

23  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

TP No. 62/397-398/NCLT/AHM/2016  
TP 62-A/2016 to TP 62-E/2016 with IA 4/2016 (New)  
CP No. 17/397-398/CLB/MB/2014  
CA No. 67/2015, 77/2015, 195/2015, 1/2016, 54/2016 (Old)

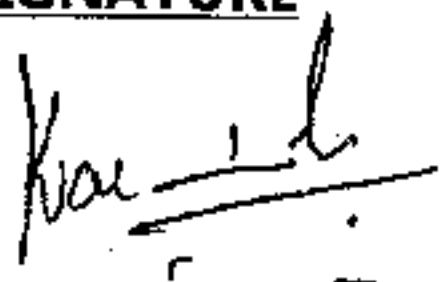

Coram:

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.09.2017**

Name of the Company: Mukund Subhash Karwa & Ors.  
V/s.  
Krishidhan Seeds Pvt. Ltd.

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

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Kunal P Vaishnav	Advocate	Respondent Nos. 1 to 5.	
2.	HARMISH K. SHAH NANDISH CHUDGAR	Advocate	Petitioner	

**ORDER**

Learned Advocate Mr. Harmish Shah with Learned Advocate Mr. Nandish Chudgar present for Petitioners. Learned Advocate Kunal Vaishnav present for Respondents no. 1 to 5.

Order pronounced in open Court. Vide separate Sheets.

  
12.9.17  
BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL

Dated this the 12th day of September, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AMEDABAD BENCH  
AHMEDABAD**

**IA 4/2016, TP 62-A/2016 to TP 62-E/2016 with  
TP No. 62/397-398/NCLT/AHM/2016 (New)  
CA No. 67/2015, 77/2015, 195/2015, 1/2016, 54/2016  
CP No. 17/397-398/CLB/MB/2014 (Old)**

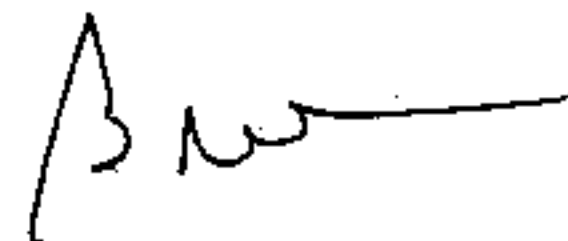
**In the matter of:**

1. Mukund Subhash Karwa
2. Anup Subhash Karwa
3. Ashish Subhash Karwa
4. Shweta Mukund Karwa
5. Kaushalyadevi Subhash Karwa
6. Arati Ashish Karwa
7. Shridevi Anup Karwa
8. Subhash P. Karwa HUF  
Through its Karta  
Ashish Subhash Karwa
9. Ashish Subhash Karwa HUF  
Through its Karta  
Ashish Subhash Karwa

All residing at R.P. Road  
Opp. Ram Mandir  
Jalna 431 203

Petitioners

**VERSUS**



1. Krishidhan Seeds Private Limited  
Company incorporated under the  
Provisions of the Companies Act, 1956  
Having its registered office at  
302 Royal House, 11/3 Usha Ganj  
INDORE - 452 001 (Madhya Pradesh)
2. Jaynarayan Pusaram Karwa  
Jay Building, Karwa Nagar  
Jalna 431 203
3. Sushil Jaynarayan Karwa  
B-7, Kapil Malhar Bungalow,  
Baner Road  
Baner, Pune 411 045
4. Vishnu Jaynarayan Karwa  
Jay Building, Karwa Nagar  
Jalna 431 203
5. Manish Jaynarayan Karwa  
9-B, Janki Nagar Annex,  
Indore 452 001
6. Madhav Ambadasji Dhande  
A-3, Kapil Malhar Bungalow, Baner Road  
Baner, Pune 411 045
7. Omprakash Attal  
Flat No. 903  
Building No. I  
Laburnum Park  
Magarpatta City Hadapsar  
Pune 411 013
8. Girish S. Sharma  
H. No. 1-7-23  
Opp. Radhika Cloth Stores  
Dr. R.P. Road  
Jalna 431 203
9. Sanjay Khare  
Flat No. 101  
Building No. O  
Laburnum Park  
Magarpatta City Hadapsar  
Pune 411 013

10. Hasmukh Raithatha  
Behind Hotel Bagadia International  
Nava Mondha Road, Jalna  
Jalna 431 203
11. Mukund Katwe  
Plot No. E-39  
N-4, CIDCO  
Aurangabad 431 003
12. Summit Partners India Private Investments  
Suite 25, 3 North Avenue  
Maker Maxity  
Bandra Kurla Complex  
Bandra (East)  
Mumbai 400 051
13. Krifin Pvt. Ltd.  
C/o. Mr. Omprakash Attal  
Flat No. 903  
Building No. I  
Laburnum Park  
Magarpatta City Hadapsar  
Pune 411 013
14. Ernst & Young  
Ernst & Young India P. Ltd.  
C-401 Panchsil Tech Park  
IBM Complex  
Next to Don Bosco School  
Yerwada  
Pune 411 006

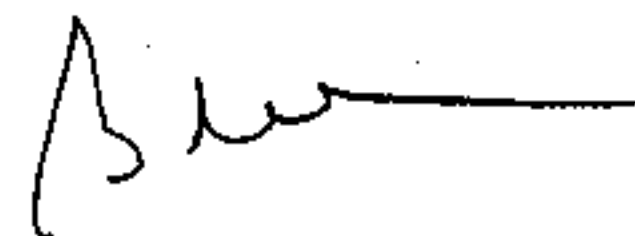
Respondents

**Order delivered on 12<sup>th</sup> September, 2017**

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

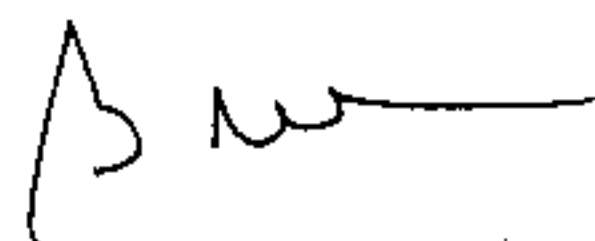
**Appearance:**

- For the petitioners : Learned Advocate Mr. Nandish Chudgar  
with Learned Advocate Harmish Shah
- For the respondents : Learned FCA Mr. Rajkumar Adukia with  
Learned Advocate Mr. Kunal Vaishnav



## **ORDER**

1. Facts lead to forming of Krishidhan Seeds Private Limited/the first respondent company, hereinafter referred to as "KSPL" and other companies are as follows: -
2. One Subhash Karwa who is the father of petitioners No. 1, 2 & 3 and respondent No. 2 being equal partners formed and carried on business in the firm name and style of Rajendra Seeds carrying on trading in seeds and pesticides. In or about 1992 a partnership firm in the name of Krishidhan Seeds was registered wherein the brand "Krishidhan" was developed. Late Mr. Subhash Karwa established research and development division giving a strong impetus to Krishidhan brand.
3. Mr. Subhash Karwa passed away in an accident on 07.12.1995. In January, 1996 petitioner No. 3 who is son of late Mr. Subhash Karwa was inducted as partner in Rajendra Seeds. On 05.02.1996, partnership firm was dissolved and Krishidhan Seeds Limited was floated by petitioner No. 3, Petitioner No. 5 and respondents No. 2 to 5. Petitioner No. 3 and respondents No. 2 and 3 together and in consensus with each other were handling, managing and carrying on the affairs of Krishidhan Seeds Ltd.
4. Respondents No. 2 to 5 represent J.P. Karwa group, hereinafter referred to as 'JPK" group. Petitioners 1 to 7 represent S.P. Karwa group, hereinafter referred to as 'SPK" group. In Krishidhan Seeds



Ltd. JPK group is having 60% share whereas SPK group is having 40% share.

5. It was mutually decided by both the groups i.e. JPK group and SPK group to float five other companies as 100% subsidiary of KSPL. They are ...

(1) Rajendra Agri Products P. Ltd. hereinafter referred to as "RAPPL"

(2) SFPL Crop Life Sciences Pvt. Ltd. hereinafter referred to as "SFPL"

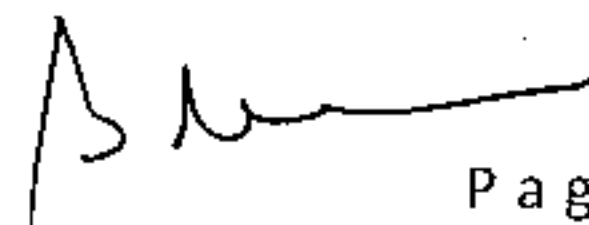
(3) Krishidhan Vegetable Seeds India Pvt. Ltd. hereinafter referred to as "KVS IPL"

(4) Krishidhan Research Foundation Pvt. Ltd. hereinafter referred to as "KRFPL"

(5) Krishidhan Seeds Europe, hereinafter referred to as "KSE"

6. Apart from the aforesaid five companies, one related company by name Mariegold Infratech Private Limited was also incorporated for the infrastructure development required.

