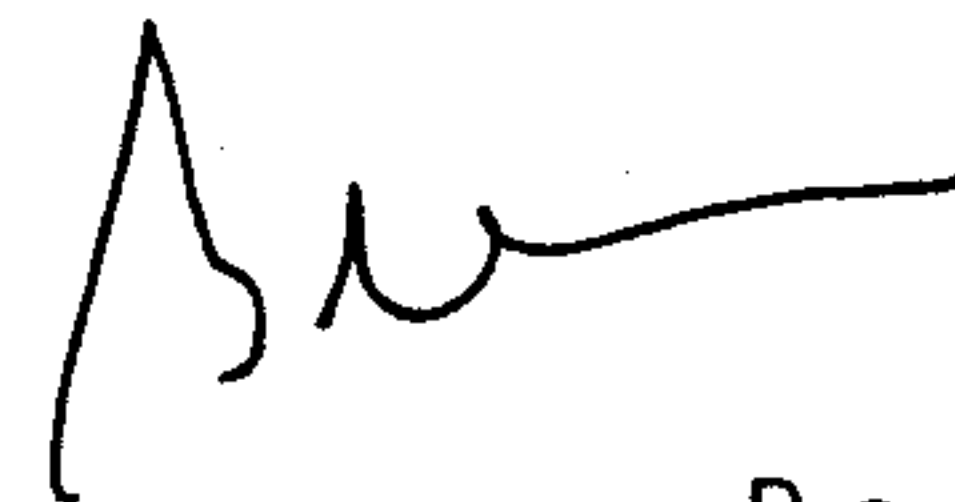
28. Another objection raised in notice of EOGM is that it was not given at the present registered office of the first respondent company. Notice of EOGM is dated 11.04.2016. Date of meeting is 06.05.2016. According to the respondent, registered office of the first respondent company was shifted from shop No. 4, second floor, Akshar Complex, Road No. 0, Udhna, Surat even before 11.04.2016 and it was within the knowledge of the petitioner. According to the petitioner, he has issued EOGM notice dated 11.04.2016 at the address of the registered office available in the website. Now it has to be seen that whether petitioner is having knowledge of the shifting of the registered office to shop No. 4, second floor, Akshar Complex, Road No. 0, Udhna, Surat. It is a fact that EOGM dated 11.04.2016 was sent to only World Trade Centre address which is the earlier registered address of the first respondent company. In this context, learned PCS appearing for the respondents brought to the notice of this Tribunal that two letters were written by the first respondent to all the shareholders and the petitioner. The first letter is dated





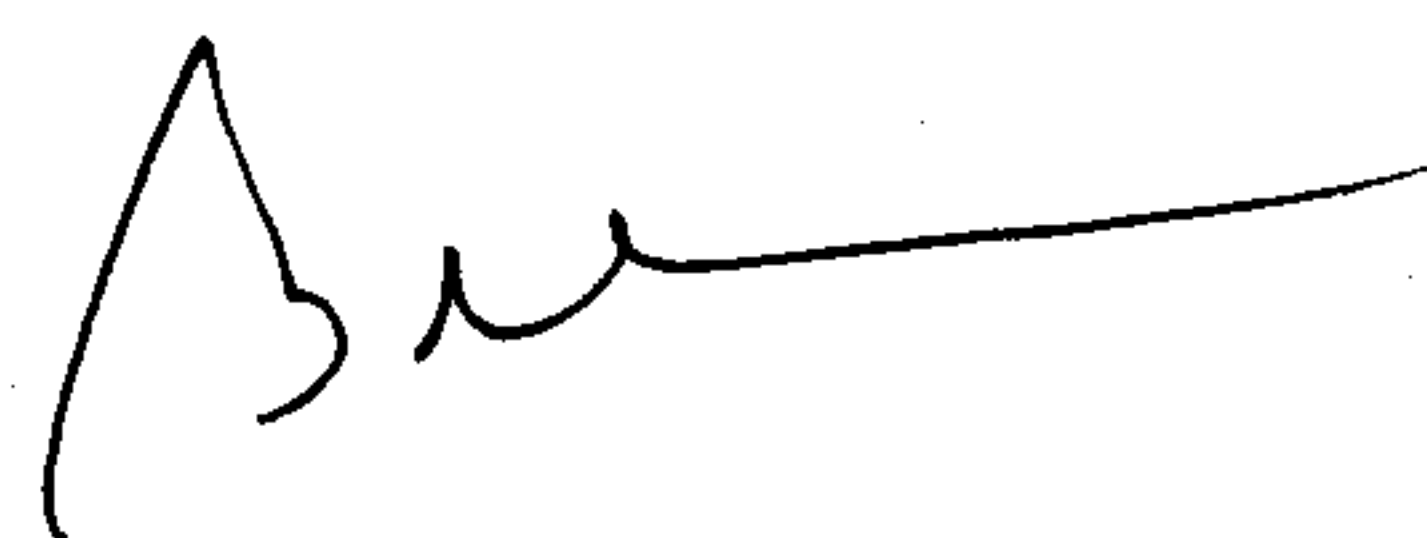
06.04.2016 which is addressed to all shareholders regarding issue of right shares. In that letter, registered office of the first respondent company is shown as shop No. 4, second floor, Akshar Complex, Road No. 0, Udhna, Surat but not World Trade Centre address. Similar is the case with another letter dated 08.04.2016 addressed by the first respondent company to the petitioner. In that notice also registered office address of the first respondent company is shown as shop No. 4, second floor, Akshar Complex, Road No. 0, Udhna, Surat but not World Trade Centre address. Therefore, from these two documents it can only be said that petitioner is having knowledge of shifting of the registered office. When the petitioner is having knowledge of shifting of the registered office of the first respondent company, sending EOGM notice dated 11.04.2016 to the earlier registered office address is not a valid act and such notice cannot be acted upon.

