NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

T.P.NO. 12/397/398/GB/2016 (CP No. 161/ 2013)

Inder Chand Pincha,
S/o. Deo Chand Pincha,
29/10, Ballygunge Park,
Kolkata – 700 019. - Petitioner

-Versus-

1. **Kettela** Tea Co. (P) Ltd.
119, Hem Barua Road, Fancy Bazar,
Guwahati, Assam

2. Chand Mal Pincha,
S/o. Deo Chand Pincha,
29/10, Ballygunge Park,
Kolkata – 700 019

3. Mohan Lal Pincha,
S/o. Deo Chand Pincha,
29/10, Ballygunge Park,
Kolkata – 700 019

4. Hathi Mal Pincha,
S/o. Deo Chand Pincha,
29/10, Ballygunge Park,
Kolkata – 700 019

5. Chanda Devi Pincha,
W/o. Hathi Mal Pincha,
29/10, Ballygunge Park,
Kolkata – 700 019

6. Hathimal Nirmal Kumar HUF,
29/10, Ballygunge Parkm,
Kolkata -700 019

7. Supriya Pincha,
W/o. Naman Pincha,
29/10, Ballygunge Park,
Kolkata -700 019

8. Nirmal Kumar Pincha,
S/o. Hathi Mal Pincha,
29/10, Ballygunge Park,
Kolkata -700 019

9. Naman Pincha,
S/o. Hathi Mal Pincha,
29/10, Ballygunge Park,
Kolkata -700 019.

10. Accurate Vintrade Pvt. Ltd.,
108/4, Bandhav Nagar,
Dum Dum,
Kolkata-700028.

11. Rotomac Vinimay Pvt. Ltd.,
35, Chittaranjan Avenue,
6th Floor, Room No.26/7,
Kolkata-700012.

12. Diamond Vanijya Pvt. Ltd.
71, Canning Street,
Kolkata-700001. — Struck off vide order dated 16.01.2017

13. Goldstone Vanijya Pvt. Ltd.
35, Chittaranjan Avenue, 6th Floor,
Kolkata-700012.

14. Singrodia Vors Holding Pvt. Ltd.
35, Chittaranjan Avenue,
6th Floor, Room No.26/7,
Kolkata-700012.

15. Newtown Mercantiles Pvt. Ltd.
108/4, Bandhav Nagar,
Dum Dum, Kolkata-700028.

16. Positive Vinimay P. Ltd.
108/4, Bandhav Nagar,
Dum Dum, Kolkata-700028.

17. Williamson Magor & Co. Ltd.
4, Mangoe Lane, Kolkata-700013.

18. M/s Sopanam Enterprises Pvt. Ltd. (Impleaded vide order dated 16.01.2017)
3817, Galilohe Wali Chawri Bazar,
Delhi-110006.

- Respondent

PRESENT:

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

Date of Order: 31.05.2017

Name of the Company	
Under Section	397/398

Sl. No.	Name & Designation of Authorized Representative.(in Capital Letters).	Appearing on behalf of	Signature with date

Mr. Ashok Pincha ... For the petitioner

Mr. Naman Pincha,
Mr. Raj Ratan Sen, Advocate ... For the respondents

This petition has been filed seeking amongst others the following relief(s): -

> *"To hold and declare that the allotment of all the shares other than the initial shareholding of 8,000 shares to all four brothers i.e. the petitioner and R2 and R4 as per the Order of the Hon'ble High Court of Guwahati dated 18.11.1999 read with the Hon'ble Company Law Board Order dated 18.08.1998 to all and any of the respondents mentioned therein in the petition or left by mistake or by reason of their names no more appearing in any of the statutory registers and/or documents relating to the company and all Form 2s relating to thereof as illegal and null and void or in the alternative the register of members be altered to allocate shares in the name of the family members including the petitioner in proportion of the original shareholding in M/s. Kettela Tea Company Private Limited till 1980 by altering the shareholdings of the respondents and deleting the names of all other shareholders except the petitioner and R2 and R4 as the same could not have been altered under any circumstances as R1 is a family company, transfer of shares is prohibited by its Articles to persons other than members and is also prevented by the Order of Hon'ble Company Law Board dated 18.08.1998 and all the initial shareholders represented the interests of all the family members of the family;*
>
> *To direct issue of further shares to the petitioner to restore the correct position in the R1 in line with his shareholding in M/s. Kettela Tea Company Private Limited up to 1980 i.e., 25% of the paid up capital of the said company.*
>
> *To remove the current directors of the company for defrauding the petitioner as shareholder and mismanagement of the affairs of the company;"*

2. The facts, which are narrated in the present petition, in short, are that M/s Kettela Tea Company (P) Ltd (in short KTCPL) was formed by the petitioner and his other three brothers way back in 1969 with an authorized capital of Rs.12 (Twelve lakhs only) divided into 12000 equity shares of Rs. 100/- each. Initially each of the brothers was allotted 1675 equity shares of Rs.100/- each and thus, total paid up capital of the company was Rs.6,70,000 (Six lakhs and seventy thousand) only.

3. The petitioner, being the eldest of all four brothers, had required knowledge and experience necessary to open a new tea company since he himself had been working in the executive post in a tea

company for a considerably long period. Since the petitioner had enough experience about tea and tea industry, the petitioner had decided to start a new tea company of his own. But his three brothers expressed their desire to participate in such a project.

4. Therefore, they purchased Kettela Tea Garden with the legitimate hope and expectation of their being engaged gainfully for the rest of lives and also with the hope of subsequently handing down the reins of such tea company to their progenies. Said tea garden was run under the name and style 'Kettela Tea Co. (P) Ltd'. In the initial years under the stewardship of the petitioner, the company had been doing good business and had posted profits every year which is evident from the annual reports including balance sheets for the aforesaid years.

5. But the brothers fell apart during 1977 and first causality of such quarrel was noticed in the methodology in the conduct of the business of the company since the principle of running the business of the company by consensus had been replaced by the rule of majority and as a consequence thereof, the post of Managing Director stood abolished. Therefore, by 1977, the petitioner was excluded from management. After stripping him off the post of Managing Director, the respondents asked him to continue as garden manager, which was, however, not agreed to by the petitioner.

6. In 1981, the paid up capital of the company was increased to Rs.8,00000/- consisting of equity shares of 8000 of Rs.100/- each and in that connection, 1300 further equity shares of Rs.100/- each were issued. However, all such shares were subscribed to by Chand Mal Pincha group (in short, R2 group) and Hathi Mal Pincha (in short, R4 group) alone and the same was done in gross violation of the provisions incorporated in the AOA and various provisions in the Companies Act, 1956 and the Rules framed there-under. However, due to such increase in the paid up share capital of the company, the shareholding of Mohan Lal Pincha (hereinafter referred to as R-3) and the petitioner had come down to 21% each whereas shareholding of R2 group and R4 group increased to 29% each.

7. In that connection, it has been stated that a series of misdeeds on the part of Chand Mall Pincha Group (in short, R2 group) and Hathi Mall Pincha (in short, R4 group) have forced the petitioner to live in penury which is evident from various communications and which were annexed with the petition, more particularly, the letter dated 18.05.1977 which was annexed to the petition as *Annexure-I.* Owing to such hopeless financial conditions, it became wholly impossible for the petitioner to subscribe additional shares, so issued in 1981.

8. During 1984, the petitioner discovered huge illegalities, committed by R2 group and R4 group in running the affairs of the company for which he informed such illegalities to all concerned, more particularly, the workers of the garden as well as the banker of the company and same was done seeking correction of the illegalities, committed by his brothers. However, being annoyed with such conduct of the petitioner, his brothers, more particularly, R2 group and R4 group tried to silence him forever. They, therefore, immediately, rushed to the Hon'ble Calcutta High Court by way of a civil suit which was registered as Suit No. 189/84. In that suit, they managed to secure an interim injunction from the High Court under which the petitioner/his men/his agent were restrained from entering into the garden aforesaid.

9. Subsequently, said ad interim injunction restraining the petitioner/his men/agents from entering into the tea garden, obtained in Suit No.189/84, was made permanent. Being so restrained under the order dated 16.03.1984, rendered by the Hon'ble High Court in Suit No.189/84, the petitioner could not participate in the affairs of the company over a long period of time. However, Hon'ble Calcutta High Court, subsequently, discovered that the order dated 16.03.1984 is untenable in law and, therefore, it vacated the aforesaid order on its own. However, the petitioner was not aware of such an order till 1996. In 1989, R-3 decided to leave the company and offered to sell his 1500 shares in and of the company equally to all his 3 brothers.

10. The petitioner purchased 500 shares and also made payment thereof by cheque but the petitioner did not send those shares to the company for transfer----- since ---he was sure that his brothers would stall the same. In 1996, the relationship between the R2 group and R4 had turned sour once again which the petitioner approached the Court seeking an order restraining R-3 group from exercising any right in respect of aforesaid 500 shares which R3 had sold him in 1989. On hearing him, the Court was pleased to grant such relief vide order dated 02 .12.96 in T.S No. 2863/96. But then, in 1998, showing his goodwill towards his brother, the petitioner had returned the shares to R3 which he subscribed from the later.

11. In 1996, the R-4 group filed a petition U/s. 397/398 alleging that affairs of the company were conducted in an oppressive manner by the R-2 group on the basis of which CP No. 17/96 was registered. In the aforesaid petition, amongst other things, the R-4 group alleged that R-2 group had issued 4000 shares to the son of Chand Mall Pincha and made him director of the company as well thereby creating an artificial majority in the shareholding as well as in the Board of Directors. In that proceeding, while R-3 group supported R-2 group the petitioner had supported R-4 group.

12. However, by order dated 9th June, 1997, CLB, Principal Bench, New Delhi, asked R-2 group and R-4 group to bid for each other's shares in the company and the highest bidder was asked to take control of the company. It was further ordered that the group taking control of the company was to make an offer to buy the shares of minority shareholders. The CLB subsequently clarified that the minority shareholder's shares were to be purchased at the same price in which the highest bidder purchased the shares of other majority shareholders.

13. Against the order dated 9.6.1997, both the sides thereto preferred appeal before the Gauhati High Court which were registered as OJ (Company Appeal) No. 42/97 and OJ (Company Appeal) No. 44/97 as well as OJ (Company Appeal) No. 45/97. In the appeal, preferred by R-2 group, the appellant had requested the High Court to divide the company between the parties to such appeals, which was, however, rejected by Hon'ble High Court. Instead, it upheld the order of CLB, Principal Bench, New Delhi and ordered CLB to give effect to its order dated 9.6.97, vide judgment dated 18.3.1998 in company appeals aforesaid.

14. Bidding took place on 11.6.98 and R-4 group offered to purchase the shares of the R-2 group at Rs.11008/- per share whereas R-2 group offered Rs.7771/- per share. Since R-4 group had given higher price for the shares, the management of the company was handed over to R-4. In view of the pricing of

shares as above, the value of shareholding of the petitioner in and of the company was assessed at Rs.1, 84, 38,400.00. Since the petitioner supported the R-4, he decided to join R-4 in the management of the company and was made a Director.

15. However, R-4 group could not keep its commitment vis-a-vis purchase of shares of R-2 group and accordingly, on 13.7.1998, R-2 group moved the CLB, Principal Seat, New Delhi intimating it that R-4 group had not paid the installment as ordered. The R-4 group too approached the CLB, New Delhi and informed its inability to purchase the shares of R-2 group at the rate quoted by it.

16. Owing to such sudden but unfortunate developments, the petitioner realized to his great dismay that he had been cheated by R-2 and R-4 and therefore, he approached CLB with an application requesting the later to direct the R-2 group to purchase his shares at the bid price of Rs.7771/- per share and in the event of his failure to do so, the petitioner be permitted to purchase the shareholding of the company at the rate of Rs.7771/- per share.

17. However, in the meantime, to be precise, on 18.8.1998, R2 group and R-4 group had filed a compromise petition stating that the two groups had decided to resolve the dispute amicably and also decided to run the company jointly. On the basis of such petition, CP No. 17/96 was disposed of in terms of the compromise and Para 6 of the compromise petition was made part of the order which, amongst other things, declared that the shareholding percentages of parties to the said proceeding in the company shall remain at the same level as it was on 18.08.1998 for all times to come.

18. Both the minority groups preferred separate appeals against the order dated 18.8.1998. During the pendency of those appeals, R-3 withdrew from the appeal and on 23rd February, 2000 he sold his shares to R-2 and R-4 equally at the rate of Rs.1250/- per share. It has been alleged that shares were actually sold for Rs. 11008.00 per share but the difference in actual and projected price, same being of 9758.00 per share, were paid in black money. In view of such developments, the petitioner was left with no other option but to abandon the appeal preferred by him mid-way.

19. According to the petitioner, the compromise aforesaid was a sham and was a clever measure to hoodwink the CLB. In this connection, it has been stated that in fact, a Memorandum of Understanding (in short 'MOU') was signed by R-2 group and R-4 group as back as 03.07.1998 which provided for the division of the company (which actually belongs to 4 brothers), between R2 group and R4 group to the exclusion of other two shareholders of the company. The petitioner came to possess copy of the said MOU only after the filing of the petition and same is at page Nos. 122 to 125 of the supplementary affidavit.

20. In 1998, R-2 group and R-4 group approached the Hon'ble Gauhati High Court for sanction of a scheme of arrangement transferring Borgang Division of Kettela Tea Company to a newly formed company under the name and style M/s. Borgang Tea Co.(P) Ltd (in short, BTCPL). The petitioner was not a party to such a proceeding and as such, he was ignorant of it. In course of time, Hon'ble Gauhati High Court was pleased to affirm the scheme of arrangement by its order dated 19.12.1998 in OJ.C. A. No.31/1998 and the order dated 18.11.1999 in OJ CP No. 07/98.

21. Under the order of demerger, all the shareholders in the parent company are to get proportionate shareholding in the new company. Since the petitioner was not a party to such proceeding, he preferred an appeal against the order dated 18.11.1999. But since under the order dated 18.08.1998, the R2 group and R4 group are to maintain equal shareholding of the company for all times to come, the petitioner did not pursue such appeal.