7. In January, 2010, considering business prospects, it was decided to diversify the business by infusing funds in Krishidhan Seeds Limited. In March 2010, a private equity firm namely Summit Partners (respondent No. 12) decided to invest Rs. 132.24 crores



by acquiring 24.99% equity in KSPL. In that connection, shares subscription agreement dated 18.03.2010 was entered into by respondent No. 12 as per the terms and conditions mentioned in the said agreement. To facilitate said investment, vide special resolution dated 22.11.2010, was passed at the Extra Ordinary General Meeting of Krishidhan Seeds Limited. it was resolved to change the status of Krishidhan Seeds Ltd. which is a public limited company into a private limited company under Section 31 (1) of the Act and name of the company Krishidhan Seeds Limited was changed to Krishidhan Seeds Private Limited (KSPL) i.e. respondent No. 1.

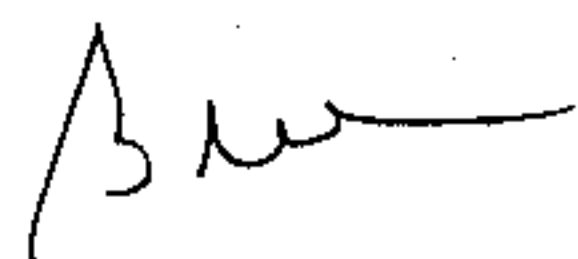
8. The events that lead to the filing of this petition by SPK group could be summarised in three parts for the sake of brevity, convenience and better understanding.

#### **Part – I**

Events that took place that lead to the family agreement dated 13.02.2013

#### **Part II**

Events that took place after family arrangement (MOU dated 13.02.2013) till the date of filing this petition i.e. 18.02.2014.



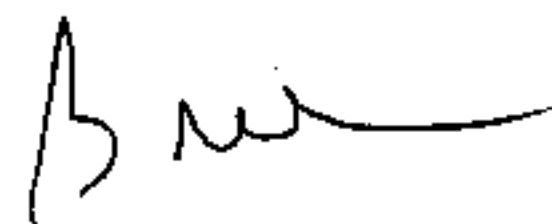
### **Part III**

Events that took place after filing of this petition.

9. In the aforesaid three heads, there are certain admitted facts and there are certain disputed facts. The case of SP Karwa group and the case of JP Karwa group in the context of aforesaid three phases, need to be narrated in brief to understand the of the case, in nutshell.

### **Part - I**

10. Admittedly the family agreement sometimes called as MOU dated 13.02.2013 was entered into among petitioners No. 1 to 3, petitioner No. 5, respondent No. 2 and Respondent No. 5. Respondent No. 2 to respondent No. 5 represent JPK group along with their spouses, HUF and children whereas petitioner No. 1, 2, 3 and petitioner No. 5 represent SPK group along with their spouses, HUF and children. In the said MOU cut off date is taken as 30.11.2012. In the MOU it is stated that on 24.11.2012 an understanding was reached between the parties and they intend to divide all the properties and liabilities including HUFs, flagship company Krishidhan Seeds Private Limited. and business interest held in various companies, firms etc.
11. Plea of the petitioners on the MOU dated 13.02.2013 is that it has not been acted upon and the validity and enforceability of the MOU

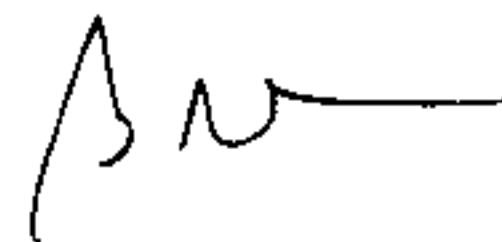




is pending before District Court, Pune. Another plea of the petitioners on the MOU is that it is only transition agreement which has not been given final effect pursuant to the MOU dated 13.2.2013. Another plea of the petitions on the MOU is that in view of the facts, the disputes were referred to Arbitration Tribunal and arbitration award has been passed. It is also stated by the petitioners that Company Law Board vide order dated 03.03.2014 rejected the contention that MOU dated 13.02.2013 till it is acted upon, rights of the petitioners is available under Section 397 and 398 of the Companies Act being shareholders/members of the company have not been taken away.

12. Plea of the respondents on the MOU dated 13.02.2013 is as follows: -

As per the MOU respondents 2 to 5 manage entire affairs of the first respondent company Krishidhan Seeds Private Limited., Mariegold Infratech Private Limited., Rajendra Agri Products Private Limited and Krishidhan Research Foundation Pvt. Ltd. whereas petitioners No. 1 to 3 i.e. SPK group were to manage two companies viz. SFPL Crop Life Science P. Ltd. and Krishidhan Vegetable Seeds India Private Limited. In view of the MOU, petitioners have no right to question in the management of the first respondent company by JPK group.



13. What necessitated MOU according to the petitioners are the following acts of JPK group which are alleged as acts of oppression and mismanagement.

(1) Siphoning through Krifin (respondent No. 13)

(a) Immediately on infusion of private equity funds, respondent No. 3 in collusion with respondent No. 2 and respondent No. 7 to 11 started systematically diverting funds invested by respondent No. 12 for the purpose of expansion of business.

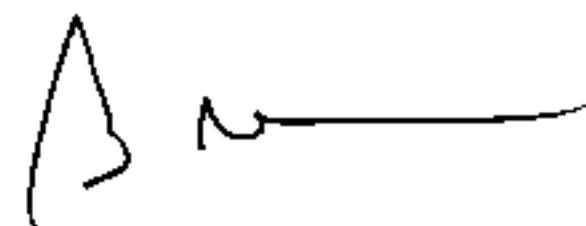
(2) Funds invested by respondent 2 for expansion of business were mis-utilised by respondent No. 3 to purchase various properties and furnish them in extravagant manner.

(3) Siphoning of funds through Mariegold.

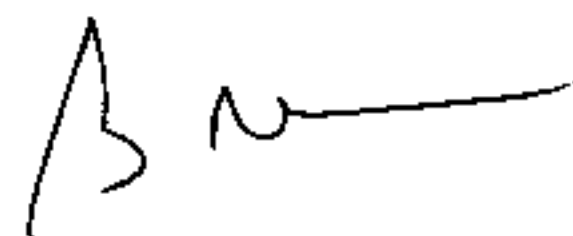
(a) Respondent No. 3 transferred funds to Mariegold from KSPL without resolutions of KSPL and without showing in the balance sheet of KSPL.

(b) Properties were brought in the name of Mariegold from the funds of KSPL.

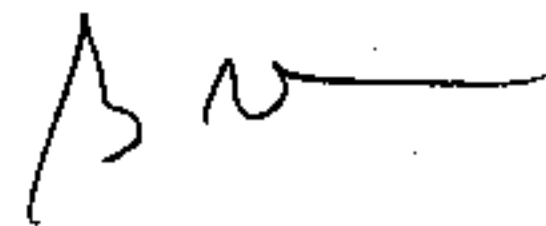
(c) Leasing out the properties purchased by Mariegold to KSPL at higher rates than the prevailing market rates.



- (d) Statutory non-compliance by respondent No. 3 i.e. failure to conduct Board Meetings.
- (e) Forgery committed and confessed by respondent No. 3
- (f) Exit of Summit Partners (Respondent No. 12) from the first respondent company before lock-in period of 36 months prematurely on 02.08.2012 i.e. almost eight months prior to agreed exit plan.
- (g) Respondent No. 3 by his unilateral decision purchased property at Magarpatta, Pune.
- (h) Respondent No. 3 outrightly refused to provide share certificate to petitioners No. 1 to 3.
- (i) Inducing petitioner No. 3 and others to execute Power of Attorney in favour of Respondent No. 3
- (j) Misuse of power of attorney by respondent No. 3
- (k) Respondent No. 3 took various loans from several banks to the tune of Rs. 170.00 crores to make tranche payments to respondent No. 12.
- (l) As per power of attorney, respondent No. 3 is obliged to notify all the communications and notices in respect of tranche payments made to respondent No. 12, but petitioner No. 3 kept the petitioners in dark.