29. Another objection raised relating to conducting of EOGM relates to the proxy forms attached to EOGM notice.
30. Section 105 of the Companies Act, 2013 deals with proxis and Rule 19 (3) of the Companies (Management and Administration) Rules, 2016 says that appointment of proxy shall be in the form No. MGT – 11. Proxy Form attached to the EOGM notice dated 11.04.2016 is not in the prescribed form.
31. Another objection raised by the respondent is that any change in the capital structure of the company or in the management



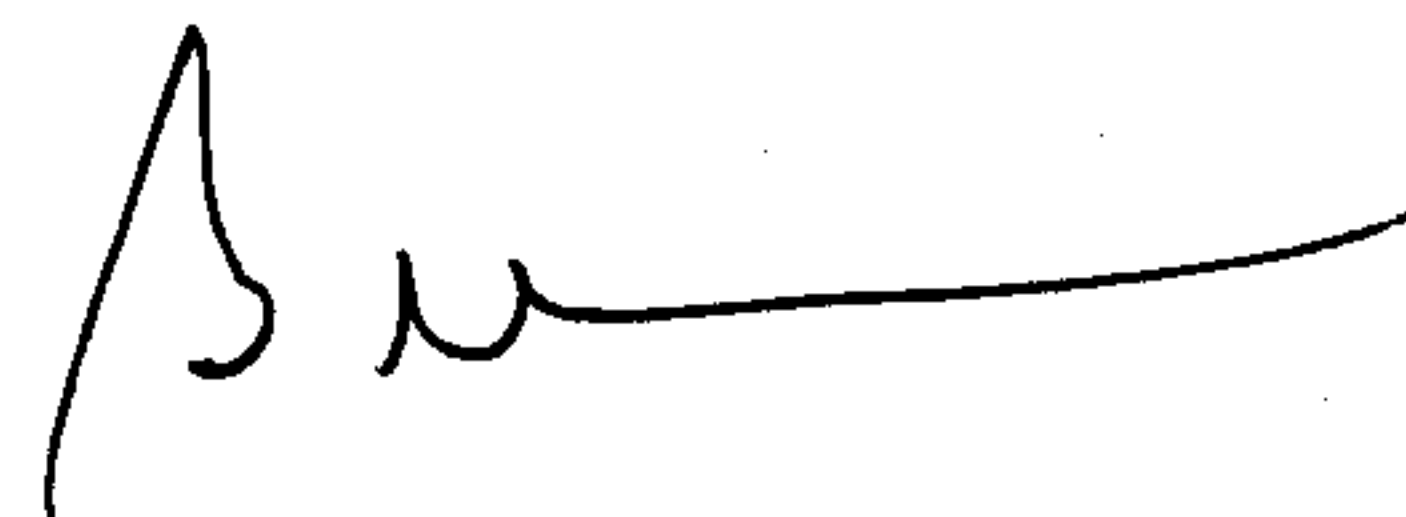
of the company shall be with the prior permission of the bankers. In the case on hand, it appears that without any prior permission from the bankers, petitioner by calling requisition meeting for appointment of the three Directors who are not shareholders as Directors of the company and thereby take over management of the Company.

32. Petitioner is seeking discretionary relief on the grounds of equity. Petitioner did not choose to mention that he resigned from the post of Director on 27.01.2015. and withdrawn his resignation on 10.02.2015 stating that resignation was given under mental pressure. It is necessary to mention here that petitioner again resigned as Director on 14.11.2015 and choose to get himself inducted as Director in April 2016 and induct three other persons who are not shareholders as Directors at a time by calling EOGM. This act on the part of the petitioner clearly indicate that he wants to take over management of the first respondent company by inducting outsiders as Directors. This type of action on the part of the petitioner cannot be called as corporate democracy. In that view of the matter also petitioner is not entitled for the equitable relief of inducting himself and three other non-shareholders as Directors by way of EOGM on the basis of requisition.
33. It is pertinent to mention here that inspite of letter dated 26.04.2016 written by the second respondent to all the shareholders including the petitioner, petitioner proceeded



with the EOGM dated 06.05.2016 without rectifying the defects in the EOGM notice dated 11.04.2016.