22. In 2000, R-2 and R-4 group had exchanged their shares in KTCPL and BTCPL and by virtue of such exchange, *R-4 group became majority with 79% shares in BTCPL* whereas the petitioner's shareholdings in the company (BTCPL) remained at 21%. With such transfer, the Directors representing R-2 group in the BTCPL retired. Similarly, for such exchange of shareholding, the shareholdings of R-2 group in KTCPL rose to 79% whereas shareholding of the petitioner therein remained at 21% in KTCPL. In the similar fashion, the directors representing R-4 group in KTCPL retired after such exchange of shareholdings.

23. Unfortunately, such exchanges of shareholdings in KTCPL and BTCPL by R-2 group and R-4 group were done illegally keeping the petitioner in dark about such developments vide paragraph Nos. 50, 54 and 55. Worse still, such exchanges of shares were done in complete violation of order dated 18.8.1998 of CLB in CP No. 17/1996, since, under the order dated 18.08.1998, the company was to maintain the shareholding percentages of 4(four) shareholders in the company in the same level as it was on 18.08.1998 for all times to come.

24. According to the petitioner, the modification in the shareholdings patterns in the company as it was on 18.08.1998 is not possible unless the order dated 18.08.1998 is revisited. There is absolutely nothing on record to show that the order dated 18.08.1998 was revisited at any point of time. But then, R2 group and R4 group increased their shareholdings in the company while the order dated 18. 08.1998 still hold the field.

25. Such changes in the shareholdings of the company were bad for other reason as well. In that connection, it is stated that the seed of division of company into two separate units was first sowed in the MOU dated 03.07.1998 which was entered into by R2 group and R4 group as back as 03.07.1998. Consequently, R2 group and R4 group were under an obligation to disclose the existence of such an MOU to the CLB as well as to the Hon'ble High Court before securing the orders dated 18.08.1998 in CLB in CP No. 17/96 and the demerger order dated 19.11.1999 from the Hon'ble High Court, more so, when Hon'ble High Court had rejected such a plea for the division of the company in OJ (Company Appeal) No. 42/1997.

26. *Since* the arrangements made in the MOU are not in tune with the AOA of the company, *since* such MOU also run counter to the arrangements made in the Companies Act and the Rules framed there-under and *since* such division of the company was also not approved by the High Court, R2 group and R4 group could not have obtained the aforesaid orders from CLB and the Hon'ble High Court without modifying AOA or without disclosing such an MOU to those two judicial authorities. Since it was not done, the order dated 18.08.1998 as well as the demerger orders are also required to be recalled on this count too.

27. Though the petitioner always wants to get himself involved in the affairs of the company with a positive frame of mind and always desires to see the company growing from strength to strength but he could not do so due to huge obstructions from the side of R2 group and R4 group. However, on 28.01.2013, the petitioner came to know from one Mrs. Jatni Devi Pincha (respondent No.11 in TA 11/2016) that the management of KTCPL might have sold the factory of the KTCPL to M/s Williamson Magor & Co. Ltd at a throw away price and on getting such information, he wrote a letter to the company but the letter was returned with the remarks "*addressee could not be found*".

28. Thereafter, he went to the website of Ministry of Corporate Affairs, New Delhi and learnt that **R2 group and R4** group had committed very many illegalities in running the affairs **of KTCPL/BTCPL** in complete violation of the order dated 18.08.1998 in CP No. 17/96 as well as in total disregard to the various provisions of Act of 1956, Rules framed there-under as well as the provisions incorporated in the AOA. In that context, it has been stated that the petitioner found from the annual returns that his shareholding in the company has been reduced from 21% to 3.49% in 2006-2007, 2.95% in 2010-2011 and 1.78% in 2011-2012.

29. The annual returns of 2004, further reveals that the authorized share capital of the **KTCPL** was increased to 50,000 shares of Rs.100/- each and in years after 2000, the paid up share capital of the **BTCPL** was increased to ***48,000 shares of*** *Rs.100/- each* and all those shares were purchased by R2 group *However, at no point of time, the petitioner was informed about the increase of authorized share capital of the company or issuance of further shares to the shareholders of* ***KTCPL.*** *What is worse, the petitioner was even not furnished with the annual return of the company every year as required under the law. All these, according to the petitioner, are further proof of the petitioner being oppressed at the hands of the respondents for their mismanaging the affairs of the company.*

30. It is also the case of the petitioner that the increase of authorized share capital or paid up share capital in the company was no**t** done to overcome any financial crisis or to expand the business of the company but to take the petitioner out of the ambit of section 399 of the Companies Act, 1956 which prescribed minimum share qualification for initiating a proceeding U/s 397/398 of the Companies Act, 1956.

31. The petitioner also suspects that in conducting the affairs of the company, the respondents have resorted to some other serious illegalities which are further proof of the affairs of the company being conducted in oppressive manners which resulted in huge mismanagement of the same, such allegations are recorded in Para 61 of the petition. For ready reference, same is also reproduced below: -

> *61. The petitioner got astonished by a careful glance at the Balance Sheet for the year ended 31.03.2011, of M/s. Kettela Tea Company Pvt. Ltd. which shows a carried forward loss of Rs.4.75 crores, and despite such huge losses the undernoted Kolkata based firms purchased 46,200 B class shares (without voting rights) of the company at a premium of Rs.900/- per share paying a total of Rs.4.62 crores during the year 2011-12. This appears to be a sham and requires serious investigation. The names and other details of those companies are furnished herein below: -*

Name	*Address*	*No. of shares*	*Directors*
a. Accurate Vintrade P.Ltd.	*108/4 Bandhavnagar*	*1000*	*S. C. Gupta and S. K. Naita*

b. Rotomac Vinimay P. Ltd.	*35 C. R. Avenue*	*2200*	*B. Majumdar and S. K. Naita*
c. Goldstone Vanijya P. Ltd.	*35 C. R. Avenue*	*9200*	*S. C. Gupta and B. Majumdar*
d.Singrodia Bros H/d P. Ltd.	*35 C. R. Avenue*	*5000*	*S. C. Gupta and S. K. Naita*
e. Diamond Vanijya P. Ltd.	*71 Canning Street*	*6500*	*Loknath Sen and S. Ghosh*
f. Newton Mercantiles P. Ltd.	*108/4 Bandhavnagar*	*1800*	*K.K. Agarwal and S. K. Naita*
g. Positive Vinimay P. Ltd.	*108/4 Bandhavnagar*	*20500*	*B. Majumdar & K. K. Agarwal*

Another surprising entry in the balance sheet as on 31.03.2012 is that the company has made share application to other firms for Rs.3.25 crores and given advances to others amounting to Rs.67 lacs when it has provident fund liabilities of Rs.1.29 crores and other statutory liabilities of approx. Rs.32 lacs due for the last 7/8 years.

32. In support of his various claims, the petitioner has relied on following decisions:

i) A. Kalyani v. Vale Exports P Ltd., (2002) 40 SCL 732 – CLB, Chennai
ii) A J Coelho v. Souty India Tea & Coffee Estates Ltd., (2001) 45 CLA 17
iii) Commissioner of Customs v. Candid Enterprises, 2001 (130) E.L.T 404 (S.C.), Civil Appeal No.2767 of 1998
iv) Tea Brokers Pvt. Ltd. v. Hemendra Prosad Barooah (1998) 5 Comp L J 463 (Cal)
v) Bhagirath Agarwal v. Tara Properties Pvt. Ltd., (2002) 51 CLA 57 (Cal)
vi) Needle Industries (India) Ltd. vs. Needle Industries Newey (India) Ltd., (1981) 51 Com Cases 782; AIR 1981 SC 1298
vii) Shanti Prasad Jain vs. Kalinga Tubes Ltd., (1965) 35 Com Caes 351.
viii) Mr. Vijatan Rajes S/o. Mr. M.S.P. Rajes and Mrs. Madhuumathi, v. Rajes W/o. Mr. Mr. Vijayan Rajesh Vs. M.S.P. Plantations Pvt. Ltd rep. by its Managing Director M.S.P. Rajes, Mr. M.S.P. Rejes S/o. M.S. Periasamy Nadar, Mrs. Philomena Peris Rajes W/o. Late Charles Peter Peris and Mr. V.A.P. Sivasamy S/o Mr. Palanisamy Nadar (ILR 2009 Karnataka 3576)

33. It may be stated here that the decisions at serial Nos.(i) to (v) were relied on to show that the law of limitation is not applicable to a proceeding under Section 397/398 of the Act of 1956. However, it may also be stated here that when law of limitation has no application to a proceeding under Section 397/398, in appropriate cases, the principles of delay, latches and acquiesce etc. do apply.

33(A). On the other hand, decisions at serial Nos.(vi) & (vii) above, are relied on to show that the CLB has the power to grant relief to the petitioner even if he fails to make out a case. In decision at Sl. No. 8, Hon'ble Karnataka High Court held that the question whether the petitioning members of company had requisite share qualification or not needs to be ascertained by looking into their share qualification prior to the acts, complaint of.

34. The respondents have challenged the present proceeding contending that same needs to be rejected since it suffers from several legal and technical infirmities of enormous proportions. It also suffers from factual inadequacy since the facts on record could not disclose any oppression or mismanagement having been committed by the respondents herein. The legal and technical infirmities are as follows: -

i) *Present proceeding does not disclose any cause of action since it was structured more on falsehood, surmises and conjectures than on facts.*

ii) The petition is liable to be dismissed since petitioner does not have necessary share qualification for initiating the proceeding in hand.

iii) The proceeding is hit by the principle of delay and lapses.

iv) The petition is also bad for suppressing some vital information having enormous implications on the outcome of this proceeding from the notice of this Tribunal.

35. The further case of the respondents is that on 07.11.1969, KTCPL was incorporated and it was started by four brothers who are the petitioner and the respondent Nos. 2, 3 & 4. Though the petitioner was the promoter of KTCPL, it was, in fact, conceptualized by respondent Nos.2, 3 & 4. In that connection, it is stated that since the petitioner had been working over a long period of time in Tea Company, therefore, respondent Nos.2, 3 & 4 approached him with good intention and requested him to help them in acquiring a Tea Company and also running the same.

36. Though the petitioner did not have enough funds to invest in the company, the necessary fund was provided by his other brothers to make him an equal partner in the company and same was done by the younger brothers showing reverence to their elder brother who chose to guide them in their new pursuit. It was expected that while the petitioner would utilize his vast experience in the tea industry in ensuring the smooth running of the tea garden and tea company by being in the tea garden itself, the other three brothers would basically station in Calcutta looking after all other business and administrative aspects of the company.

37. Unfortunately, though the petitioner has experience in running the affairs of the tea company, he was not able to run the tea garden with much success. As a matter of fact, the tea garden was barely able to sustain itself despite the fact that the tea garden was situated in an area which is enormously conducive for tea cultivation and tea business. The balance sheets for the period 1977-1982 support such a dismal state of affairs of the company.

38. In 1978, the petitioner left for Calcutta and started remaining there for all practical purposes which was wholly repugnant to the arrangements arrived at by the parties when they started the joint enterprise. However, due to such developments, the respondents had to come to State of Assam and had to stay in the garden to look after it as well as the business of the company. In the meantime, the petitioner had left for the State of Tripura and acquired two tea gardens there, such gardens, being Brahmakunda Tea Estate and Kalyanpur Tea Estate.

39. The petitioner spent several years in the State of Tripura looking after those two gardens. However, as before, he was again unsuccessful in those missions too for which he left those gardens quite stealthily in 1984 completely disregarding the plight of the staff and workers working there, which is evident from the letter dated 17.12.2013 authored by Secretary General, Tripura Chah Mazdoor Union (in short TCMU) marked as Annexure-B to the reply.

40. Around 1978-82, Kettela Tea Company slipped into serious financial crisis and, therefore, fund was required to be raised urgently to bail the company out of such financial woes. As such, all the shareholders of the tea company were approached. The petitioner and respondent No.3 showed no interest in subscription of the additional shares. Hence, those additional shares were purchased by respondent Nos.2 & 4 equally for which the shareholding of the petitioner and R 3 came down to 21% each whereas the shareholding of the respondent Nos.2 & 4 increased to 29% each.

41. After being unsuccessful in all his pursuits in Tripura, the petitioner returned to Kolkata in 1984 and started interfering in the business of the company and did everything possible to harass his other brothers and he did so in order to extract money from respondent Nos.2 & 4. Unable to get any money from R2 group and R4 group even after employing several enormously illegal measures, the petitioner started instigating the workers of the tea gardens alleging misappropriation of huge amount of money by R2 group and R4 group.

42. Worse still, he also lodged some false complaints to the bankers of the company so as to make it impossible for R2 group and R4 group to run the company. In such a terrible situation, R2 group and R4 group were constrained to file a suit before the Hon'ble Calcutta High Court, same being Suit No.189/84. By its order dated 16.03.1984, Hon'ble Calcutta High Court was pleased to pass an order of injunction restraining the petitioner/his men/agents from entering into the tea garden aforesaid. He was also restrained from doing other similar mischief to the company.

43. On 26.03.1984, an Extra Ordinary General Meeting (EOGM) was called by the shareholders of Kettela Tea Company where the petitioner was removed from the post of Director of the company. However, the petitioner was never reappointed in any of the general meetings of the company in the following years. During the period between 1984 and 1986, Kettela Tea Company prospered, the business grew manifold and Kettela Tea Company was awarded Tea Board's award in 1990, 1991 and 1992 for making best averages in tea auction.

44. It is also the case of R2 group and R4 group that in different phases during the period from 1977 to 1996, from 1982 to 1989 in particular, the company had to negotiate with very many alarming situations which even threatened to bring the closure of the company. In all those years, the company needed the service of the petitioner since he had been in the tea business over a long period of time. Unfortunately, in all those difficult days, the petitioner chose not to help the company.