- (m) Respondent No. 3 encumbered all the assets of the first respondent company. Despite raising Rs. 170.00 crores respondent No. 3 has not been able to repay Rs. 165.00 crores to respondent No. 12. Still an amount of Rs. 35.00 crores is due to respondent No. 12.
- (n) Respondent No. 3 started disposing of assets of KSPL at throw away price which are far below the market price.
- (o) Petitioner No. 3 vide email dated 09.01.2013 requested respondent No. 3 to share the details of the sale proceeds, the multiple loans availed and the buyback of the shares but respondent No. 3 did not respond to the email dated 09.01.2013.
14. According to respondent No. 3 the family arrangement/MOU dated 13.02.2013 was entered into resolve several disputes among both the groups and to divide the assets and liabilities of the family including KSPL and its subsidiaries and to divide the business assets and liabilities.
15. Main contention of respondents No. 2 to 5 is that main reason for Summit Partners to exit from KSPL is that the petitioner No. 1 floated a company namely Krishidhan Seeds Europe in Holland along with his friend Mr. Jan Tamboer after infusing of funds (Respondent No. 12) in March 2010. In the said company which



was solely managed by petitioner No. 1, KSPL infused Rs. 5.77 crores. Mr. Jan Tamboer who was friend of petitioner No. 1 was paid salary of Rs. 1.00 crore over and above the extravagant expenses. Ultimately the said Krishidhan Seeds Europe due to which there is a huge loss to KSPL to the tune of Rs. 5.77 crores.

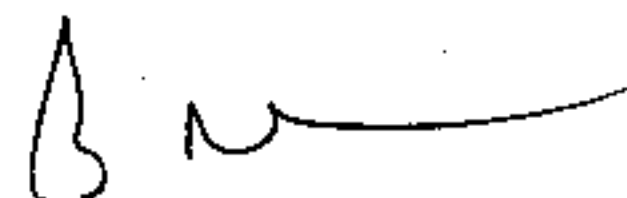
16. In July, 2010-12 petitioner No. 1 purchased Germplasm from Akshay Seeds Tech Company for Rs. 6.50 crores which has been never utilised by KSPL. Petitioner No. 1 had placed huge orders for cotton and other crop seeds to Akshay Seeds Tech Company and Axis Seeds Crop Technology. Those two companies are the companies of Mr. Natubhai Makadia, the associate of his close friend Dr. Manish Patel. Dr. Manish Patel and Mr. Natubhai Makadia were appointed by petitioner No. 1 as organiser in the production and procedure in Research and Development Department and as a result quality of the seeds became sub-standard. Petitioner No. 1 not only siphoned the money of the first respondent company by buying goods from Akshay Seeds Tech Company and Axis Seeds Crop Technology, but KSPL has to recover Rs. 8.00 crores from the said companies.

17. After infusion of funds by Summit Partners, petitioner No. 1 became over ambitious and being the in-charge of SCM Department, started taking arbitrary and hasty decisions on his own with ulterior motives without the knowledge, consent and approval of other Directors. Petitioner No. 1 directed a huge and excessive order for production of Bt Cotton seeds which was



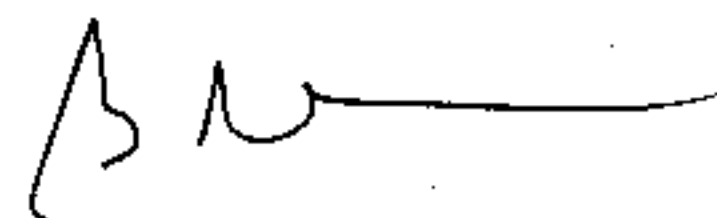
beyond the demand and the selling capacity of the first respondent company.

18. Petitioner No. 1 directed to produce about 50 lac packets of Bt Cotton seeds supposed to be sold in the year 2013 against the normal demand of 20-25 lac packets per annum. The said decision of petitioner No. 2 resulted in huge pile up of inventory running into crores of rupees which was the starting point of the downturn of the first respondent company. Goods worth Rs. 75.00 crores got locked due to excess production of 25 lacs packets of Bt. Cotton. According to respondents No. 2 to 5 aforesaid actions of petitioner No. 1 resulted in exit of Summit Partners from KSPL. Regarding de-investment of Summit Partners, note was circulated to all the persons including petitioners No. 4 and 5 and all Directors of KSPL. Petitioners gave special power of attorney to respondent No. 3 and as per the Special Power of Attorney, Rs. 130.00 crores was paid to respondent No. 12 thereby reducing their share from 24.99% to 5.28%. Respondent No. 3, due to his efforts and management skills convinced Summit Partners to sell balance share of 5.28% for Rs. 2.40 crores as against Rs. 30.00 crores required to be paid for procuring 5.28% shares.
19. It is the case of the respondents that petitioner No. 1 and others were aware of the affairs between Mariegold and KSPL. Personal guarantee of JPK group was given in the place of SPK group, especially in the case of State Bank of India. It is further stated



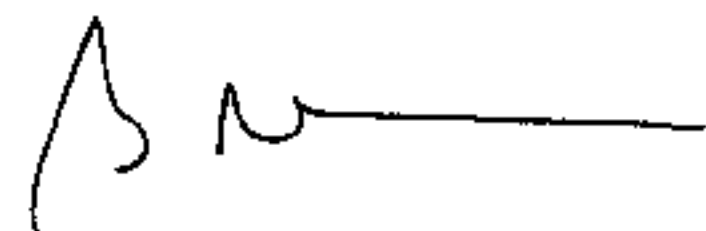
that petitioners are naturally relying upon the affidavit of Summit Partners dated 24.02.2015 filed in CA No. 67 of 2015.

20. According to the respondents, the said allegations were made by Summit Partners only to get back their money from the first respondent company within the lock in period of share purchase agreement and Summit Partners have later on withdrawn all those allegations. It is stated by the respondents that even if the petition is set aside, arbitration award is dismissed, the management of KSPL will go to respondent No. 2 to 5 and, therefore, there is no question of petitioners interfering in the day to day management and affairs of the first respondent company.
21. Respondents alleged that petitioner involved in making anti campaign and spreading allegations against the first respondent company. Respondents also alleged that petitioners are creating hindrance in the smooth functioning of the company which are being allotted to the respondents by way of MOU as well as Arbitral Award dated 31.07.2014.
22. It is the case of the respondents that MOU dated 13.02.2013 is required to be strictly adhered to. After filing Company Petition, petitioners accepted for arbitration. According to the respondents No. 2 to 5, respondent No. 3 is having very good reputation in business circle.



**Part II**

23. On 06.04.2013 respondent No. 3 denied to provide/share any information regarding the remittance documents pertaining to repayment of respondent No. 12 inspite of telephonic request made by the petitioner, Company Secretary of respondent No. 3.
24. Petitioners No. 1 to 9 revoked the power of attorney by giving legal notice dated 07.10.2013 and public notice dated 16.10.2013.
25. By search of documents with Sub-Registrar, Akola in September, 2013, petitioners learned that respondents No. 2 to 4 disposed of properties belonging to KSPL situated at Akola surreptitiously by keeping the petitioners in dark and without passing any valid and legal Board Resolution. Respondent No. 3 in collusion with respondent No. 2 to 5 and 7 to 9 passed fake Board Resolution without conducting actual Board Meetings. Petitioner No. 1 being Director never received notice of alleged Board Meetings held for passing resolution to sell Akola properties.
26. Respondent No. 3 unilaterally took a decision to sell properties of KSPL situated at Jalna (Pune), Indore and Kurnool.



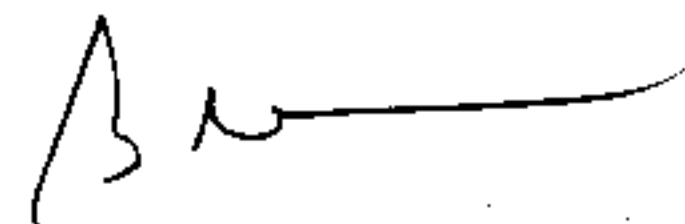


27. Petitioner No. 1 requested respondent No. 2 and 3 through legal notice dated 23.09.2013 to hold meeting urgently to decide the issue of disposal of property of KSPL.
28. Petitioner No. 1 also issued another notice dated 23.09.2013 to KSPL and respondent No. 3 stating that management of KSPL has been hijacked by respondent No. 3 without giving any communication to petitioner No. 1. In the legal notice petitioner No. 1 requested respondent No. 3 to provide copies of all the minutes of meetings. Petitioners issued public notice dated 31.10.2013 in two vernacular newspapers "Dainik Sakal Akola" and "Deshonnati Akola" informing the public at large that the properties mentioned in the said notice could not be alienated without consent of the petitioners.
29. By letter dated 25<sup>th</sup> and 26<sup>th</sup> June, 2013 respondents No. 3 and 4 directed the Purchase Manager of KSPL to stop procurement of laboratory consumables required by petitioner No. 1 to 3 for projects. Respondent No. 3 issued office orders to the Administrative Department represented by respondent No. 10 and Human Resources Department represented by respondent No. 11 to stop processing any requisition received from the petitioners No. 1 to 3.
30. Respondent No. 3 started holding the salaries payable to biotechnology scientists working on the portfolio assigned to



petitioners No. 1 to 3 under the guise that the scientists were not working on the KSPL's portfolio.