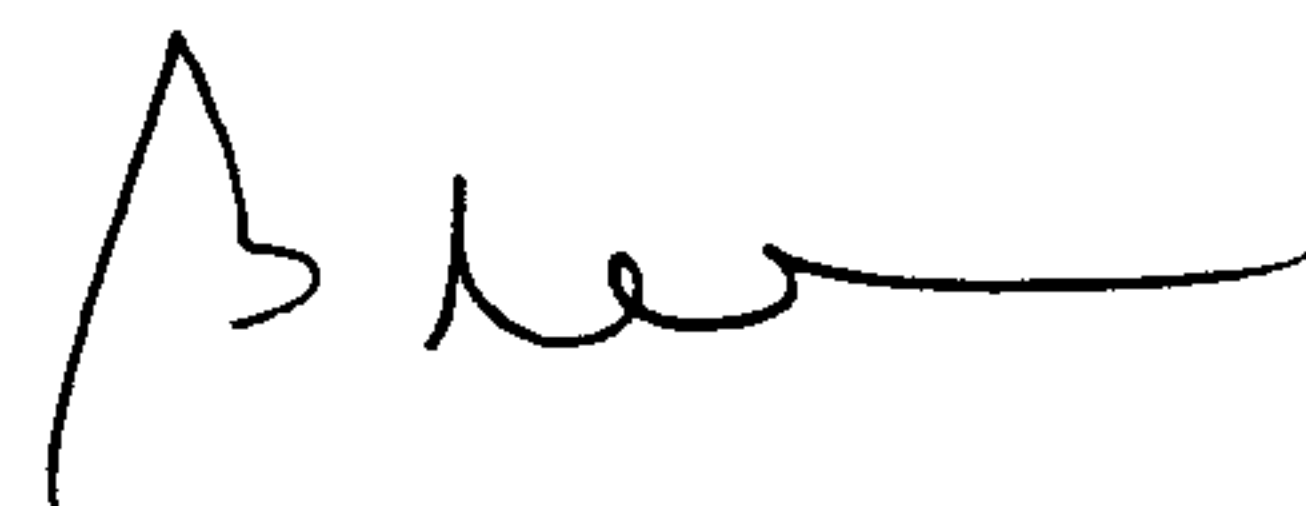
34. In view of the above said findings the EOGM held on 06.05.2016 has not been conducted by giving valid notice and following the procedures laid down in the Companies Act and Articles of Association of the Company. However, petitioner is not precluded from giving another requisition to the Board of Directors mentioning the purpose to conduct another EOGM.
35. In view of the aforesaid finding, petitioner is not entitled for direction to the company to file form DR-12 relating to the appointment of petitioner and three others as Directors and to the Regulatory Authority to accept such form DR-12.
36. Petitioner did not make out any specific instance or action on the part of the respondents in the conduct of affairs of the first respondent company that require an order of investigation.
37. Petitioner raised the issue of allotment of right issues and calling for EOGM to increase the share capital. In fact, by virtue of order of Company Law Board, EOGM was not called by the respondents for the purpose of increasing share capital. It appears that issue of right shares is after giving offer to all the shareholders. Moreover, there are allegations against the petitioner that he is acting adverse to the interest of the company. Therefore, it cannot be said that the respondents



acted in a manner oppressive to the interest of the company and the shareholders and the petitioner and there is any mismanagement in the conduct of the affairs of the company.

38. In view of the above discussions, the following are the findings of this Tribunal: -

- (1) Rejecting the requisition dated 17.03.2016 issued by the petitioner under Section 100(2) (a) of the Companies Act, 2013 to call for the EOGM to appoint petitioner and three other persons as Directors and not convening EOGM of the first respondent company on the basis of requisition dated 17.03.2016 issued by the petitioner under Section 100(2) (a) is illegal and beyond the powers and Board of Directors.
- (2) Notice dated 11.04.2016 issued by the petitioner as requisitionist to conduct EOGM of the first respondent company on 06.05.2016 is invalid notice and thereby resolutions passed in EOGM dated 06.05.2016 appointing petitioner and three others is held to be illegal.
- (3) No material is placed on record by petitioner to order investigation into the affairs of the first respondent company. No material is placed on record to establish the case of oppression or mismanagement committed by the respondents in the conduct of affairs of the first respondent company qua petitioner.





39. In view of aforesaid findings, petitioner is not entitled for any relief in this petition. However, if the petitioner is willing to sell his shares, he may offer to sell his shares to respondents 2 to 4 for a mutually agreed fair value and the respondents shall purchase the shares of petitioner for a mutually agreed fair value irrespective of the findings in this petition. In case, if parties are unable to come to an understanding on the fair value of shares of the company, they are at liberty to approach this Tribunal by filing an application.
40. Petition is disposed of accordingly. No order as to costs.

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

Pronounced by me in open court on the 17<sup>th</sup> day of August, 2017.