45. Rather, he, as stated above, had done everything possible to ensure the downfall of the company making some wild allegations against R2 group and R4 group and such allegations were made for the consumption of poor and illiterate but simple minded tea garden workers and all those were done to stir up huge trouble in the garden. According to the respondents, all these speak clearly that over the years, stretching from 1978 to 1996, the petitioner had never been involved in the management of Kettela Tea Company.

46. In 1996, a dispute arose between R2 group and R4 group for which respondent No.4 group filed a proceeding against respondent No.2 alleging mismanagement and oppression on the part of the R2 and also sought for various reliefs. On the basis of such petition, CP. No 17/1996 under Section 397/398 of the Act, 1956 was registered. The petitioner as well as R 3 was aware of such a proceeding being filed by R4 group against R2 group before the Company Law Board, (In short, CLB), Principal Seat, New Delhi.

47. However, petitioner or for that matter R3 remained a silent spectator for a considerably long period of time and chose to participate in the proceeding only after the main proceeding was disposed of on 09.06.1997 which itself is a testimony to the fact that the petitioner and R3 were interested only

in enjoying the fruit of the litigation ------and---------- not at all interested in the meaningful operation and management of Kettela Tea Company.

48. In June 1997, the CLB was pleased to dispose of C.P.No.07/1996 with certain directions including a direction requiring the parties thereto to make bid for the shares of each other in and of the company with further direction to the highest bidder to purchase the shareholdings of other shareholders in and of the company within the time limits which was programmed in the order itself. The said order was challenged in appeal by the parties to the aforesaid proceeding but without any success.

49. Therefore, in terms of the order dated 09.06.1997, respondent Nos.2 & 4 made bid for the shares of other. In such bid, R4 wanted to purchase the share of R2 for Rs**.**11008 per share whereas R2 quoted such price at Rs.7771/- per share**.** However, since none of them could materialize their commitments, they resolved to settle their dispute amicably and their decision to settle the dispute in CP No.17/1997 amicably was duly communicated to the CLB having filed an application.

50. CLB too was pleased to dispose of such application on the basis of settlement arrived at between R2 group and R4 group by its order dated 18.08.1998. The petitioner and R3 challenged the order dated 18.08.1998 preferring an appeal against the order of CLB, New Delhi before the Hon'ble Gauhati High Court but same was not pursued to its logical conclusion. Rather such appeal was abandoned midway on very flimsy and unconvincing reason while the real reason for abandonment of such appeal was that it hardly had any merit in it.

51. In the meantime in 2000, R3 offered to sell his shares to his brothers. While the petitioner refused to purchase the same, R2 group and R4 group had purchased the shares of R3 equally for which the shareholding of the petitioner remained at 21% whereas shareholding of R2 & R3 in the company rose to 39.5% each.

52. In 2000, in a proceeding, initiated by R2 group and R4 group before the Hon'ble Gauhati High Court seeking approval to a scheme of arrangement for demerger of KTPCL into two companies, new one being Borgang Tea Company Pvt. Ltd. having similar shareholding as in the case of parent company, Hon'ble High Court, vide order dated 19.11.1999 in C.P.7/1998, accepted such prayer and in consequence thereof, all the members of the parent company including the petitioner were given shares in the new company on pro-rata basis vide letter dated 5th April 2000.

53. The petitioner despite receipt of the share script refused to accept the said 1675 shares and in fact, returned the same to BTCPL under the letter dated 03.07.2000 which is annexed **as Annexure-C to** the reply stating that since he had already preferred an appeal against the order dated **18.11.1999**, there is no question of his accepting the shares, so offered to him, in the new company.

54. It may be stated here that the petitioner, being dissatisfied with the arrangement, preferred an appeal against the order dated 18.11.1999 against the demerger. However, the petitioner did not take his appeal to its logical conclusion. During July 2000, R2 group and R4 group exchanged their respective shares in KTCPL and BTCPL in an effort to corner their shares in one company. Therefore, due to such exchange of shares respondent No.4 came to control 79% shareholding in the BTCPL whereas, shareholding of the petitioner therein remained at 21%.

55. **During 2000 as well as 2002 to 2008**, the company again slipped into huge financial hardship and therefore, its bankers refused to provide fund unless authorized share capital of the company is adequately increased. In such a situation, the authorized capital of the company had to be increased and all the shareholders including the petitioner were requested to subscribe to additional shares so that company could overcome such financial hardship. But as before, the petitioner did not at all take any interest in bailing the company out of its financial doldrums.

56. However, due to trust which the shareholders of the company had earned from the public over the years, the company could issue shares to the companies/trusts/individuals even at premium. What is important to note is that such shares were issued strictly in accordance with law and the Rules framed there-under and also on complying the arrangements made in the AOA and in that process, it garnered fund necessary for the running of the company. In view of above, the shareholdings of the petitioner have further come down to 1.78% in the company.

57. In regard to the allegation that the petitioner came to know about the sale of the factory of Kettela Tea Company to M/s Williamson Magor & Co. Ltd from respondent Jatni Devi, it has been stated that such a story was invented by the petitioner only to prevent the present proceeding being hit by law of limitation as well as by principles of delay and latches. In that connection, it has been stated that even if one assumes for the sake of argument for a moment that all the allegations hurled at the respondents are true and correct, even then, the present proceeding is required to be rejected on the ground of delay in initiating the same. This is because of the fact that most of the alleged illegal activities occurred long back, 05 to 30 years before filing of the present petition, to be precise.

58. Equally importantly, there are enough materials on record to show that the petitioner was well posted with all those alleged illegalities. But since he did not approach the court in time and instead, chose to sleep over such matter over an enormous long period of time, it needs be concluded that the petitioner had acquiesced all such illegalities and therefore, he is prevented under the law to come up with the present proceeding after decades of accrual of cause of action seeking correction of alleged illegalities occurred in distant past. The respondents attacked the case of the petitioner on some other counts as well. However, in order to avoid the repetition of the same, I propose to discuss such matters at appropriate time and place.

59. According to the respondents, the petitioner miserably fails to make out any case either under section 397 or under section 398 of the Companies Act 1956. Rather, on a careful reading of the petition, one would clearly find that the petitioner structured his case on lies and lies alone and as such, the Tribunal should dismiss the petition with costs. The fact that the petitioner keeps on filing several additional supplementary affidavits after the filing of the petition under section 397/398 of the Act of 1956(which is however not permissible under the law) again establishes that the petition was premised not on facts but on surmises and conjectures.

60. In support of their various pleas, the respondents have relied on the following decisions:

i)Vinay Vij vs. Vineet Tea Finance (P) Ltd and another, CLB, Principal Bench (1995) 5 Comp L J 324 (CLB)

ii)V.J. Thomas Vettom vs. Kuttanad Rubber Co. Ltd.

iii) Rahul Shah and Others vs. AVI Sales Pvt. Ltd. and others, CLB Principal Bench (2008) 141 Comp Cas 505.

61. In Vinay Vij (supra), CLB, Principal Bench held that non-allotment of shares long before the initiation of proceeding u/s 397/398 cannot be considered to be a continuing affair. In the same judgment it has also been held that issuance of further shares without offering such shares to some of the shareholders may not always result in oppression to the minority shareholders.

62. In V. J. Thomas Vettam (supra), the Hon'ble Madras High Court held that cornering of shares may not always cause oppression provided the same is done for the benefit of the company. In Rahul Shah (supra), it was held that a delay of three years in approaching the Court by the way of petition u/s 397/398 without proper explanation for such delay, may require the Court to refuse the reliefs sought for in such a proceeding.

63. I have very carefully perused the pleadings of the parties having regard to various documents annexed with the pleadings of the parties. On making such an exercise, it is found that the parties are quarrelling over some issues. Such issues are as follows: -

i) *Whether present proceeding discloses any cause of action.*

ii) *Whether petition is liable to be dismissed for want of necessary share qualification of the petitioner for initiating the proceeding in hand.*

iii) *Whether the proceeding is hit by the principle of delay, laches and acquiesces.*

iv) *Whether the demerger of KTCPL into two companies under the order dated 18.11.1999 in C.P.No.07/1998 was done behind the back of the petitioner.*

v) *Whether petitioner remained indifferent to the affairs of the company during the period from 1977 to 2013 or whether the respondents had always prevented the petitioner from involving himself with the affairs of the company and that too quite illegally.*

vi) *Whether the petitioner had been reduced to hopeless minority illegally.*

vii) *Whether the order dated 18.8.1998 in CP No. 17/ 1996* as well as the order dated 19.12.1998 in CA No. 31/98 and the order dated 18.11.1999 in CP No. 07/1998 *are bad for being obtained on suppressing some very vital information from the CLB and Hon'ble High Court.*

viii) *Whether under the order dated 18.08.1998, the shareholdings of the original shareholders of the company were to be maintained in the same level in which such shareholdings were as on 18.08.1998 for all times to come.*

ix) *If so, whether the order dated 19.12.1998 in Co.App.No.31/1998 and order dated 18.11.1999 in C.P.No.07/1998 are to be set aside in view of violation of the mandate in the order dated 18.08.1998.*

x) *Whether the petitioner is guilty of suppressing some material facts having huge bearing on the outcome of the proceeding in hand from the notice of the Tribunal.*

xi) *Whether the alleged incidents, not being in the nature of continuing ones but being in the nature of concluded contract cannot be made the basis a proceeding under section 397/398 of the Act of 1956.*

64. In order to address those controversies accurately and appropriately, I find it necessary to focus my attention on those disputes issue wise having regard to the materials on record and issue (No iv) is first taken up for consideration.

Issue No (IV)

Whether the demerger of KTCPL into two companies under the order dated 19.12.1998 in CA No. 31/1998 and order dated18.11.1999 in C.P.No.07/1998 were obtained behind the back of the petitioner

65. Here, it needs to be stated here that the petitioner claims that the ***order dated 19.12.1998 in CA No. 31/1998 and order dated 18.11.1999 in C.P.No.07/1998 were secured behind his back and he came to know about it only in 2011,*** as claimed in paragraph 50, 54 and 55 of the petition. Such claim was, however, vehemently denied by the contesting respondents stating that the petitioner came to know of such division in 1999/2000 itself as is evident from various materials available on record. In that connection, the respondents claim that a scheme of arrangement for the bifurcation of the KTCPL into two companies was initiated in 1998 and same was terminated by the Hon'ble High Court on 18.11.1999.

66. What is important to note is that such a scheme of arrangement was approved by Hon'ble High Court by its order dated 19.12.1998 in CA No.31/1998 as well as the order dated 18.11.1999 in CP No.07/1998 and Hon'ble High Court has rendered such orders on following the prescription of law in small detail. The order dated *19.12.1998 in Company Application No. OJ 31/1998* reveals that the scheme of arrangement was duly approved by the shareholders of the respective company. The relevant part of the order is reproduced below:

> "*2. That a separate meeting of the holders of Equity shares in the transferor company shall be convened and held at "UMALAYA", Rajgarh Road, Guwahati 781 007 on Saturday the 30th January, 1999 at 11.30 A.M. for the purpose of considering and if thought fit, approving with or without modification the said scheme of Arrangement.*
>
> *3. That, at least 21 days before the meeting to be held at aforesaid, a notice convening the said meeting at the place and time as aforesaid together with a copy of the said scheme of Arrangement, a copy of the statement required to be sent under Section 393 of the Companies Act, 1956 and the prescribed form of proxy be sent by prepaid letter post under Certificate of posting addressed to each of the holders of the said Equity shares in the applicant companies at their respective or last known addresses.*
>
> *4. That in addition at least 21 days before the day appointed for the meeting, an advertisement convening the same and stating that copies of the said Scheme of Arrangement and the statement required to be furnished pursuant*

to Section 393 and the forms of proxy can be obtained from the charge at the Registered Office of the applicant companies or at the office of their advocate, to be inserted in the "Ajir Batori" and once in the North East Observer, Guwahati. Publication in the Gazette is dispensed with.

5. That the advocate for the applicant companies does within seven days from this day file in Court the form of the notice, the statement to company the notice and the form of advertisement and the same shall be settled by the Registrar General of this Court.

6. That Mr. Rafiqul Islam, Advocate and failing him Ms. Mamani Choudhury, Advocate shall be the Chairman of the said meeting of the Equity Shareholders of Kettele Tea Company Private Ltd., to be held as aforesaid at a consolidated remuneration of Rs.3,500/-.

7. That Ms. Mamani Choudhury, Advocate failing her Mr. Rafiqul Islam, Advocate shall be the Chairman of the meeting of the Equity Shareholders of Borgang Tea Company Private Ltd., to be held as aforesaid at a consolidated remuneration of Rs.3,500/-.

8. That any one of the Chairman appointed for the said meetings or any person authorized by them do issue the notice of the meetings referred to above."

67. *The order dated 18.11.1999, rendered by Hon'ble High Court in Company Petition No. 07/199*9 further shows that before the scheme of demerger was approved, all the concerned authorities were informed of the same inviting their objection, if any, to such scheme of arrangement and thereafter on getting clearance from all concerned, Hon'ble High Court had approved the same. The relevant part of the order is reproduced below:

"3. *By this Court's order dated 8th September, 1999 after seeing the report of the meetings submitted under Rule 79 of the Companies (Court) Rules, 1959 verified by Affidavits and marked as Annexure "F" held in compliance with this Court's order dated 19.12.98 and on perusal of the petition for confirming the Scheme of Arrangement in Form No.40, this petition was fixed for hearing on 18.11.99 and notices were ordered to be advertised in the North East Observer, Guwahati and "Ajir Batori", Guwahati not later than 14 days before the date fixed for hearing, on the Regional Director, Company Law Board, Calcutta, not less than 28 clear days before the date of hearing as required under Section 294A of the Companies Act, 1956 read with Rule 27 of the Companies (Court) Rules in Form No.6.*

4. The learned Counsel appearing for the petitioner's state that all the aforesaid directions have been faithfully complied with and that notices have been served on all the parties including the Regional Director of Company Law Board, Calcutta. No objection has been filed to the grant of approval/sanction to the present Scheme of Arrangement.