31. Respondent No. 3 transferred some scientists to locations where there were no biotechnology laboratory.
32. Respondent No. 3 transferred female employees to undignified location which required to be shares with drivers which even lacked the basic amenities like washroom on the suspicion that scientists and female employees worked against his interest and in the interest of petitioners No. 1 to 3.
33. Petitioner No. 1 requested by letter dated 08.08.2013 addressed to respondent No. 3 to provide all documents and information relating to the affairs of the first respondent company KSPL but no information was provided by respondent No. 3. Petitioner was not allowed access to the books.
34. Respondent No. 3, by email dated 10.08.2013 alleged that petitioner No. 1 was attempting to create turmoil in the office of the first respondent company and completely denied access to the office.
35. In June, 2013, respondent No. 3 instructed accounts department to stop paying any salary to petitioners No. 1, 2, 4, 6 and 7. By email dated 19.11.2013, petitioner No. 1 and 2 inquired the reasons for non-payment of salary which remained unanswered.

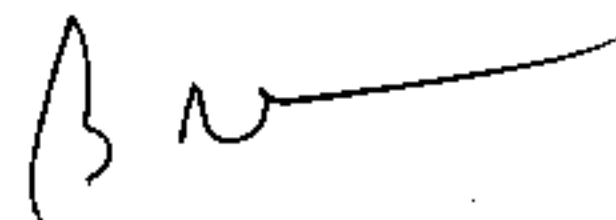


36. Respondents No. 2 and 3 stopped informing petitioner No. 1 about any Board Meetings of KSPL.
37. According to petitioner No. 1 management and affairs of KSPL is with respondent No. 2 and 3 and it would result in further acts of oppression and mismanagement and it would not be in the interest of KSPL and its Directors and the public.
38. According to petitioner No. 1 KSPL is subjected to gross mismanagement by respondent No. 2 to 5. Petitioners have made out a case for just and equitable winding up of KSPL but winding up KSPL would prejudicially affect the interest of the petitioners as shareholders.

### **Part III**

39. Hon'ble Company Law Board by its order dated 03.03.2014 in Company Petition No. 17 of 2014 passed the following order: -

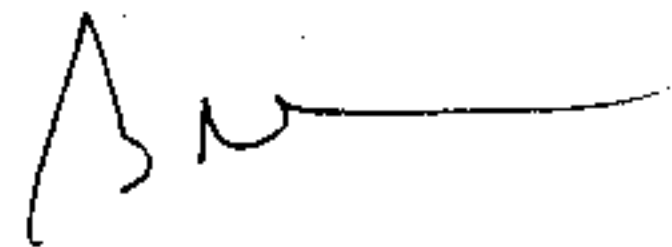
"Having found a prima facie case, balance of convenience and question of irreparable loss in favour of the petitioners, I am inclined to grant ad-interim prayer directing the respondents to maintain status quo as it exists today in respect of the immovable assets of respondent No. 1 company. This seems to me more necessary in order to protect the subject matter of the petitioner. However, it is clarified that



the aforesaid order will not be construed as if the respondent No. 12 is precluded from recovering its balance amount, if any, payable in terms of the SPA in the exercise of its rights available to it under the applicable laws. Similarly, any secured creditor is free to recover its dues if any, from the assets of the respondent No. 1 company in accordance with law.”

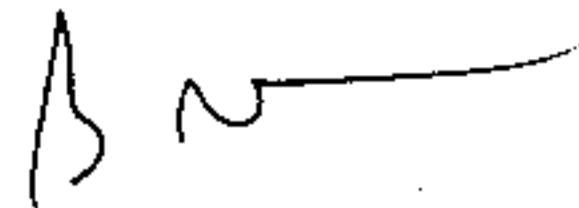
40. In the said order, in para 13, Hon'ble Company Law Board observed as follows: -

“I have considered the rival submissions. Admittedly, the answering respondents themselves have filed a suit for specific performance in relation to the agreement entered into between the parties through the alleged family settlement. However, the petitioners are still shareholders and their names still exist in the Register of Members. I, am therefore of the view, that mere entering into a family settlement unless it is acted upon in terms thereof, the rights of the petitioners available to them under section 397/398 of the Act, being shareholders/members of the company cannot be permitted to be defeated. I, therefore, hold that this ground is also devoid of merits and liable to be dismissed. It is rejected accordingly.



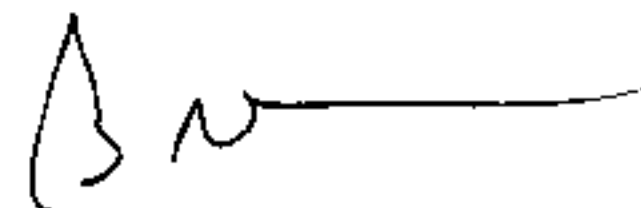
41. As against the said order, original respondents filed Company Appeal No. 9 of 2014 before Hon'ble High Court of Bombay. The said appeal was disposed of by Hon'ble High Court of Bombay with observation that the respondents have filed this application for modification or vacating of the interim order before the Company Law Board and shall consider the same on 07.04.2014.
42. On 07.04.2014 Hon'ble Company Law Board passed order asking the respondents to suggest the modalities for sale of Akola properties of the company and if they so desire, together with list of liabilities/dues as on 31.03.2014.
43. Original petitioners filed CA 98 of 2014 seeking appointment of Administrator/Special Officer or independent committee to carry out business and manage the affairs of the company etc.
44. Original respondents No. 2 to 5 filed Company Application No. 102 of 2014 praying to therein to vacate or modify the order passed on 03.03.2014 by the Hon'ble Company Law Board. Both the aforesaid applications were disposed of by the Hon'ble Company Law Board by its order dated 25.04.2014 wherein it observed as follows: -

"I, therefore, in order to avoid further controversies and to balance the equities between the parties while modifying the order dated 03.03.2014 thereby permitting the Answering respondents to sell



property(ies) of the company i.e. Akola Oil Industry and Akul Plaza to meet out the urgent liabilities of the Company, impose certain terms and conditions described hereinafter. The directions are thus: -

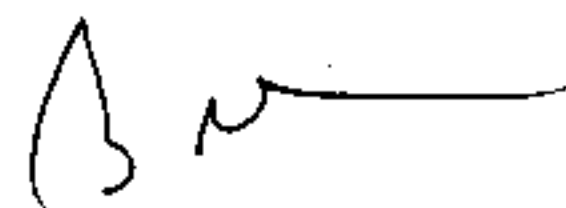
- a. To meet the urgent liabilities of the Company, the answering respondents are permitted to sell the property(ies) of the company i.e. Akola Oil Industry and Akul Plaza. To supervise the same, I hereby appoint Hon'ble Justice Mr. K.K. Lahoti, Former Judge, High Court of M.P. having address at B-23, Sector 14, NOIDA 201 301, (Mob. No. 09425152000 [e-mail-j.kklahoti@gmail.com](mailto:j.kklahoti@gmail.com)) as observer cum facilitator. The parties are directed to render all the assistance and co-operation to the said observer-cum facilitator. The answering respondents shall furnish all information as desired by him along with the relevant record in respect of the properties sought to be sold and after his approval only, an agreement for sale and/or sale deed shall be executed by the answering respondents in favour of the prospective purchaser(s). It is, however, clarified that, in respect of registered agreements for sale of plots of the said properties which the company has already entered into with the prospective buyer(s), this order will not be applicable.



- b. The learned observer cum facilitator is requested to ensure that the properties are sold at the best price, reasonable time may also be granted to the petitioners to match the offer and/or to bring a better buyer. However, on this ground, the petitioners will not be allowed to delay/derail the process of sale.
- c. The meetings for the purposes of sale of properties may be held at Aurangabad/ Jalana/Akola/Pune or any other place as the Hon'ble observer cum facilitator after consultation with the parties and the prospective purchaser(s) decides.
- d. Hon'ble Mr. Justice Lahoti will be entitled to Rs. 75,000/- per visit subject to maximum Rs. 1.5 lacs per month. In addition to, he shall also be entitled to travelling allowances to which he was entitled as a sitting judge of Hon'ble High Court. The expenses of the said learned observer cum facilitator shall be borne in equal proportions by the petitioners and the answering respondents and will be paid in advance before the scheduled meetings. In all such meetings the petitioner No. 3 may also remain present.



- e. Hon'ble Mr. Justice Lahoti is hereby granted complete immunity from any kind of civil and criminal proceedings already launched or to be launched anywhere in the country or outside against the company and its directors for all acts done prior to and subsequent to the date of appointment as an observer cum facilitator with an additional immunity and protection during all such legal proceedings for and against the company.
- f. It is further directed that at the written request and at the expenses of the petitioners, which they may negotiate with the Hon'ble observer cum facilitator, the Hon'ble observer cum facilitator shall also be entitled to attend and supervise the Board Meetings, AGM/EOGM. It shall be the duty of the answering respondents to inform the dates of holding of such meetings well in time to the petitioner No. 3 and the Hon'ble observer cum facilitator. Along with him, the petitioner No. 3 shall also be entitled to participate in such meeting(s). In case, the Hon'ble observer cum facilitator is not available on such date(s) due to some personal difficulty/pre-occupation, the Hon'ble observer cum facilitator may nominate someone to attend and supervise such meetings on his behalf. It is also directed that in case, the petitioner No. 3 tenders any objection





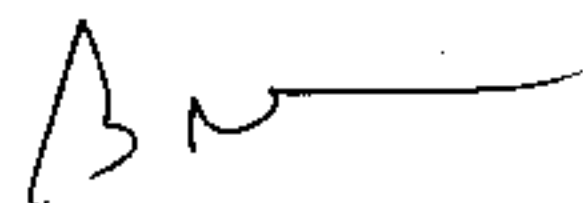
in writing in respect of any resolution(s) to be considered and passed, the same shall be examined by the Board of Directors of the company and shall be decided forthwith and such decision will be recorded in the minutes of the meeting(s) which shall be communicated to the petitioners within 3 days of such meeting(s).

g. The Hon'ble observer cum facilitator will submit his reported periodically.

h. The order dated 03.03.2014 is modified to the extent above. It is clarified that in so far as the order of status quo in respect of the other immovable properties of the company is concerned, the same shall continue. However, after completion of sale of the above stated properties, the answering respondents shall be at liberty to mention and seek permission from the bench, if they are so advised.

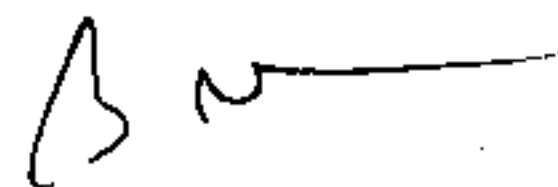
i. Both the applications stand disposed of in the above terms."

45. Again the matter was carried to Hon'ble High Court of Madhya Pradesh by way of Misc. Company Appeal No. 3 of 2014. The said application was disposed of at the stage of admission itself



permitting the appellants/original petitioners to make application before the Hon'ble Company Law Board.

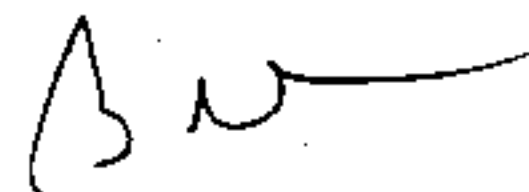
46. Original petitioner filed Company Application No. 225 of 2014 to appoint administrator or to expand the role of the observer cum facilitator empowering him to not only supervise the sale but also disburse the sale proceeds to discharge the liabilities, after due forensic audit, in accordance with the award and to stay the sale of cotton portfolio and rights issue.
47. Original petitioners filed Company Application No. 226 of 2014 to modify the order dated 25.04.2014 and to appoint administrator and or special officer and or an independent committee of Management or such other body or person and to modify the order dated 25.04.2014 to the extent of permitting the sale of the properties after considering necessary audit and being satisfied of the necessity to sell the properties.
48. Respondents No. 2 to 5 filed Company Application No. 231 of 2014 challenging the maintainability of the Company Petition itself. Hon'ble Company Law Board passed a common order dated 05.09.2014 in Company Applications No. 225 of 2014, 226 of 2014 and 231 of 2014 wherein it is observed that the Hon'ble observer cum facilitator shall ensure that the sale proceeds received from the sale of the company's assets are appropriated towards discharge of genuine liabilities of the first respondent company. Hon'ble Company Law Board further observed that the prayers



made in Company Application No. 226 of 2014 which amounts to grant of final reliefs sought in the main petition. Coming to the maintainability of Company Application No. 225 of 2014, 231 of 2014 which deals with the Arbitration Award, Hon'ble Company Law Board observed as follows: -

"It is observed that the effect of this "so called Arbitration agreement" arrived at between the parties during the pendency of the petition would be seen at the time of final disposal of the petition. The respondents may take such pleas in this regard in their reply as they deem fit and proper in the fact and circumstances of the case. "

49. It is further observed in this order that the original respondents/applicants in C.A. No. 231 of 2014 have themselves challenged the Award by way of filing a petition under Section 34 of the Arbitration Act before the Civil Judge, Sr. Division, Pune. In such a situation, the original respondents are estopped from relying upon a part of the award which stipulates that the first respondent company have been given in their share in the distribution of assets by the learned Arbitrators in the said Arbitration Proceedings and Hon'ble Company Law Board held that Section 8 of the Arbitration Act is not applicable. Hon'ble Company Law Board dismissed Company Application 231 of 2014 filed by the original respondent. The common order dated 05.09.2014 was carried an appeal to Hon'ble High Court of Madhya Pradesh in MCA



No. 49 of 2014. Madhya Pradesh High Court disposed of MCOMA on 14.01.2015 by observing that the ratio in Rakesh Malhotra v/s Rajinder Kumar Malhotra case by the Hon'ble Mumbai High Court is to be considered by the Hon'ble Company Law Board while considering effect of the arbitral award at the time of final disposal of the matter. In the said judgement, Hon'ble High Court of Madhya Pradesh further held that the decision in Sukanya Holdings Pvt. Ltd. v/s Jayesh H. Pandya reported in AIR 2003 SC 2252 does not relate to the arbitration pending the application under Section 397-398 of the Companies Act.

50. Hon'ble High Court of Madhya Pradesh in Misc. Company Appeal No. 46 of 2014 filed by the original petitioners against the order dated 05.09.2014 held that the prayers made in Company Appeal No. 225 of 2014 and 226 of 2014 were interim in nature and the impugned order of the Company Law Board is an interlocutory order, therefore, no interference is required. Hon'ble High Court of Madhya Pradesh dismissed Misc. Company Appeal No. 46 of 2014 with the aforesaid observation and further observing that liberty be given to the appellants to file fresh application before the Company Law Board.
51. Respondent No. 2 filed Company Application No. 67 of 2015 seeking appointment of independent valuer to ascertain the value of the shares of the first respondent company as on the date of filing of the petition and to pass order directing respondents No. 2



to 5 to buyout the shareholding of the petitioners at such a fair value decided by the independent valuer.

52. Company Law Board by its order dated 10.04.2015 passed in Company Petition No. 17 of 2014 directed the parties not to enter into any correspondences with the third parties or do any further acts which are prejudicial to the interest of the company with immediate effect. In the said order, Company Law Board directed the aggrieved party to mention the matter first to the observer cum facilitator, and, if they still feel aggrieved they may approach the Board.
53. In the said Civil Suit filed by the original respondents before Civil Court vide Special Civil Suit No. 328 of 2014, application is filed by second defendant for rejection of the plaint under Order 7 Rule 11 of Civil Procedure Code for interpretation of section 5 and 8 of the Arbitration and Conciliation Act, 1996. Learned Civil Judge, Senior Division, Pune vide order dated 29.08.2015 held that the suit is not barred by limitation under Arbitration and Conciliation Act.
54. Member of Company Law Board New Delhi by order dated 10.03.2016 held that typographical mistakes in the order passed by the Board on 25.04.2014 showing petitioner No. 3 in place petitioner No. 1 as Director who is entitled to attend the meeting and such typographical mistakes cannot be construed by any of the parties. With those observations Company Appeal No. 53 of 2016 was disposed of. Company Law Board disposed of CA No.



54 of 2016 holding that the circular resolution dated 01.02.2016 is not in accordance with order of Company Law Board dated 25.04.2014.

55. Following are the applications filed and pending for disposal along with the main petition.

(1) CA No. 67 of 2015 renumbered as TP 62-A/2016

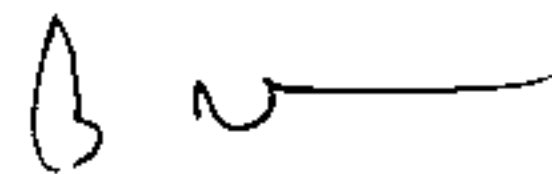
This application is filed by original respondents No. 2 to 5 requesting to appoint independent valuer to ascertain value of the shares of the first respondent company and to direct respondents 2 to 5 to buyout shares of the first respondent company.