5. The learned Senior Central Government Standing Counsel, appearing for the Company Law Board, has stated that the Scheme of Arrangement has been carefully examined by the Regional Director, Calcutta and that there is no objection by the Board to the grant of approval/sanction to the Scheme of Arrangement. At it appears, the Scheme of Arrangement has been prepared bona fide and there is no bar whatsoever to the grant of approval/sanction to the Scheme of Arrangement, as prayed for.

6. It is, therefore, considered expedient that the prayer for approval/sanction of the Scheme of Arrangement be granted in term of the prayers in this petition confirming the said Scheme of Arrangement."

68. There is evidence on record to show that order dated 18.11.1999 in CP No.07/1998 was questioned by the petitioner preferring an appeal against such an order. Such revelations coupled with the various narrations made in the orders aforesaid decisively demonstrate that the petitioner was aware of the bifurcation of the KTCPL in 1998/1999 itself which in turn establishes the complete falseness of the claim of the petitioner that the bifurcation of the KTCPL was done behind his back and he came to know of it only in 2011.

69. However, it is the letter dated 03.07.2000 which finally establishes that the petitioner came to know about such bifurcation in 2000 itself. In that connection, it was pointed out that as per the scheme of arrangement, all shareholders in the parent company were also offered proportionate shares in the new company, same being BTCPL. The petitioner was also offered his proportionate shares in the new company vide letter dated 05.04.2000 which is attached to the reply as Annexure-C. For ready reference same is also reproduced below**: -**

"BORGANG TEA CO. PRIVATE LTD.
BTCL/L/SHARES *5th April, 2000*
Shri Inder Chand Pincha
29/10, Ballygunge Park
Calcutta- 700 019
Dear Sir.

This is to inform you that pursuant to scheme of Arrangement approved by the Hon'ble High Court at Gauhati vide order no.7 of 1999 dated 18.11.1999 all erstwhile shareholders of Kettela Tea Company Private Limited have been allotted shares of Borgang Tea Company Private Limited in ration of…… for consideration other than cash.

The details of the shares allotted and sent to you along with this letter are as follows:

CERTIFICATE NO.	*DISTINCTIVE NO.*	*NO OF SHARES.*
……		
……		
TOTAL SHARES =		*1675*

70. But the petitioner refused to accept such shares in the new company stating that he had already challenged the order dated 18.08.1998 rendered by the CLB, Principal Seat, New Delhi in CP No. 17/1996 and as such, there was no question of his accepting such shares in the new company vide his letter dated 03.07.2000 which is attached to the reply as Annexure-C**.** In his letter dated 03.07.2000, he also categorically claimed that the bifurcation of Kettela Tea company (P) Ltd was not done for the benefit of company. For ready reference, said letter is also reproduced below:

"The Board of Directors, Borgang Tea Co. Pvt. Ltd.
67 Ganesh Ch Avenue
Calcutta 700013.

Date 03.07.2000

Dear Sir,

Ref: Your letter No.BTCL/L/SHARES dtd 05/04/2000 recd on 28/06/2000

The above mentioned letter was received by me on 28/06/2000 along with 17 share scripts totaling to 1675 shares of Rs.100/00 each.

You are fully aware that against an order of the Principal Bench, Company Law Board, New Delhi, in a petition u/s 397/398 an appeal was preferred with the Hon'ble Gauhati High Court. The appeal was admitted and is pending before the Hon'ble Gauhati High Court.

Without informing the minority shareholders and keeping the Hon'ble Gauhati High Court in the dark about the pending appeal you obtained an order for bifurcating M/s Kettela Tea Co. Pvt. Ltd.

As the bifurcation was done not for the benefit of the garden or its shareholders but with the ulterior motive of dividing the garden among the CM Pincha and the HM Pincha groups of shareholders I have filed an appeal against the said order which has been admitted.

Until disposal of these above mentioned two appeals at Hon'ble Gauhati High Court, there is no question of my accepting the above mentioned 1675 shares and hence the same are being returned back to you, herewith.
S/d
INDER CHAND PINCHA."

71. It is worth noting here that the petitioner did not dispute the authenticity of the letters marked as Annexure-C nor did he dispute the authorship of the same. Therefore, letter dated 05.04.2000 & letter dated 03.07.2000 are required to be treated as genuine letters. Such letters, coupled with various orders, passed by Hon'ble High Court in the connected demerger proceeding, establish beyond any shadow of doubt that in 2000 itself, the petitioner knew about the bifurcation of KTCPL into two entities.

72. Once it is found that the petitioner had the knowledge of bifurcation of KTCPL into two companies in 1999/2000 itself, his plea that he came to know about the bifurcation of KTCPL into two companies only in 2013, and that too, after downloading the necessary company papers from the website of the Ministry of Corporate Affairs are found to be downright falsehood. Unfortunately, such revelations not only make the plea aforesaid untenable in law but it also violently shakes the very edifice of the case of the petitioner.

Issue No (V)

Whether petitioner remained indifferent to the affairs of the company during the period from1977 to 2013 or whether the respondents had always prevented the petitioner from involving himself with the affairs of the company and that too quite illegally.

73. One of the most important controversies which has enormous bearing on the disputes in question is whether the petitioner remained indifferent to the affairs of the company over a long period of time stretching from 1977 to 2013 as alleged by the respondents. Such a contention was sternly disputed by the petitioner arguing that over all those years from 1977 to 2013, the respondents had done everything possible to keep the petitioner out of the affairs of the company.

74. But then, in spite of facing such plight and troubles of enormous proportions, the petitioner keeps on fighting all the times for his rightful place in the company, which was his brainchild. The various correspondences which he made with the other respondents over all those periods as well as various petitions/applications, he preferred before the different judicial/ quasi-judicial authorities and the various orders, rendered by those authorities in the proceedings, initiated by him, would make it abundantly clear.

75. Countering such allegations, the respondents claim that the petitioner had never shown any genuine interest in the affairs of the company and in order to substantiate such allegations, they place heavy reliance on the averments, made in their reply, besides relying on various communications as well as the order(s) passed by judicial authorities. In their reply, the respondents quite painstakingly contend that during the period between 1978 and 1984, the petitioner had not been even in the state of Assam---- much less ----his associating with the affairs of the company during such period.

76. Continuing their argument further on this count, it has also been stated by the petitioner that during such periods, his guidance and leadership was greatly felt by the company since it was the period during which, the company had been suffering from enormous losses due to various tough and testing problems. However, during such difficult periods, the petitioner chose to ditch the company leaving the same in the hands of his younger brothers and tried his luck once again by acquiring two new tea gardens in the State of Tripura.

77. In that connection, the letter dated 17.12.2013 from the Secretary General, Tripura Chah Mazdoor Union (in short, (TCMU) has been referred to. The letter above, attached to the **reply as Annexure B,** reveals that during the period between 1978 and 1984, the petitioner had been in the State of Tripura where he acquired two gardens, namely, Brahmakunda Tea Estate and Kalyanpur Tea Estate. Such letter further reveals that said enterprises had to be abandoned since such enterprises sustained huge loss and, therefore, the petitioner had to leave the State of Tripura hurriedly but stealthily leaving the gardens aforesaid with its poor employees, staff and officers in great lurch. For ready reference, letter at Annexure-B is reproduced below:

> *"It is within our best knowledge that Shri I.C. Jain (Pincha) managed the Brammakunda Tea Estate under Sadar Sub Division, at present under Mohanpur Sub Division, West Tripura and as far as I know that Mr. Jain was owner of the said Tea Estate since 1978. While Shri I.C. Jain (Pincha) was in Brahmakunda Tea Estate I had interacted with him because of the interest of the workers.*
>
> *But thereafter, he fled away from the said garden in the year 1984 according to my knowledge goes."*

78. But in trying to refute such allegation, the petitioner claims that the letter from the Secretary General, TCMU is a forged and fabricated one and, therefore, no reliance whatsoever should be placed on such a letter. In response to contention based on letter aforesaid, the petitioner further claims that he had to leave State of Tripura since those gardens were taken by the Government of Tripura under The Tripura Tea Companies (Taking over of management of certain tea units) Ordinance 1986 (in short,

the Ordinance of 1986). So, the allegation that he left the State of Tripura all of a sudden after his enterprises aforesaid met huge losses is nothing but a big lie.

79. I have considered the rival submissions and found that the petitioner has disputed the authenticity of the letter dated 17.12.2013. But then, one must be oblivious to the fact the petitioner did not dispute the claim of the respondents that during the period from 1978 to 1984, he had been in the State of Tripura managing two gardens, namely, Brahmakunda Tea Estate and Kalyanpur Tea Estate. It is also not in dispute that he left Tripura in 1984. In view of such admissions on some very important aspects of the dispute, coupled with the facts and circumstances, *which emerge from the materials on record, in needs to be held that* mere denial is not enough to destroy and or nullify the credibility of aforesaid letter.

80. Even otherwise, the contention of the petitioner that he left the State of Tripura only after the acquisition of his garden by the Government of Tripura sounds pretty unconvincing. This is because of the reason that a perusal of the ordinance aforementioned reveals that said ordinance came into force w. e. f. 13th November, 1986, long after the petitioner left the State of Tripura in 1984 which unmistakably shows the fallacy of the claim of the petitioner that he had to leave the state of Tripura in 1984 for his gardens being taken over by the State Government. Being so, in my opinion, the materials on record, clearly establishes that the petitioner left the state of Tripura in 1984 when he found his missions went haywire.

81. One more factor which needs discussion here is the absence of any material on record to show any linkage between the petitioner and company or with its affairs during the period from 1978 to 1984. The complete or near complete absence of such material connecting the petitioner with the company or with its affairs during the aforesaid period lends more and more support to the claim of the respondents that during the period from 1978 to 1984, the petitioner was not even in the State of Assam which is why there was hardly any material on record to show his linkage with the affairs of the company during the period referred to above.

82. So situated, let us see, if the petitioner again remained indifferent to the affairs of the Company during the period **(i)** from 1984 to 1997-98, **(ii)** from 1998 to 2000 and (**iii)** from 2001 till the time of filing of the present proceeding in 2013 as alleged by the contesting respondents. I have already found that the petitioner all along maintains that the respondent No.2 and 4 had always tried to keep him out of the affairs of the company and they did so in order to satisfy their personal agenda which are

profoundly harmful-------- *not only to the company, its workers and employees* --- but to the public as well.

83. In that connection, it has been stated that in 1984, he detected that R2 group and R4 group had misappropriated a huge amount of money which was to the tune of Rs.1.20 crores, which, according to the petitioner, is quite apparent from the fact that during the period from 1978 to 1984, KTCPL had actually garnered magnificent profits but R2 group and R4 group manipulating the official records showed that during such period, the company had sustained huge losses and in that process, they illegally pocketed huge amount thereby depriving all concerned including the poor laborers.

84. The petitioner, therefore, found it necessary to bring such horrible state of affairs to the knowledge of all concerned in order to rectify such illegalities, indulged in by R2 group and R4 group. Accordingly, he started making correspondences with various authorities including the Labour Unions giving all of them the details showing as to how they were all duped by the R2 group and R4 group. Being annoyed with such activities of the petitioner, R2 group and R4 group rushed to the Court and initiated a civil suit on the basis of some wild allegations.

85. Worse still, on misleading the Court, R2 group and R4 group had also managed to secure an interim order of injunction restraining, amongst others, the petitioner/his men/agents from entering into the Tea Garden aforesaid and such an interim order was made permanent subsequently. Taking advantage of such injunction order, R2 group and R4 group even got his wife arrested and was taken into police custody. Owing to such prohibitory order as well as the atrocities which respondents aforesaid perpetuated on the petitioner and his other family members, the petitioner was compelled to get himself disassociated with the affairs of the company over a long period of time.

86. In 1992, Hon'ble Calcutta High Court discovered that the order prohibiting the petitioner from entering into the garden was untenable in law and as such, it on its own vacated such an order of injunction. But the petitioner was not aware of all those developments and came to know about such an order vacating the prohibitory order passed on him only in 1996. On coming to know about the vacation of such prohibitory order in 1996, he got the courage to involve himself in the affairs of the company once again.

87. However, R2 group and R4 group denied tooth and nail such allegations contending that once the petitioner returned to the State of Assam in 1984, he started squeezing the company to extract money and that too quite illegally. But not being able to squeeze money from the company, he started

instigating the simple minded but illiterate garden workers to go against the management alleging that during the period between 1978 and 1984, the company earned huge profit but all those profits were pocketed by R2 group and R4 group thereby depriving the poor workers what was legally due to them.

88. What was equally worse, the petitioner had even sent the copies of those documents to the bankers and other authorities advising those authorities to question the authority of the respondents to run the company aforesaid which, in turn, put enormous pressure on them in conducting the affairs of the company which had already been in great troubles for variety of reasons. Having found no other way out, the majority shareholders decided to rush to the Hon'ble Calcutta High Court by the way of a civil suit seeking various reliefs including an order restraining the petitioner from conducting himself in a manner injurious to the company.

89. On being so approached by R2 group and R4 group, the Hon'ble Calcutta High Court was pleased to pass an order prohibiting the petitioner from entering into the tea garden. However, even after the order, so passed by the Hon'ble High Court, the petitioner through his wife entered in the tea garden and tried to foment disturbances in the garden for which the police authority was forced to take action against the wife of petitioner to uphold the majesty of law and also to prevent the situation in and around the garden in question going out of control.

90. I have considered rival submissions and found that the claim of the petitioner that he had always been kept out of the affairs of the company by R2 group and R4 group has no or little substance in it and same is apparent from the materials on record, more particularly, the letters which the petitioner himself had attached to the petition as **Annexure – D, E & F.** Those letters reveal that the petitioner had leveled extremely serious allegations against R2 group and R4 group and such allegations were brought to the notice of very many persons and authorities including the Labour Unions even soliciting their violent reactions to the alleged illegalities, attributed to R2 group and R4 group.