(2) CA No. 77 of 2015 renumbered as TP 62-B of 2016

This application is filed by original respondents No. 2 to 5 to modify/clarify the order dated 10.04.2015 and to restrain original petitioners from competing with the business of the company.

(3) CA No. 195 of 2016 renumbered as TP 62 C OF 2016

This application is filed by original petitioners to maintain status-quo on shareholding and to direct respondents No. 2 to 5 to discharge urgent liabilities of the first respondent company.

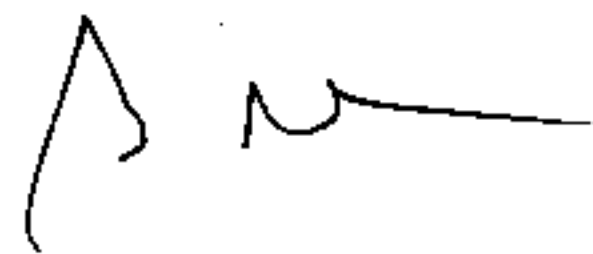


(4) CA No. 01 of 2016 renumbered as TP 62 D of 2016

This application is filed by original petitioners to appoint interim administrator of the first respondent company or in the alternative to appoint two independent Directors, to declare resolutions dated 05.01.2016, 13.03.2013 and 25.12.2015 as null and void for non-compliance of order dated 03.03.2014 and 25.04.2014 and to set aside the circular resolution dated 05.01.2016, 13.03.2013 and 25.12.2015.

(5) CA No. 54 of 2016 renumbered as TP 62 E OF 2016

This application is filed by original petitioners to declare circular resolution dated 01.02.2016 is null and void, to restrain respondent No. 2 and 3 from passing any resolution in terms of section 113 of Companies Act, 2013, to restrain respondent No. 2 to 5 directly or indirectly subjudice matters in the agenda of any Board meeting of the first respondent company, to expand the role of observer cum facilitator by appointing him as independent Director, to restrain respondents from creating encumbrances on the assets of the first respondent company and to stay the resolution dated 01.02.2016.



(6) IA No. 4 of 2016

This application is filed by original petitioners to declare resolution dated 01.04.2016 null and void, to order forensic audit carried out by independent Chartered Accountants, expand the role of observer cum facilitator by appointing him as interim administrator, to restrain the respondents from creating any further encumbrance on the assets of the first respondent company and to stay implementation of resolutions passed in the Board Meeting dated 01.04.2016 etc.

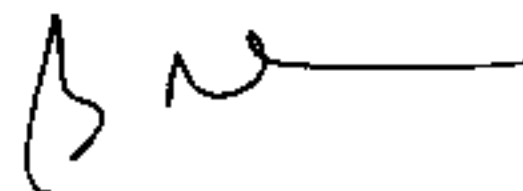
56. Board Resolutions dated 26.03.2016 and 01.04.2016 are in challenge in CAs No. 195/15, TP No. 62 C of 2016, CA No. 64 of 2016, TP No. 62 E of 2016, IA No. 4 of 2016, CA No. 1 of 2016 and TP No. 62 D of 2016. According to the petitioners the following resolutions were passed unilaterally and illegally.

- (1) resolution dated 16.10.2012,
- (2) resolution dated 03.10.2012,
- (3) resolution dated 20.12.2012,
- (4) resolution dated 13.03.2013,
- (5) resolution dated 13.03.2013
- (6) resolution dated 07.07.2014
- (7) resolution dated 25.12.2015





57. Main plea of the petitioners is that inspite of the arbitration award dated 31.07.2015 which is under challenge before Civil Court under Section 34 of the Arbitration and Conciliation Act, this Tribunal has jurisdiction to deal with the case of oppression and mismanagement and grant appropriate reliefs by invoking the powers under Section 397 and 398 read with 402 and 403 of the Companies Act, 1956.
58. Dealing with the alleged acts of oppression and mismanagement narrated by the petitioners against respondents No. 2 to 5 it is necessary to decide certain threshold aspects. The first and foremost such question is Arbitration Award dated 31.07.2014. Admittedly, in the Board Meeting of KSPL held on 07.07.2014 in the presence of Justice K.K. Lahoti, Hon'ble Observer cum Facilitator appointed by the Company Law Board, Mumbai it was agreed by SPK group and JPK group to go for arbitration. Admittedly, the minutes of the said meeting was considered as read and confirmed unanimously on 07.07.2014. In the said meeting S/Shri Hiralal Malu, Vinaykumar Maliwal and Nandkishor Baheti were the persons agreed to act as Arbitrators. To this effect, an agreement was also entered into representing both the families in hundred rupee stamp paper. The said Arbitrators passed award on 31.07.2014. The award deals with (1) Pooja Articles, (2) award of business interest (3) award of personal assets (4) company's and branch bifurcation with future scope and (5) procedure to free group liabilities and implementation of

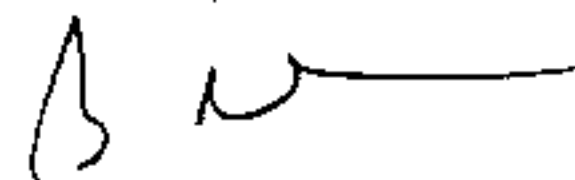


award. The award also suggest the action required to be taken jointly by both the groups. Award is also based on the arrangements during transition. Annexure I of the award deals with the properties allotted to JPK group whereas Annexure II deals with the properties allotted to SPK group. Such award was challenged by respondents No. 2 and others before Learned District Judge, Pune under section 34 of the Arbitration and Conciliation Act, 1996 with a request to set aside the award. The award was questioned on the ground that it is opposed to law and public policy, it is one sided and on the ground that it also encompasses power to execute the award and the award is against public interest etc. etc.

59. It is pertinent to refer here regarding the order of Hon'ble High Court of Madhya Pradesh in Company Appeal No. 49 of 2014 in the order dated 14.01.2015 held as follows: -

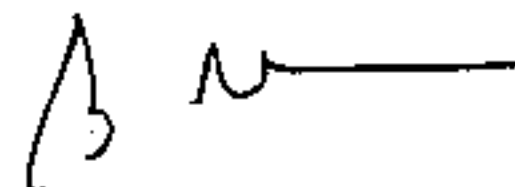
"13. Under Section 397-398 of the Companies Act, the Tribunal/CLB has power to grant relief in case of oppression and mismanagement of the affairs of the company. The distribution of assets in terms of the award has not taken place, therefore, in the facts of the present case the jurisdiction of the Company Law Board will not cease on the passing of the award.

14. The Bombay High Court in the matter of Rakesh Malhotra vs. Rajinder Kumar Malhotra by order dated

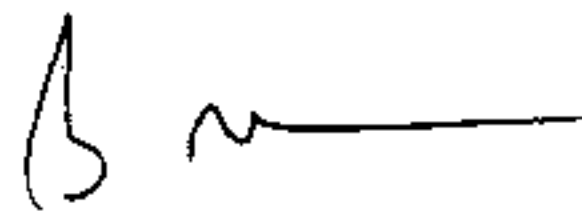


20.08.2014 in Company Appeal Nos. 10-19 of 2013, has held that the dispute in a petition properly brought under Section 397 and 398 read with Section 402 of the Companies Act, cannot be referred to arbitration except in the cases of mala fide, factitious and oppressive petition. The Gujarat High Court by order dated 14.08.2014 in Special Civil Application No. 2179/2014 in the matter of Sadbhav Infrastructure Project Limited vs. Company Law Board has held that the dispute before the CLB is just not a kind of civil dispute concerning the rights of the parties flowing from the terms contained in the agreement, but it is about the oppression and mismanagement and inspite of the widely worded arbitration clause the matter before the CLB cannot be termed as the same as of the subject of arbitration agreement. The ratio of these judgements is yet to be considered by the CLB while considering effect of the arbitral award at the time of final disposal of the matter.

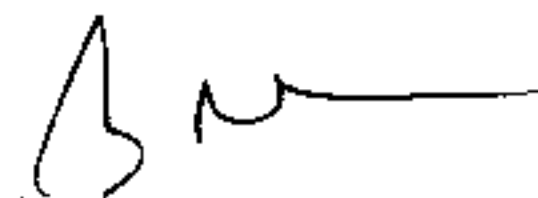
15. So far as the judgement in the matter of Sukanya Holdings Pvt. Ltd. vs. Jayesh H. Pandya and another reported in AIR 2003 SC 2252 relied upon by counsel for the parties is concerned, the said judgement does not relate to the arbitration pending the application under Section 397-398 of the Companies Act.