91. It may be stated here that leveling allegations against someone is one thing and bringing those allegations to their logical conclusions is another thing. If a person brought an allegation against someone and then chooses not to substantiate the same, then, it may be well within the competence of the court to conclude that the allegation leveled against such person is false and same was hurled at the person concerned only to advance the illegal agenda of the accuser. This is more so, when such allegation is denied by the person who was targeted by it.

92. One may note here that in Suit No. 189/1984, the Hon'ble Calcutta High Court did pass some orders against the petitioner/his men/his agents restraining them to carry out certain things so mentioned in the order itself. But then, said order never prohibited the petitioner to bring the very serious allegations, leveled against R2 group and R4 group, to their logical conclusions by initiating appropriate legal proceeding. Therefore, the petitioner was duty bound to ensure that such allegations were investigated into by appropriate authorities so that the culprits did not go unpunished.

93. This is more so, since the petitioner, *and the petitioner alone*, presumably had necessary wherewithal to help the investigating agency to bring those very serious allegations to their rational end -------*reason being*------- the petitioner all along maintained that during the period from 1978 to 1984, the company had earned huge profits but by manipulating the accounts, R2 group and R4 group showed that during such period, it sustained huge losses. Since the petitioner did not do anything to substantiate such allegations, there cannot be any escape from the conclusion that the charges, leveled against R2 group and R4 group, were groundless.

94. It is worth noting here that the petitioner claims that though the order dated 16.03.1984 in CP No.17 of 1984 was vacated in 1992, he came to know about such vacation only in 1996. Such a statement, however, hardly advances the claim of the petitioner that he had always been trying to get himself associated with the affairs of the company but he could not do so due to alleged illegal impediments from the side of R2 group and R4 group and also for the prohibitory order, passed on him by the Hon'ble Calcutta High Court on 16.03.1984.

95. This is because of the fact that had the petitioner been so keen, eager and enthusiastic in getting himself associated with the affairs of the company, he must have done everything possible to see that the order dated 16.03.1984, rendered by the Hon'ble Calcutta High Court in Suit No. 189/1984 is recalled at the earliest possible opportunity. But record reveals that the petitioner made, no attempt, whatsoever, to get rid of such a prohibitory order, passed on him by the Hon'ble High Court. Rather, he chose to live with it over a very long period of time.

96. What is equally baffling is that the petitioner never cares to know about such a suit--- having enormous impact on his life ----for a pretty long period of time, *since, according to his own admission,* he came to know about such an order having been recalled by the Hon'ble High Court itself on some technical grounds*, only in 1996*. Therefore, his plea that he came to know of such vacation only in 1996 does not augur well to advance his claim that he always wanted to get himself associated with the

affairs of the company but he could not do so for the illegal resistance from the side of the respondents herein.

97. However, the final seal of approval to the conclusion that the petitioner had never been associating with the company or its affairs during the period from 1978 to 1996-97 comes from some accounts, rendered by the CLB, New Delhi in its order dated 9.6.1997 in CP No.17 of 1996 (vide paragraph No.3). Similar accounts were also made by the Hon'ble Gauhati High in Company Appeal Nos.42/44/45/1997 (vide paragraph No.9).

The relevant part of the order dated 9.6.1997 in CP No.17 of 1996 is reproduced below: -

> ----- *"As regards the other two groups holding 21% each Mohanlal Pincha group had already shown interest in selling their shares to the respondent group and* ***the Inder Chand Pincha group did not take any interest in the company for a long time"***

98. In its judgment dated 18.03.1998, rendered in Co. Appeal Nos.42/44/45/1997, the Hon'ble High Court too quoted some portion from the petition in CP No.17/1996 having serious connotations on the conduct of petitioner vis-à-vis affairs of the company (vide paragraph 3 of the judgment). For ready reference, relevant part of the judgment is also reproduced below:

> *"Para-3……It was averred inter alia in the petition that on or about 30.10.69 the company was incorporated with an authorized capital of Rs.12 lakhs made up of 12,000/- equity shares of Rs.100 each. The paid up capital of the company was Rs.8 lakhs made up of 8000 equity shares of Rs.100/- each. 29% of the capital was held by the company petitioners-respondents group and another 29% was held by the respondents in the company petition and appellants herein. Hatimal Pincha company petitioner no.1/ respondent no.1 in this appeal and Chandmal Pincha-respondent no.2 in the company petition and appellant no.1 herein are brothers. Apart from that two other brothers Inder Chand Pincha who intervened in the appeal and Mohan Lal Pincha along with his family members were holding 21% each of the paid up capital of the company.* ***The above four brothers were also the first Directors of the company though Inder Chand Pincha and Mohan Lal Pincha ceased to be the Directors when the company proceeding was started. The petitioners/respondents as well as the respondents'/appellants groups together holding 58% of the shares were controlling the company with 29% each the two groups were also equally represented in the Board. The company was a family concern of the Pincha family and a partnership unit in the guise of a limited liability company. The company owned a tea estate known as Kettella Tea Estate at Sonitpur District in the State of Assam. Inder Chand Pincha and Mohan Lal Pincha and his family members did not involve themselves in the management of the affairs of the company and both the groups were in charge of the management of the company for the last 15 years****. "*

99. It may be stated here that the petitioner was quite aware of all those important accounts, made by two different Courts having huge bearing upon his claim that he has always been trying to associate himself with the affairs of the company. The fact that he initiated CA No.188/1998 to enforce the directions given in the order dated 09.06.1997, passed in CP No. 17/1996 and the fact that the

petitioner and the R3 preferred an appeal against the order dated 18.08.1998 in CP No.17/1996 as well as the fact that the petitioner *along with the R3* had questioned the judgment dated 18, 03.1998, rendered by the Hon'ble High Court but without any success, make such a conclusion inevitable.

100. Quite interestingly, the petitioner despite being aware of all those remarks, rendered on him, made no attempt to question such remarks at any point of time. Consequently, his failure to challenge such adverse accounts on his conduct qua the affairs of the company only serves to show that the statements on the conduct of the petitioner in the aforesaid order / judgment are entirely truthful. Being so, the statements on the conduct of the petitioner, coupled with other facts and circumstances, detailed hereinbefore, firmly establish that the petitioner never associated himself with the affairs of the company during the period from 1984 to 1996-97**.**

101. This brings us to the question whether the petitioner got associated with the affairs of the company during the period between 1997 and 2001. This question arises because the petitioner claims that during the period between 1997 and 2001, he approached the Tribunal and the Court again and again complaining various alleged illegal activities on the part of the R2 group and R4 group qua the affairs of the company. According to the petitioner, such a state of affairs is a forceful testimony to the fact that despite all odds, the petitioner keeps on fighting for his due place in the company.

102. In support of such contention, the petitioner contended that in 1996, the R2 group created an artificial majority in the shareholding as well as in the Board of Directors which was however challenged by the R4 group having filed a company petition U/s 397/398 of the Act of 1956. In such a proceeding, the petitioner took the side of R4 group while the R3 took the side of R2 group. The said proceeding was partly answered in favour of the R2 group and partly answered in favour of the R4 group, vide order dated 09.06.1997 in CP No.17/1996 requiring both the parties thereto to comply with certain directions, rendered therein.

103. Both of them had challenged the order preferring appeals before the Hon'ble Gauhati High Court (vide Company Appeal Nos. 42/1997, 44/1997 and 45/1997 which were filed by the R2 group and R4 group). The Hon'ble Gauhati High Court had dismissed all those appeals upholding the order of the CLB, Principal Bench, New Delhi, vide judgment dated 18.03.1998 and directed the CLB, Principal Bench, New Delhi to implement its directions given in the order dated 09.06.1997 in CP No. 17/1996.

104. However, none of the parties could comply with the directions over a long period of time for which the petitioner approached the CLB with an application which gave rise to CA No. 88/1998. In CA No.188/1998, the petitioner, amongst other things, prayed for following reliefs: -

> *"(a) That the respondents be directed to make payment to the applicant Rs 7771/- in four equal monthly installments of Rs.3254108.25 p. each following due on 13.10.1998, 13.11.1998. 13.12.1998 and 13.1.1999. In case of failure interest @ 3% per month be charged till 13.1.1999:*
>
> *(b) That both the minority directors, namely, Inder Chand Pincha and Mohan Lal Pincha be reinstated as directors of the company till the entire payment so made to them:*
>
> *(c) That in the event of default by the respondent to pay the 1st installment by 3.8.1998 or full payment to petitioners by 13.9.1998 then the applicant should be allowed to purchase the shareholdings of the company @ Rs.7,771.00 per share from all interested sellers":*

105. According to the petitioner, on coming to know about the filing of CA No.188/1998, the R2 group and R4 group with some ulterior designs approached the CLB and informed it that they had entered into a compromise settling the dispute between them in CP No.17/1996 amicably and requested the former to dispose of the proceeding on the basis of such amicable settlement. An unsuspecting CLB accepted such an apparently innocuous looking but enormously illegal prayer and also disposed of the same further stating therein that CA No188/1998 became in fructuous following settlement of the disputes by the parties to CP No 17/1996 vide order dated 18.08. 1998.

106. Subsequently, the petitioner and the R3 could discover the misdeeds done by the R2 group and R4 group in having the aforesaid proceeding disposed of on compromise and therefore, they jointly preferred an appeal challenging the order dated 18.08.1998. But, later on, the R3 chose not to proceed with the appeal. Owing to such developments and also on the advice of his counsel, the petitioner too abandoned such appeal since he was told that the order dated 18.08.1998 also protects his interest in the company as well. These revelations are clear proof to the fact that the petitioner always took keen interest in the affairs of the company- ---argues the petitioner.

107. Countering such argument, Mr. Sen Counsel for the respondents arduously contend that the petitioner had always been interfering with the affairs of the company and he did so ---- *not for the benefit of the company or its shareholder*s ------but------- for advancing his sole and lone agendum, same being to squeeze the company to the extent possible in order to fill his own coffer. In order to substantiate such allegation, the contesting respondents heavily relied on various materials on record including the orders / judgment, referred to above.

108. I have considered such submissions in the light of the materials on record. Such an exercise of mine has brought to the fore certain episodes which, however, hardly advance the cause of the petitioner in this proceeding. In CP No. 17/1996, the R4 group leveled some very serious allegations against the R2 group for their conducting the affairs of the company in a very harmful manner which were, however, disputed by the R2 group who were arraigned as the respondents therein. On hearing the parties to the proceeding, the CLB found reason to allow the proceeding partly.

109. If one believes the claim of the petitioner that he had always been genuinely interested in the affairs of the company, he ought to have filed the proceeding on his own highlighting the alleged illegalities in running the affairs of the company during the middle part of nineties. But the petitioner did not do anything in that line. Nor did he implead himself in the proceeding aforesaid as party to strengthen the hands of the party who he believed to be on the right side of the game.

110. Though there are materials on record to show that the petitioner took the side of the R4 group while the R3 took the side of the R2 group ---yet ---in the facts and circumstances of the case, mere siding with one of the parties to such proceeding was not enough, more so, *when* the petitioner herein always claims that the company in question was his brainchild and *when* the subject matter in *CP 17/1996 was stated* to be the huge illegalities resorted to by the R2 group in running the affairs of the company.

111. Rather his reported symbolic participation in such a proceeding, coupled with various important developments that took place in the following years, only serves to show that in taking side of one of the warring parties, the petitioner was guided----- more by his self-interest--- than--- by his concern for the company. In other words, the petitioner was more interested in fishing in t***roubled*** waters and he did so only to advance his own gain which is very personal in nature.

112. What is equally important to note is that the petitioner and the R3 chose to prefer an appeal against the order of the CLB rendered on 18.8.1998. But they abandoned such appeal midway. The abandonment of the appeal midway coupled with circumstances in which such appeal was preferred and abandoned *do not go* down well with the claim of the petitioner that *he has always been concerned with the affairs of the company and has always been desirous of seeing the company growing from strength to strength with the progress of time.*

113. However, more and more revelations have again thrown their weight behind the above conclusion of mine. I have already found that the R4 group, as being petitioner, had initiated a

proceeding u/s 397/398 (CP No.17/1996) against the respondents therein (R2 group herein). In the aforesaid proceeding, the respondents (R2 group herein) in his reply alleged that the petitioner (R4 group herein) most illegally allowed *the petitioner herein* to work with him although he (*the petitioner herein*) had done enormous damage to the company over a long period of time for which both of them had to rush to the court seeking reliefs against *the petitioner herein*.

114. While disposing of the case, the learned CLB had recorded in its order such allegations which the respondents in CP No.17/1996 had hurled at the petitioner therein qua the conduct of the present petitioner over the affairs of the company in order to demolish the case of the petitioner in CP No.17/1996. For ready reference, the relevant part of the final order in CP No. 17/1996 (vide Para-11) containing aforesaid allegations against the present petitioner are reproduced below:

> *"Before dealing with the reliefs prayed for by the petitioners it is necessary to take cognizance of the charge of the respondent with regard to the conduct of the petitioners in not disclosing their relationship with one group of the family against whom the respondents and the petitioners jointly moved the Calcutta High Court in 1984 and the High Court had restrained Shri Inder Chand Pincha of that group from entering the tea gardens for some time. This non-disclosure has to be read with the subsequent events after the filing of the petition when the petitioner No. 1 visited the tea garden along with the said Inder Chand Pincha and installed him as a Supdt after seeking adjournment of the board meeting on 30.8.96. Thereafter the respondents allege that the said Inder Chand Pincha instigated the laborers and created law and order problem in the estate resulting in intervention by the police.* ***According to the respondents the said Inder Chand Pincha is not a desirable person and the petitioners themselves joined the respondents in restraining the said Inder Chand Pincha from interfering in the affairs of the company and now join hands with him to destabilize the existing management. We however refrain from coming to any conclusions with regard to the activities of the said Inder Chand Pincha as we did not have the opportunity of hearing him since he is not a party****".*

115. I have found that the learned CLB refused to make any comment on such allegations against the present petitioner since the petitioner was not a party to such a proceeding. But then one must not overlook the fact that though the R2 and R4 were exchanging swords in aforesaid proceeding over very many matters, yet, on one count, they were not disputing each other, same being the very harmful role played by the petitioner qua the affairs of the company over a long period of time.