16. So far as the reasons which have been assigned by the Company Law Board in the impugned order are concerned, the question formulated by this Court is about the sustainability of those reasons and not the perversity of any finding recorded by the CLB while assigning those reasons. If there is no commonality of parties and if respondent No. 1 company is not a party to the agreement, then the arbitration agreement would not have any effect on the pending proceedings under Section 397-398 in respect of the affairs of the respondent No. 1 company. If the said conclusion on fact about commonality of parties is incorrect, then it would be open to the appellants to address the CLB on this aspect of the matter at the time of final hearing of the application, since the CLB in the impugned order itself has stated that the effect of the arbitration agreement would be seen at the time of final disposal of the petition. Even if the reason assigned by the CLB about entering into the alleged arbitration agreement during the trial of the case may not be sustainable, that would not affect the final conclusion arrived at by the CLB on account of the other reasons and specially the fact that the arbitration award has not attained finality and also considering the difference scope of two proceedings."

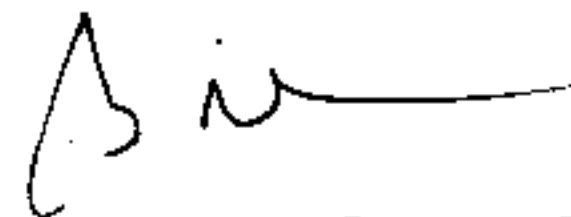


60. In view of the said order of Hon'ble High Court of Madhya Pradesh, this Tribunal has got powers to grant relief in case of oppression and mismanagement of the affairs of the first respondent company because distribution of assets in terms of award has not taken place. Hon'ble MP High Court observed that CLB/Tribunal has to consider the ratio in the judgements in Rakesh Malhotra vs. Rajinder Kumar Malhotra and the order of Gujarat High Court in Sadbhav Infrastructure Project Limited viz. Company Law Board, while considering the effect of the Arbitral Award at the time of final disposal of the matter. Hon'ble High Court of MP also observed that the judgement in the matter of Sukanya Holdings Pvt. Ltd. vs. Jayesh H. Pandya and another reported in AIR 2003 SC 2252 does not relate to the Arbitration pending the application.
61. Hon'ble Company Law Board considering the judgement of the Hon'ble Supreme Court in P. Anand Gajapathi Raju and others vs. P.V.G. Raju (Dead) and others reported in AIR [2000] SC page 1886 and having applied the conditions laid down in the said judgement rejected the application of the respondents that the Company Petition is not maintainable. As against the said order Company Appeal No. 49 of 2014 was filed and the appeal was also dismissed by Hon'ble Madhya Pradesh High Court with the aforesaid observations.
62. Therefore, it is necessary for this Tribunal at the final hearing stage to decide the effect of the Arbitral Award on this petition



with reference to the judgements mentioned in the order of Hon'ble MP High Court as well as other judgements on the aspect of jurisdiction of the Company Law Board vis a vis Arbitral Tribunal/Arbitral Award.

63. Peculiar facts in this case is that after filing of this petition and after appointment of Hon'ble Observer cum Facilitator Mr. Justice K.K. Lahotia, right in the presence of the observer cum facilitator in the Board Meeting held on 07.07.2014 it was resolved by representatives of both the families i.e. SPK group and JPK group to refer all the disputes to the Arbitrators and accordingly all the disputes were referred to the Arbitrators and Arbitrators passed the award. After passing of the award, respondents No. 2 to 5 filed Company Appeal No. 231 of 2013 questioning the maintainability of the petition on the ground that Arbitral Award has been passed. The same respondents filed petition before District Judge to set aside the award under Section 34 of the Arbitration and Conciliation Act, 1996.
64. In this scenario it is necessary to refer to the Arbitration Agreement. Hon'ble Apex Court in *SN Prasad Hitek Industries (Bihar) Limited vs. Monnet Finance Limited & Others*, reported in (2011) 1 SCC 320 held that reference to Arbitration is valid only if there is an Arbitration Agreement between the parties. In the case on hand there was an agreement between representatives of both the parties to have an Arbitration, in the Board Meeting held on 07.07.2014 right in the presence of Hon'ble Observer cum

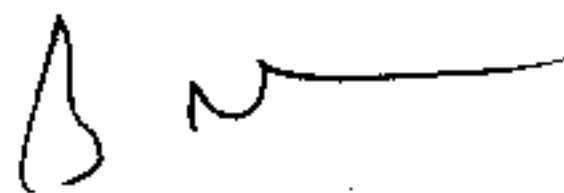


Facilitator and an agreement was also entered into that effect. Therefore, it cannot be said that there is no valid Arbitration Agreement between SPK group and JPK group.

65. Next question is whether the issues relating to oppression and mismanagement are referable to Arbitration or not. In Rakesh Malhotra v/s Rajinder Kumar Malhotra, Hon'ble Bombay High Court after referring various judgements of Hon'ble Supreme Court held as follows: -

"As to whether the disputes in a petition properly brought under Sections 397 and 398 read with Section 402 of the Companies Act, 1956 can be referred to arbitration, the answer is no, subject to the caveat that I have noted regarding a mala fide, vexatious or oppressive petition and one that is merely 'dressing up' to avoid an arbitration clause."

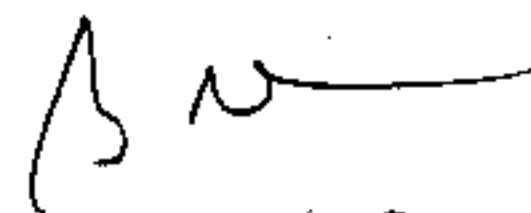
66. In the judgement in Sadbhav Infrastructure Project Limited viz. Company Law Board reported in 2014 SCC online Guj 9159 it is held that judgement of Sukanya Holdings Pvt. Ltd. is not applicable to the facts of this case. In the judgement it is also held that in that case there is a mother agreement and there are other ancillary agreements to the mother agreement and it is a case of composite transaction between the same parties or the parties claiming through or under them falling under Section 45 of the Act the dictum stated in para 13 of the Sukanya Holdings



P. Ltd. judgement is not applicable. In the judgement in Sukanya Holdings P. Ltd. a suit has been filed for dissolution of partnership firm and rendition of accounts and challenging the conveyance deed executed by the partnership firm in favour of one of the parties to the suit. In the judgement the party who filed the suit also filed a petition under Section 8 of the Arbitration and Conciliation Act. The Hon'ble High Court rejected the petition under Section 8 of the Act in view of the suit in which the rendition of accounts was also asked. In that decision, Hon'ble Supreme Court held that bifurcation of the suits in two parts one has to be decided by Arbitral Tribunal and other to be decided by the Court will undoubtedly delay the decision. In the decision it is also held that there is no provision for partly referring the dispute to Arbitration because no such language was employed in Arbitration.

67. In the judgement in Sukanya Holdings P. Ltd. there is an Arbitration agreement even prior to the filing of the suit. In the case on hand the Arbitration Agreement was entered into after filing of the Company Petition in the Board Meeting held on 07.07.2014. In fact, Madhya Pradesh High Court in the order in CA 49 of 2016 held that the judgement in Sukanya Holdings Pvt. Ltd. does not relate to Arbitration pending the application.

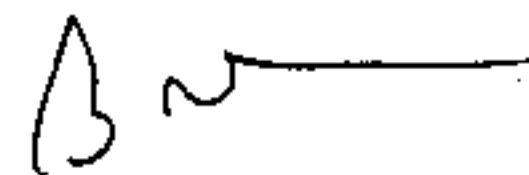
68. In the case on hand during the pendency of the Company Petition both the families entered into Arbitration Agreement and





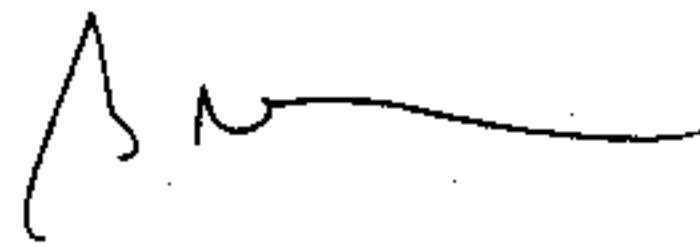
accordingly disputes were referred to Arbitrator. Arbitral Award was passed but the award has not reached finality. Respondents No. 2 to 5 already filed petition to stay the Arbitration. The issues raised in this petition relate to alleged acts of oppression and mismanagement. A perusal of the submissions in the petition and the averments in the reply clingingly show that this petition is not a dressed up one to overcome the arbitration. In fact, there was no Arbitration Agreement prior to filing of this petition. Therefore, issues relating to the acts of oppression and mismanagement are not at all referable to Arbitrator and it is the exclusive domain of this Tribunal to decide one way or the other basing on the material available on record, since the Arbitral Award is yet to reach finality and yet to be implemented.