116. Such disclosures coupled with the fact that the allegations, made in the present proceeding against the petitioner herein is nothing but the repetition of very similar allegations made against him in a proceeding initiated in distant past, same being CP No. 17/1996, infuses more and more credibility to the allegation *that petitioner had always been interfering with the affairs of the company to advance his own self-interest, and that too , at the cost of the interest of the company* which, in turn, upgrades such to a irrefutable fact .

117. Such revelations together with facts that the petitioner never contested the serious allegations made against him in **C.P.No.17/1996** require me to conclude that the petitioner had always been

meddling in the affairs of the company in a most harmful way. What is worse, he did not hesitate to do so when the company had been gasping for life. Therefore, his claim that during the period between 1984 and 2000, he always tried to get himself involved with affairs of the company but he could not do so due to resistance of the R2 group and R4 group is also found to have fallen through.

118. Now, the question is whether during the period from 2001 to 2013, the petitioner had been associating himself with the affairs of the company. I have found that the R2 group and R4 group quite categorically claim that during the period from 2001 to 2013, the petitioner never showed any interest in running the affairs of the company. According to the R2 group and R4 group, on the bifurcation of KCTPL, the new company issued a letter dated 05.04.2000 offering him proportionate shares in the BTCPL further requesting him to accept such shares in New Company. As stated above, he refused to accept such offer stating that he had already questioned the legality of the order dated 18.08.1998.

119. But though a considerably long period got elapsed in the meantime, same being a period more than 13 (thirteen) years, the petitioner never made known to the R4 group as to the fate of the appeal, he filed questioning the legality of the order dated 18.08.1998. Nor did he inform BTCPL, if he was going to accept the shares, offered to him in the new company. Such an episode hardly advances the claim of the petitioner that he had always been interested in the affairs of the company.

120. On perusal of the pleadings of the parties, pleadings of the petitioner in particular, it was found that such a contention has never been seriously disputed by the petitioner. More importantly, there is absolutely nothing on record to show that during the period between 2001 and 2013, *the petitioner had in anyway been involved in the affairs of the company* although during such period the company had seen enough ups and downs as is evident from the statutory reports submitted by the respondents. Therefore, on marshalling the materials on record in proper perspective, it is found that during the period from 2001 to 2013, the petitioner hardly participated in the affairs of the company.

Issue No (VI)

Whether the petitioner had been reduced to hopeless minority illegally.

121. The petitioner has claimed that over the period between 1981 and 2011, his shareholding in the company was reduced from 25% to 1.78%. According to the petitioner, such reduction of his shareholdings in the company was illegal since the increase of the paid up capital of the company from time to time as well as the increase of the authorized capital of the company under which his shareholding in the company stood reduced from 25% to 1.78% were done in total violation of laws holding the field as well as various provisions incorporated in the AOA.

122. Such contention was fiercely disputed by the contesting respondents arguing that before the issuance of additional shares, notice had always been sent to the petitioner intimating him all those developments further requesting him to purchase the shares offered to him on proportionate basis. Similarly, before the increase of the authorized share capital of the company, the petitioner was informed of the same seeking his participation guidance etc. However, despite receiving the notice well in time, the petitioner always chose to remain silent for which the other shareholders in the company were compelled to take necessary decision in his absence.

123. In that connection, it has been stated that the company had to increase its authorized capital for operational and tactical reasons, one of them, being the refusal of the banker of the company, on occasions more than one, to infuse fund unless the limit of authorized capital was raised. Again, the company used to issue additional shares when the company had been in deep financial trouble requiring the company to undertake such an exercise to bail out the company from the financial difficulties, it had been in or when fund was required to expand the business base of the company to allow the company to exist as a going concern. But all those exercises were done strictly in accordance with the prescription of law.

124. The contesting respondents stated that in 1981-82, the company had been in serious financial problems for which the company was forced to issue 1300 additional shares to all the 4 shareholders. While the petitioner and the R3 showed no interest, whatsoever in purchase of such shares, the R2 & R4 were, therefore, forced to purchase all those shares equally, so offered to the shareholders of KTCPL. Thus, their shareholding increased to 29% each whereas shareholding of the petitioner and R3 come down to 21% each.

125. In support of such contention, R2 & R4 placed heavy reliance on the averments made in the reply apart from relying on some other documents including the order dated 09.06.1997, rendered by CLB, Principal Bench, New Delhi in C.P. No. 17/1996 as well as the judgment dated 18.03.1998, passed by Hon'ble Gauhati High Court in Company Appeal Nos.42/1997,.44/1997 & 45/1997. I have also considered such arguments having regard to the various materials available on record.

126. A careful perusal of the materials on record including the reply in the light of the order dated 09.06.1997, rendered by CLB, Principal Bench, New Delhi in C.P. No. 17/1996 as well as the order dated 18.03.1998, passed by Hon'ble Gauhati High Court in Company Appeal Nos.42/1997,.44/1997 & 45/1997 makes it more than clear that in the year 1981, the company had been in huge financial difficulties for which it had to issue 1300 additional shares and such shares were offered in equal numbers to all the existing shareholders.

127. Those materials on record, particularly the order dated 09.06.1997 in CP No 17/1996 as well as the order dated 18.03.1998 unmistakably evince that since the petitioner and R-3 did not purchase such shares, R2 group & R4 group were forced to purchase entire such shares equally for which, the shareholdings of R2 group & R4 group in the company increased from 25% to 29% each whereas the shareholdings of petitioner and R3 reduced from 25% to 21% each. Therefore, one cannot find fault with issuance of such shares to R2 group & R4 group.

128. Coming to the allegation that the shares of the R2 group & R4 group were increased to 39.5% each quite illegally, it is found that there is unquestionable evidence on record to show that in 2000**,** entire shareholding of R3 in the company was offered to other 3 shareholders equally, they being petitioner, the R2 group & R4 group. While the petitioner chose not to subscribe to such shares, the R2 group & R4 group had purchased the same equally on 23rd Feb, 2000 thereby raising their shareholding in the company to 39.5% each whereas the shareholding of the petitioner remained at 21%. Therefore, the increase of shareholdings of the R2 group & R4 group in the company to 39.5% each cannot be faulted.

129. It is in such background, let us consider the question if during the years between 2000 and 2012**,** the **R2 group had increased** their shareholdings in the company **from 39.5% to 98.22 %** and if so, whether such increase was done in total violation of relevant provisions in law as well as the arrangements made in AOA and MOA as alleged by the petitioner. However, before addressing the above queries, one needs to consider another aspect of the disputes herein which would help us to appreciate the disputes in the present proceeding effectively.

130. One may note here that in 1999, the KTCPL was bifurcated and such bifurcation was done under the supervision of the Hon'ble Gauhati High Court as required under the law. Owing to such division, a new company with similar shareholdings as in the parent company was brought into existence. Though the petitioner claims that such division of the company was done illegally, I have already decidedly found that such a claim has no legs to stand on at all. The discussion, hereinbefore, has made such position more than clear and same does not require any further reiteration.

131. Record further reveals that after the bifurcation of KTCPL in 2000, R2 group and R4 group exchanged their shareholdings in the companies and thus, they cornered their shareholdings in one company. After the cornering of their shareholdings in one company, the shareholdings of the R4 group in BTCPL rose to 79% whereas their shareholding in KTCPL came down to 0%. Similarly, after such exercise, the shareholdings of the R2 group in KTCPL rose to 79% whereas their shareholdings in BTCPL came down to 0 %. Once again, the petitioner claims that the cornering of their shares by the R2 group and R4 group in one company was done without any notice being served on him.

132. Equally importantly, according to the petitioner, the cornering of shareholding of R2 group and R4 group in one company was done not for the benefit of the company but to sub serve the very individual and personal interest of those two shareholders which cannot be justified under any circumstance. Therefore, the cornering of the shareholdings of R2 group and R4 group in two different companies in one company itself is the testimony of huge oppression having been perpetuated on the petitioner.

133. R2 group and R4 group denied such allegation stating that the cornering of the shareholdings of the R2 group and R4 group in one company had been done on following the prescription of law. Quite significantly, the companies took such decision to allow the cornering of the shareholding of the R2 group and R4 group in one company in the best interest of the companies involved. In such a scenario, the petitioner cannot have any grievance in cornering the shareholding of the R2 group and R4 group in

one company. In support of such contention, the respondents have relied on the decision of the Hon'ble Kerala High Court in the case of V.J. *Thomas Vettom (supra)*

134. *In the case of V.J. Thomas Vettom* (supra), it was held that the cornering of shareholding cannot be faulted provided same is done for the benefit of the company. I have considered such submissions, advanced by the parties having regard to the materials on record as well as the decision relied on by the parties and noticed no serious infirmity in cornering the shareholdings of the R2 group and R4 group in one company, more so, when the materials on record prima facie show that such cornering of shares were done for the benefit of the company and when such cornering is approved by majority shareholders of the company.

135. So situated, let us consider the allegations that the increase of authorized share capital of the company as well as the issuance of additional shares which reduced the shareholding of the petitioner in the **BTCPL from 21 % to 1.78 %** were done in total breach of provisions of law as well as the arrangements, made in the AOA of the company. It may be stated here that the increase of authorized share capital of the company as well as the issuance of additional shares can be done only when the company needs fund genuinely.

136. Once it is established that there is real need of fund for the company, issuance of further shares can be made but only in accordance with prescription of law as well as the arrangements, if any, made in the AOA of the company. In our instant case, it is not in dispute that during the period from 2000-2001, the authorized capital of the company was raised from Rs.1200000/- to Rs.5000000/- and thereafter, additional shares were issued from time to time. There was also no quarrel over the fact that due to issuance of such further shares the shareholdings of the **R2** group in the company increased to 98.22% whereas the shareholdings of the petitioner in the KTCPL got reduced to 01.78%.

137. Now, the million-dollar question is whether such increase in the shareholding of the R4 group in the company was done in accordance with the requirement of law. Needless to say here both the sides took diametrically opposite stand. Once again, before going to other aspect of the dispute, I find it necessary to know if there was any need for the additional fund of the company during the period in question. In that connection, I find it necessary to look at the papers which a company is statutorily required to submit before ROC etc., more particularly the **balance sheets** of the company pertaining to 2000 and to the years thereafter.

138. A perusal of the balance sheets of the company for the years aforesaid makes it more than clear that that during the period commencing from 2000 and beyond, the company had been in deep financial crises and in order to ***get the*** company out of such difficulties, fund was required to be raised without any delay. Such revelations, in my opinion, evince that there was justification for the increase of the authorized capital of the company, more so when there are materials to show that the banker of the company was reluctant to infuse additional unless the limit of authorized capital is raised.

139. Here, once again, it is the case of contesting respondents that the authorized capital of the company was increased by the majority shareholders of the company on following the prescription of law and Rules framed there under. Further, whenever the paid up capital of the company was increased,

all the existing shareholders were requested to subscribe the additional shares on proportionate basis. In that connection, necessary communications were made to all the shareholders including the petitioner requesting them to subscribe to such shares. Once again, as before, the petitioner, it is alleged, completely ignored such request.

140. But then, the petitioner questioned the issuance of notice to the petitioner requiring him to purchase shares offered in 2001 and thereafter and even dared to ask **the contesting respondents** to produce the copy of notice purportedly sent to him for the purpose aforesaid. What is worse, according to the petitioner, despite he being a shareholder of the company, the company never thought it fit to send to him any of the statutory papers, such as, annual report including balance sheet, profit and loss statement, etc. for his information over a long period of time. Such episodes speak loud and clear about enormous oppression having been perpetuated on the petitioner.

141. The contesting respondents responded to such allegation stating that the most of the alleged transactions **took place in 2000-2001. But a fire broke out in the office of the BTCPL in 2001 which** reduced to ash very many files including the files containing the notices etc., sent to shareholders of the company. Said incident was reported to the concerned police station for doing needful in accordance with law. Therefore, the company was not in a position to produce before the Tribunal the copies of various notices sent to the petitioner from time to time till the date of incident aforesaid.

142. The petitioner ridiculed such an assertion contending that said claim is nothing but a clever ploy to cover up the serious irregularities in issuance of shares to the shareholders in 2001 and beyond. In that connection, it has been pointed out that the fire allegedly broke out in **the office of the BTCPL** but it reportedly damaged the **documents pertaining to KTCPL** including the notices reportedly sent to the petitioner asking him to subscribe the additional shares offered to him on pro rata basis. Such a story not only sounds pretty unconvincing but it also demonstrates serious infirmities in issuance of shares in 2001 and thereafter.

143. Countering such allegation, it was stated by the respondents that when fire broke out in 2001, the offices of the KTCPL and BTCPL were housed in the same premises since at that point of time; the process of separation of the companies aforesaid was still going on. Therefore, there was nothing strange in the destruction of some of the documents pertaining to KTCPL in the fire aforesaid. The fact that there was indisputable evidence to show that such incident was immediately communicated to the jurisdictional Police Station obviously demonstrates the bona fide of the claim of the respondents.

144. I have considered both the submissions having regard to the materials on record and found reason to accept the contention of the respondents. This is because of the fact that there is convincing evidence on record to show that during the period between 2000 and 2001, KTCPL and BTCPL were in the process of separation and during such time, they operated from the same premises. In that view of the matter, the claim of the respondents that fire which broke out in the office of BTCPL had also damaged very many files pertaining to KTCPL cannot be disbelieved. The immediate reporting of such incident to the jurisdictional police lends more and more credence to the above claim of the respondents.

145. Even if one assumes for the sake of argument that the enhancement of authorized share capital of the company as well as issuance of additional shares were done behind his back, still then , such alleged lapses on the part of the respondents cannot now be used as a stick to assail the stand taken by the respondents in the present proceeding, more so, when most of those alleged incident took place almost a decade before the petitioners coming to the court by the way of present proceeding .

146. One may note here that there is no dispute over the fact that the companies aforesaid are all going concerns and consequently, they are bound by law to dispatch all the statutory reports to the authorities concerned quite regularly. Therefore, one can reasonably presume that in such statutory reports, the company must have disclosed everything pertaining to the company including the shareholding patterns therein. It is also evident that from 2006 and onwards, all the companies are also required to upload their statutory reports regularly in the website of MCA.

147. So, any person, interested in knowing the status of a company including shareholding patterns therein, may approach the ROC and apply for the statutory reports of the company on payment of necessary fees etc. Similarly, after 2006, any person interested in the affairs of the company may visit the website of the MCA and obtain necessary information pertaining to the company. Unfortunately; there is absolutely nothing on record to show that over a very long period of time, to be precise, from 2000 to 2013, the petitioner had ever undertaken such an exercise.

148. Such failures on the part of the petitioner, now, establishes that the petitioner had never been genuinely interested in the affairs of the company which is why he remained so uninformed about some of the very important developments that took place in the company during the period 2001-2013, more particularly between 2000 and 2004. Such episodes, more importantly, also show that it is too late in the day for this Tribunal to overturn the acts of the respondents, even if it is found such acts are unlawful or illegal for one reason or other.

149. In view of our foregoing reasons and discussions, I am constrained to hold that the allegation that the petitioner was illegally reduced to hopeless minority by the respondents over the years cannot be accepted as truthful claim and resultantly same stands rejected.

Issue No (VII)
Whether the order dated 18.8.1998 in CP No. 17/ 1996 as well as the order dated 19.12.1998 in CA No. 31/98 and the order dated 18.11.1999 in CP No. 07/1998 are obtained by suppressing materials facts from the CLB and the Hon'ble High Court.

150. It is also the case of the petitioner that *the order dated 18.8.1998 in CP No.17/ 1996* as well as *the order dated 19.12.1998 in CA No. 31/98* and *the order dated 18.11.1999 in CP No. 07/1998* are all required to be recalled since all those orders were obtained by R2 group and R4 group by holding back some crucial and fundamental facts from the notice of the authorities aforesaid. According to the petitioner, any order obtained by a party from the Court /Tribunal practicing fraud upon it is non-est in law.

151. In that connection, it was alleged that R2 group and R4 group hatched a sinister design to divide the company so that each one of them could lead entirely one of those two entities. In order to materialize such an illegal design, they surreptitiously entered into a MOU dated 07. 03. 1998 and to give effect to such a sinister plan, the appellant in OJ (Company appeal) No. 42/1997, during the course of hearing of the appeals against the order dated 09.06.1997, made a prayer before the Hon'ble High Court seeking the division of KTCPL between the parties to such appeals. However, the Hon'ble High Court rejected such request while concurring with the finding of the CLB, Principal Bench, New Delhi.

152. But, withholding such vital facts from the CLB as well as from the High Court, R2 group and R4 group managed to secure from the CLB the order dated 18.08.1988 in CP No.17/1996 and so also secured the demerger order dated 19.12.1998 in CA No. 31/98 as well as the order dated 18.11.1999 in CP No. 07/1998 from the Hon'ble High Court. Such a state of affairs demonstrates the enormity of illegality which R2 group and R4 group had resorted to in securing the orders aforesaid since the order dated 18.08.1988 in CP No.17/1996 and the demerger order dated 19.12.1998 in CA No. 31/98 as well as the order dated 18.11.1999 in CP No. 07/1998 from the Hon'ble High Court are wholly incompatible with the arrangements made in MOU.

153. In order to infuse life and blood to such a claim, my attention has been drawn to the MOU aforesaid which put in place a plan to divide the company into two separate entities. In that connection, my attention has also been drawn to certain observations, made by the Hon'ble High Court in the appeals aforesaid to contend that the prayer seeking the division of KTCPL, as contemplated in the MOU, above, was flatly refused by the Hon'ble High Court. Now, one needs to know how far such allegation stands to reason.

154. But before one could address above query, it also needs to be known if the MOU in question is illegal and unlawful as alleged by the petitioner. In that connection, the petitioner has alleged that the MOU is wholly incompatible with the AOA of the company as well as the arrangements, made in the Companies Act and the Rules framed there under which, in turn, makes it an illegal document and this is why same was withheld from the notice of the aforesaid Judicial authorities before obtaining the orders from them. But then, such a contention is found to be the farthest from the truth.

155. My forgoing discussion now makes it more than clear that though by 2000, R2 group and R4 group together came to hold 79% of shareholdings in the company –yet --- over a very long period of time, the management of the company had always been at the hands of the R2 group and R4 group. During all those periods, the petitioner or R3 hardly extended their constructive support in running the affairs of the company. What is worse, their support was not found forthcoming even when the company was struggling for survival.

156. My discussion hereinbefore further reveals that the petitioner sporadically made some efforts to make his presence felt in the company. But even then, the petitioner did so, not being motivated by good design and intention or by his desire to see the company in well off condition. Rather he did so, being enthused by his very narrow and personnel agenda. My discussion herein before make such position abundantly clear and same needs no further reiteration here.

157. In the aforesaid scenario, when one considers the arrangements, made under the MOU, he would not notice any serious infirmity in those two groups of shareholders entering into MOU to divide the company on certain terms and conditions provided such arrangements do not run counter to the principle of corporate democracy. Such revelations, therefore, appear to be quite in the line of stand taken by the contesting respondents in their reply (paragraph 26).

158. Therefore, I find no valid reason to condemn the MOU as prayed for by the petitioner. In that view of the matter, perhaps, CLB or for that matter the Hon'ble High Court would not have refused to pass the order/ judgment aforesaid even if such MOU was brought to their notice.

159. So situated, let me consider the claim of the petitioner that if the Hon'ble High Court while dismissing the appeals against the order dated 09.06.1997 had ever refused a prayer made by the R2 group here seeking division of the company into two separate units. In order to ascertain such an allegation, I find it necessary to peruse the judgment of the Hon'ble High Court, the relevant part thereof in particular, which is being referred to by the petitioner to make out his case on this score. For ready reference, the relevant part of the judgment is reproduced below: -

> *"Para- 28. After conclusion of the argument and before delivery of the judgment an application was submitted on behalf of the appellants in Company Appeal No.42 of 97. In the said application certain facts were brought in respect of certain orders passed in Title Suit No. 2863 of 96 in the Civil Court at Calcutta instituted by Shri I.C. Pincha (Jain) Vs Kettela Tea Company Pvt. Ltd. It was stated, inter alia that on the fact situation, the respondents are to be directed to sell out their shareholdings to the appellants,* ***in the event the court was reluctant to pass such orders the asset of the company being a Tea garden the court may direct for division of the company in two lots between the warring groups".***

160. But then, a bare perusal of the relevant part of the judgment reveals that the appellant in OJ (Company appeal) No.42/97 (R2 herein) submitted an application containing two proposals ----one of such proposal being a primary proposal while the other was alternative one--- the alternative prayer being the proposal seeking the division of KTCPL between him and respondent therein (R4 herein). Said application was filed well after the arguments from both the sides was over but before the pronouncement of judgment in such appeals. There is absolutely nothing on record to show that such an application was filed by the R2 with the approval of respondent in such appeal.

161. Since the application aforesaid was filed well after the arguments from both the sides was over and since the application was filed without the concurrence of the other party therein, there was no scope whatsoever for the Hon'ble High Court to decide such a fresh request from the side of the appellant in OJ (Company appeal) No.42/97 (R2 herein) on merit which is why the Hon'ble High Court did not pass any effective order except mentioning the fact that such an application was received from the appellant in OJ (Company appeal) No.42/97.

162. In other words, the Hon'ble High Court never approved or disapproved such a prayer made by the appellant in OJ (Company appeal) No.42/97 (R2 group herein). In view of above disclosures, I have no difficulty in concluding the contention that in the aforesaid appeals, Hon'ble High Court had refused to make division of KTCPL is nothing but a myth only.

163. One more factor again rallies behind the above conclusion of mine. The discussion herein above shows that the petitioner was well aware of the order under which KTCPL stood divided into two entities and being dissatisfied, he even preferred an appeal against such order of demerger. However, he did not peruse the appeal to its logical conclusion. Rather he abandoned it midway. Such revelations, *in the facts and circumstances of the present case,* hardly advance the claim of the petitioner that those orders, the order dated 19.12.1998 in OJ (Company Application) No. 31/1998 and the order dated 18.11.1999 in Company Petition No. 07/1999, were all obtained by R2 and R4 by suppressing some materials from the notice of the Court/ CLB.

Issue No (VIII)
Whether under the order dated 18.08.1998, the shareholdings of the original shareholders of the company were to be maintained in the same level in which such shareholdings were as on 18.08.1998 for all times to come

164. The petitioner vehemently contends that transfer of shares and issuance of shares in 2000 etc, and, thereafter were done in complete violation of the command of the court rendered in order dated 18.8.1998 in CP No. 17/1996. In that regard, it has been pointed out that on 18.8.98, the shareholding of the R2 group and R4 group in the company was 29% each whereas on the same date, the shareholding of the petitioner and R3 of the company was 21% each.

165. Therefore, under the order dated 18.08.1998 in CP No.17/1996, the company needs to maintain the shareholdings of original shareholders of the company in such percentages as it was on 18.08.1998 for all times to come. However, such direction in the order dated 18.8.98 was honored in complete breach instead. The contesting respondents admitted that the order dated 18.8.1998 required the parties thereto to maintain their shareholding percentages in the company at such level at which it was on 18.8.1998 for all times to come (Emphasis supplied).

166. But, according to R2 group and R4 group, the direction rendered therein, was made applicable only to the parties thereto, they being the R2 group and R4 group. A bare perusal of the order dated 09.06.1997 in CP No.17/1996 together with order dated 18.08.1998 (which finally terminated the CP No.17/1996) would make such position quite clear. Therefore, the direction in the order dated 18.08.1998 in CP No.17/1996, has no application whatsoever to the petitioner or the R3, they, not being parties to CP No. 17/1996. Being so, it is not correct to say that under the order dated 18.08.1998, all the four shareholders of the company are to maintain their shareholdings in the company at the level as it was on 18.08.1998 for all times to come.

167. In support of such contention, it was argued that the only parties to CP No. 17/1996 were the R2 group on one side and R4 group on the other side and same become apparent from the fact that in CP No. 17/1996, R4 group alone alleged that R2 group created an artificial majority in their favour in the shareholding as well as Board of Directors which resulted in mismanagement besides causing oppression to the minority shareholders. What is important to note is that such allegation was only against the R2 group *and not against the other shareholders of the company*.

168. In CP No. 17/1996, the respondents (R2 group herein) repudiated such allegation stating that they did not commit any illegality in running the affairs of the company. Rather, they (R2 group) conducted the affairs of the company strictly in accordance with the law as well as the arrangement made in the AOA and MOA. Therefore----- the R2 group, as respondent in CP No. 17/1996, claimed that the charges, leveled against them were without any substance.

169. Such claims and counter claims------according to the contesting respondents herein-------- firmly demonstrate that only parties to CP No. 17/1996 were the R2 group and R4 group and in that proceeding, both the petitioner herein and the R3 were quite strangers. In other words, in CP No.17/1996, the contest was between R2 group and R4 group and none else. Does such a contention hold any water? In order to address such a query, I have considered the rival submissions having regard to the materials on record.

170. Before I proceed further, I find it necessary to have a look at the relevant part of the order dated 18.8.1998 on which the petitioner has placed enormous reliance to make out his case on this score. For **ready reference, the relevant part of the order is reproduced below: -**

> *"That the petitioners and respondents will continue to hold equal number of shares for all time to come, in the respondent company and will maintain that percentages in the paid capital of the respondent company at party with each other and any other acquisition of shares will also be made by the Petitioners and respondents in such a manner that their respective shareholdings in the respondent company shall remain equal."*

171. On a careful perusal of order dated 18.8.1998, it is found that in the aforesaid proceeding, the CLB had directed the parties thereto to maintain their shareholdings in the company in the level in which it was on 18.08.1998 for all times to come (Emphasis supplied).But then, a dispassionate reading of the order dated 18.8.1998 together with the order dated 09.06.1997 in CP No.17/1996 as well as the judgment 18.03.1998 in OJ (Company Appeal) Nos. 42/97.44/97 45/97 unmistakably shows that the dispute in the proceeding aforesaid was essentially between the R2 group and R4 group where both the petitioner and R3 were all strangers.

172. These apart, in CP No. 17/1996, the CLB (vide paragraph No.3) and in OJ (Company Appeal) No. 42/1997 and OJ (Company Appeal) No. 44/1997, the Hon'ble Gauhati High Court (vide paragraph No.9) clearly held that the petitioner herein and R3 showed no interest whatsoever in the affairs of the company. Such remarks, made by Tribunal and Court, over some important matters pertaining to the conduct of the petitioner and the R3 firmly serve to show that the R2 group and R4 group ----and not the petitioner and the R3 --------- were the parties to CP No.17/1996.

173. I have also found that learned CLB noticed that the petitioner in C.P.No.17/1996 (R2 group herein) had made some scathing remarks on the conduct of petitioner herein vis-à-vis the affairs of the company. Though such remarks showed the present petitioner in very poor light, yet, the CLB refused to make any comment on such remarks on the petitioner considering the fact that *he was not a party in such a proceeding*. Such an observation leaves no scope whatsoever to doubt the claim of the respondents on this score.

174. The above conclusion of mine would find support if we view the dispute in the proceeding in hand from a different angle. There is indisputable evidence to show that the R-3 group offered to sell its shareholding in the company to the other three shareholders of the company. While the petitioner chose not to purchase such shareholding in the company, R-2 group and R-4 group decided to purchase such shareholding in equal number for which their shareholdings in the company rose to 39.5% each whereas the shareholding of the petitioner remained at 21%.

175. If I am to accept the contention of the petitioner that the shareholding percentages of all the four original shareholders in the company are to remain in the same level as it was on 18.08.1998 for all times to come, then, R-3 group could not have sold their shares in the company. But the R-3 group sold its share in the company to the R-2 and R-4 group way back in 2000 raising thereby their shareholdings in the company to 39.5% each. Such revelations very firmly demonstrate the emptiness of the claim of petitioner made on this count, more so, when petitioner never questioned such sale which took place way back in 2000.

176. In the teeth of such revelations, this Tribunal is duty bound to conclude that the direction in CP No 17/ 1996 were applicable to R2 and R4 group alone which in turn, requires the R2 group & R4 group to maintain their shareholdings in the company at such level as it was on 18.08.1998 for all times to come. The fact that only the R2 and R4 were quarrelling over their shareholdings in the company in CP No. 17/1996 as well as in the appeals before the High Court against the order dated 09.06.1997 in C.P. No.17/1996, makes such a conclusion inevitable.

177. It may be noticed here that a company needs to increase or decrees its paid-up share capital depending upon the situations which it has to negotiate during the course of its life. Similarly, the number of the shareholders in a company cannot remain static for all times to come for a variety of reasons. The Companies Act has also recognized such eventualities. However, if the proposition, advanced by the petitioner is to be accepted, then, it would be impossible for the company concerned to increase/decrease the share capital of the company or to increase or decrease the number of shareholders in the company which is, however, completely mismatched with the arrangements of things as has been made in the Companies Act.

178. Once it is found that the petitioner or for that matter the R3 are not parties in CP No. 17/96, there cannot be any escape from the conclusion that the direction rendered therein qua maintenance of shareholding patterns of the company as on 18.8.1998 has no application to the petitioner or for that matter to the respondent No.3. Such directions are applicable only to the R2 and R4 herein.

178A One may, however, question if complete exchanges of their shareholdings by R2 group and R4 group in KTCLP and BTCPL offends the mandate in the order dated 09.06,1997 in CP No.17/1996. My answer to query is a clear “NO.” In my considered opinion, R2 group and R4 group are to obey such dictum in the order dated 09.06.1997 so long as both of them remain as shareholders in KTCPL. But once each of them made a complete exit from one of those companies, as has been done in the case in hand, such mandate in the order dated 09.06.1997, cannot come in way of exchanges of such shareholdings, more so, when the bifurcation of the KCTLP has been done under the supervision of Hon’ble High Court and when such bifurcation order attains finality long ago.

Issue No (IX)

If so, whether the order dated 19.12.1998 in Co.App.No.31/1998 and order dated 18.11.1999 in C.P.No.07/1998 are to be set aside in view of violation of the mandate in the order dated 18.08.1998.

179. In deciding the issue No IV, I have found that the order dated 19.12.1998 in Co.App.No.31/1998 and order dated 18.11.1999 in C.P.No.07/1998 were rendered by Hon'ble High Court in accordance with the prescription of law. In deciding the issue No VIII I have also found that the order dated 18.08.1998 in CP No No.17/1996 binds only the parties to such a proceeding and has no application either to petitioner or R3 herein. Being so, those orders cannot be challenged, now, and that too, before a Tribunal subordinate to Hon'ble High Court. This issue is accordingly answered in negative and against the petitioner.

Issue No (XI)

Whether the alleged incident not being in the nature of continuing ones but being in the nature of concluded contract cannot be made the basis a proceeding under section 397/398 of the Act of 1956.

180. The counsel for the respondents also claim that under the scheme of old Act, a concluded contract or contracts cannot be made the foundation of a proceeding under section 397/398 of the Act 1956. This is because of the fact that section 397 of the Act 1956 clearly states that the Tribunal may, in order to bring to an end of the matters, complained of, make such orders as it thinks fit. In other words, the act(s) complained of must be in the nature of continuous ones. In support of such claim, the counsel for the respondents have relied in the decision of Guajrat High Court in Mohanlal Ganapatram and another V Shri Sayaji Jubilee Cotton and Jute Mills ---reported in AIR1965 Gujarat 96

181. A careful perusal of the various claims in the company petition together with averments made in the reply submitted by the respondents requires me to entertain an opinion that the most of the transactions, alleged to be illegal, are also concluded transactions which occurred in distant past. In that connection, the alleged increase of shareholdings of the contesting respondents, first to 29% in 1981, then to 39.5 %to 79% in 2000, then to 96.51 % in 2006-07, then to 97.05 % in 2010-11 and lastly to 98.22% in 2011 -2012 as well as the sale of the factory of the garden in 2007 etc. may be refereed to. In the face of such revelations, in my opinion, the present preceding is required to be rejected on this count as well.

Issue No (III)

Whether the present proceeding is hit by the principles of delay, laches and acquiesces etc.

182. The respondents quite arduously contend that almost all the alleged illegal incidents occurred during the period between 1981 and 2004 although some of those incidents occurred during the period between 2005 and 2012 as well. According to the respondents, the petitioner came to know about all those alleged illegal activities long ago. However, instead of taking recourse to law soon after the commission of those alleged illegalities, he chose to sleep over those very vital matters having enormous adverse effects on his life as well as on the lives of persons, dependent on him, and decades thereafter,

he decided to came to the Court by the way of the present proceeding seeking nullifying the acts which had taken place in distant past.

183. It is a settled law---- argues by the counsel for the respondents------ that whenever a person allowed someone to do something to his disadvantage, and then, does not take any step to rectify such prejudicial acts/ illegalities in time in accordance with the prescription of law but chose to sleep over such matter, then after the elapse of certain period, it would be presumed that such a person had acquiesced to such prejudicial acts/ illegalities and therefore, he would be estopped from questioning such illegalities later ---since by the time--- he chooses to initiate legal action against the alleged illegalities, such illegalities may settle firmly making it impossible for the court to unsettle such settled matters which were otherwise illegal or unlawful. That is exactly what which had happened to the petitioner herein.

184. In Hungerford Investment Trust Ltd Vs. Turner Morrison & Company Ltd, reported in ILR (1972) 1 Cal 286, it was held that delay will not itself bar the remedy in a proceeding under Sec. 397/398 of the Act of 1956 but if the delay is evidence of acquiescence or condonation of wrongful Act, the court may not exercise its discretion in granting relief. Similar view was rendered in N. R. Harikumar Vs WW Apparels (India) Pvt. Ltd (2011) 103 CLA 80 (CLB).

185. According to respondents if one assumes for the sake of argument that the petitioner were not aware of such alleged incidents that occurred over a very long period of time stretching from 1981 to 2012, more particularly the incidents which took place in between 2000 and 2012, then such a story would be one more proof of huge lack of interest on the part of the petitioner was towards the company or to its affairs which hardly goes hand in hand with his claim that the petitioner had been doing his best to keep himself in touch with the company or with its affairs. Rather such a state of affairs would fortify more and more the claim of the respondents that the petitioner had always been more interested in milching the company than in siding by his brother whenever the company was in crisis.

186. Disputing such claims, the petitioner arduously contends that in so far the incidents which took place between 1981 and 2000 are concerned, he had been contesting such alleged illegal activities on the part of the respondents and even initiated series of actions including proceedings before various judicial authorities. However, most of those proceedings got scuttled either due to prohibitory order issued by the court as in case of Suit No. 189/1984 or were withdrawn by petitioner himself since he was told that his interest in the company has been protected under the order dated 18.08.1998 rendered in C.P. No.17/1996. Therefore, under no circumstances, it can be said that he had acquiesced to such illegalities, committed by the respondents during the period from 1981 to 2000.

187. I have discussed in great detail above controversies herein before and therefore, same needs no further discussion here. Suffice it to say, the claim of the petitioner---- *that he had always been doing everything possible from his side to set right the various illegalities, cited by him in his petition, <u>which took place in between 1981 and 2000</u> but unfortunately, he failed to derive any fruit from such efforts for certain eventualities over which he had no control whatsoever* ----is already held to be far from the truth and as such, aforesaid plea completely fails to take the case of the petitioner to its destination.

188. In regard to the incidents that took place in between 2000 and 2012, the petitioner seems to have taken shelter under the plea that **since** the respondents failed to furnish him even with a copy of any of the statutory reports (which a company is duty bound to furnish to all statutory authorities as well as to its shareholders regularly) pertaining to the periods aforesaid, he was not at all aware of all those illegalities that took place in between 2000 and 2012. However, such a plea could hardly save the sinking boat of the petitioner from drowning, more so, **when** the period, complained of, is as huge as 12years **and when** the alleged illegalities are found to not continuing in nature.

189. This is because of the fact that even if it is assumed for the sake of argument for a moment that the respondents never furnish the petitioner with statutory papers pertaining to the period aforesaid or, yet then, such a situation does not help at all the petitioner in propping up his case. Quite contrary to it, such revelations go a long way to show that the petitioner never took any interest in the company or its affairs –for ----had he been little vigilant, he could have easily collected all those information without any loss of time from various sources, such as, office of ROC/ website of the MCA since the respondents have always claimed that all those statutory papers were furnished to the all concerned including the petitioner regularly.

190. In view of the above disclosures, it needs to be concluded that the petitioner never protested some alleged illegal activities on the part of the respondents which occurred during the period between 2000 and 2012, more particularly, during the period between 2000 and 2004, in time. Rather he waits for a period more than a decade to pass by before initiating the proceeding in hand. Such revelations are also testimonies to the fact that the petitioner did acquiesce the alleged illegalities which occurred during the period aforesaid and as such, the principle of delay, laches and acquiesces etc. would certainly come in the way of present proceeding even if, the Law of Limitation is found inapplicable to a proceeding u/s 397/398 of the Act of 1956.

Issue No II
Whether petition is liable to be dismissed for want of necessary share qualification of the petitioner

191. My forgoing discussion has now made it more than clear that though the shareholding of the petitioner in the company during the period between 1969 and 1981 was 25%, however, over the years, **it was reduced to 7.3**% and such reduction took place long before filing of the present proceeding. Being so, there cannot be any doubt that on the date on which the present petition was filed, the petitioner did not have the requisite share qualification as specified in Section 399 of the Act, 1956. Therefore, on this count alone the present proceeding is liable to be dismissed.

Issue No (X)
Whether the petitioner is guilty of suppressing the material facts on record having vital bearing on the outcome of the proceeding in hand.

192. I have found that the petitioner claims that he was ignorant about the bifurcation of the company. However, my forgoing discussion has demonstrated that he was aware of such

division/bifurcation because he had preferred an appeal against the order of demerger rendered by the Hon'ble High Court which he had also admitted in his letter dated 03.07.2000. But such an important fact was withheld from the notice of this Tribunal.

193. There is again indisputable evidence on record that during the period 1978 to 1984, the petitioner was not even in the State of Assam as he was in the State of Tripura where he acquired two tea estates, namely, Brahmakund Tea Estate and Kalyanpur Tea Estate. However, such enterprises had gone haywire for which the petitioner had to leave the State of Tripura in 1984. But once again, this important fact was also not brought to the notice of this Court.

194. I have found that the aforesaid facts have huge bearing upon the outcome of the present proceeding and, therefore, the petitioner is expected to disclose all those important facts in his petition. But instead, he tried to hide all such important facts from the notice of this Tribunal, which, in turn, require me to hold that the petitioner has suppressed very many important facts. Since the petitioner fails to do equity in seeking equitable relief, on this count also the present proceeding is liable to be dismissed.

Discussion on the allegations, described in Para 61 of the petition u/s 397/398 of the Act of 1956.

195. In paragraph 61 of the petition, the petitioner hurled several serious allegations at the respondents in running the affairs of the company. One of such allegations relates to issuance of shares in premium when the company had been incurring loss over a long period of time as well as the purchase of the shares subsequently at a much lower price. In regard to such allegation, it has been stated that such practices are quite common in the business world dealing with equity shares. Therefore, one cannot jump into a conclusion that there was illegality only because of the fact that shares were sold at premium when the company was running at loss as well as repurchase of such shares at a lower price subsequently.

196. In so far the allegation that the company had sold the factory without there being any necessity to do so is concerned, the R2 group had stated that the company has been in deep financial distress for a pretty long period of time which is why the company was required to manage its funds from every source available and a non-performing assets , same being the factory of the company, was first identified and was sought to be disposed of at a very competitive price *vide paragraph 30 of the reply by the respondents*.

197. In regard to the allegation that the said assets were sold at a throw away price, it was contended that such property was sold at a very reasonable price. In that context, it has been stated that during 2008, the banker of the company had assessed the value of the entire Tea Estate with all its assets including the factory at Rs1.59 crores whereas the management of the company could manage to sell the factory alone for Rs 30 lacs which unmistakably demonstrates that the factory was sold at a very competitive price.

198. I have considered such submissions and found that there were enough materials on record to show that the company had been *in red* over a long period of time and as such, it needed funds from time to time to help it to exist as a going concern. In so far the allegation that the factory was sold at a

throw away price, I have found from the materials on record that the factory was sold at a reasonable price. Therefore, it is not correct to say that the factory was sold without there being any necessity to do so and that too at a throw away price.

199. In so far as the allegations of selling shares at premium and repurchase of such shares at a much lower price is concerned, on reading the materials on record, particularly paragraph 61 of the petition, very carefully, it is found that such allegations are based more on conjectures and surmises than on facts and therefore, I have found reason to accept the explanations rendered on this count from the side of the respondents.

Issue No (I)
Whether present proceeding discloses any cause of action

200. I have already found that the petitioner could not substantiate any of the allegations leveled against the respondents. Our foregoing discussions make such position more than clear and same needs no further restatements here. Therefore, I have found no other way out but to hold that this proceeding lacks cause of action. That being the position none of the decisions, relied on by the petitioner including the decision in *Needle Industries* (supra) *and Shanti Prasad Jain (supra)* are found applicable to the case.

201. Resultantly, the present proceeding is dismissed but without any order as to costs of the proceeding.

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

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

Deka/-