69. A suit for specific performance was filed by the respondents against the petitioners. It is the plea of the petitioner that MOU dated 13.02.2013 has not been acted upon. It is plea of the respondents that as per MOU, petitioners have no power to question about the management of KSPL. Admittedly, the suit No. 238/14 is pending before the Civil Court. It is the plea of the petitioner that in view of the disputes referred to Arbitrator subsequent to filing of the Company Petition, there is no need to consider the MOU. It is the plea of the respondents, MOU shall also be taken into consideration. The Company Law Board by its order dated 25.04.2014 clearly held that, inspite of MOU the petition is maintainable and the said order is upheld. Company Law Board also decided about the eligibility aspect and consent



aspect in favour of the petitioner in its order dated 25.04.2014 and those orders became final. This Tribunal is having jurisdiction to entertain the issues relating to the oppression and mismanagement inspite of MOU, inspite pendency of civil suit, till the arbitral award reached finality and implemented. Therefore, this Tribunal is of the considered view that this Tribunal is having jurisdiction to decide the issues of oppression and mismanagement qua the petitioners and the first respondent company.

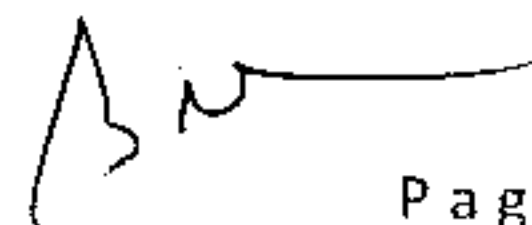
70. Before exercising such jurisdiction, it has to be borne in mind that KSPL and its management has been allotted to JPK group in the MOU as well as in the Arbitral Award. It is a fact that, Arbitral Award has not reached finality. Arbitration and Conciliation Act, 1996 do not contemplate the award to become the Rule of Law. Section 34 of Arbitration and Conciliation Act, 1996 lays down certain grounds on which Arbitral Award can be set aside. Petitioner has stated that, Arbitral Award is under challenge before learned District Judge. Till the Arbitral Award is set aside it cannot be treated as a waste paper which is emerged out of the agreement between the parties, during the pendency of this petition.



71. In this context it has to be seen that, what weight and consideration should be given to the Arbitral Award before going to decide on the issues of oppression and mismanagement alleged in the petition.
72. On this aspect, learned counsel appearing for the respondents relied upon two decisions i.e. Hari Shankar Singhania and others v/s Gaur Hari Sindhanian and others reported in (2006) 4 SCC page 658 and Satish Kumar and others v/s. Surinder Kumar and others reported in AIR 1970 SC page 833. In the judgement of Hari Shankar Singhania and others v/s Gaur Hari Sindhanian in para 42 and 43 it is held about the family arrangement as follows: -

"42. Another fact that assumed importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement in the eye of the law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well- being of a family.

43. The concept of "family arrangement or settlement" and the present one in hand, in our opinion, should be treated differently. Technicalities of

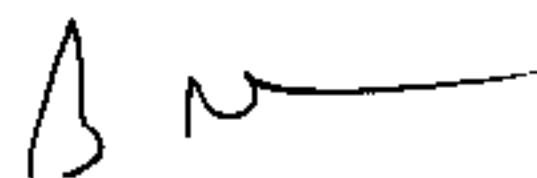


limitation etc. should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into to allay disputes existing or apprehended and even any dispute or difference apart, of it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in Ram Charan Das v. Girjanandini Devi."

73. In para 49 it is further held as follows: -

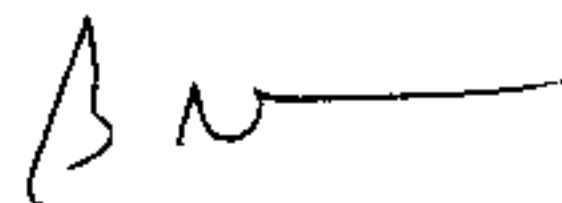
"49. Further, in Krishna Beharilal v/v. Gulabchand this Court reiterated the approach of the courts to learn strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all. This approach was again re-emphasised in S. Shanmugam Pillai v/s. K. Shanmugam Pillai where it was declared that this Court will be reluctant to disturb a family arrangement.

74. In the judgement of Satishkumar and others v/s. Surinder Kumar and others it is held as follows: -



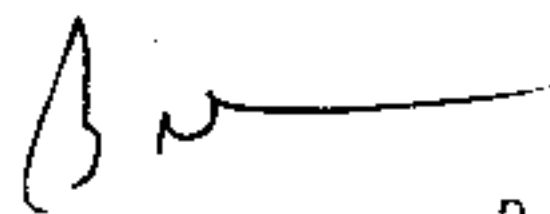
"The award is not a mere waste paper but has some legal effect. It is final and binding on the parties and it cannot be said that it is a waste paper unless it is made a rule of the Court. The conferment of exclusive jurisdiction on a Court under the Act does not make an award any the less binding than it was under the provisions of the Second Schedule of the Code of civil procedure. The award is, in fact a final adjudication of a Court of the parties' own choice, and until impeached upon sufficient grounds in an appropriate proceeding, an award, which is on the face of it regular, is conclusive upon the merits of the controversy submitted. As between the parties and their privies, an award is entitled to that respect which is due to judgement of a court of last resort.

75. In the Arbitration Act of 1996 there is no need to make the Arbitral Award Rule of Law. Therefore, the only way to avoid Arbitration Award is to set aside the same under Section 34 of the Arbitration and Conciliation Act, 1996. The Arbitration Award is binding on both the parties.
76. In case if this Tribunal came to a conclusion that there are acts of oppression and mismanagement in the conduct of affairs of the first respondent company (KSPL), it is necessary for this Tribunal to pass certain orders regarding the management and conduct of the affairs of the first respondent company (KSPL) which has



already been allotted to SPK group in order to remove the oppression and to compensate mismanagement. In case the award become final and implemented, then the orders passed by this Tribunal in respect of management of the first respondent company would be directly and sometimes impliedly take away the rights conferred on the SPK group by virtue of the award. It may be said that respondents 2 to 5 themselves asked for setting aside the award. Both the parties are bound by the award till it is set aside and it is not material who asked for setting aside the Arbitral Award. It is strange that respondents No. 2 to 5 who challenged the award is pleading before the Court that in view of the Arbitral award this Company Petition is not maintainable. Such type of diametrically opposite inconsistent pleas taken in different forums show that JPK group is somehow trying to manage the KSPL as they wish as long as possible.

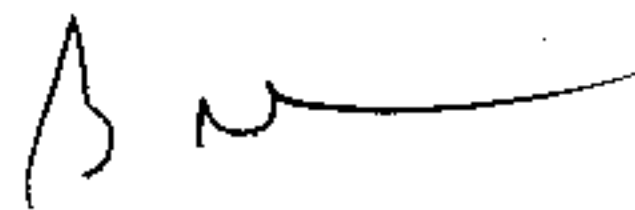
77. The Company Law Board considering the disputes between the parties in the management of the affairs of the first respondent company appointed Hon'ble Mr. Justice K.K. Lahoti as Observer cum facilitator. Company Law Board considering the need for sale of certain properties also permitted the respondents to sell the properties by virtue of order dated 25.04.2014. Company Law Board also ordered that Hon'ble Mr. Justice K.K. Lahoti to attend and supervise the Board Meetings. A perusal of reports of Hon'ble Observer cum Facilitator show that in the Board Meetings conducted right in the presence of Hon'ble Mr. Justice K.K. Lahoti several disputes were raised regarding the recording of the



minutes of the meeting by audio video record and recording certain financial transactions and SPK group has gone to the extent of passing circular resolutions which is not contemplated in the order of the Company Law Board.

78. In the aforesaid factual situation and in view of the fact that Arbitral Award cannot be treated as waste paper till it is set aside and in view of the finding that this Tribunal has got jurisdiction to decide on the aspect of oppression and mismanagement and to pass necessary orders if acts of oppression and mismanagement are established and considering the impact of award, this Tribunal is of the view that pending finalisation of the Arbitral Award there is no need to give a conclusive finding on the alleged acts of oppression and mismanagement and grant final reliefs.

79. However, considering long standing disputes between the petitioners and respondents No. 2 to 5, considering the non-implementation of MOU, considering the challenge made to the Arbitral award passed by the Arbitrator, considering the manner in which the proceedings in the Board Meetings have been taken place, and taking into consideration the interest of KSPL and subsidiary companies, there need to be certain directions in the conduct of the affairs of the first respondent company. In this regard it is necessary to state ~~out~~ certain facts. Respondent got circular resolutions passed which are not contemplated in the order of Company Law Board dated 25.04.2014. Certain financial



irregularities were alleged by the petitioners, even after the appointment of Observer cum Facilitator. There is also averment to the effect that salaries are also stopped. Moreover, respondents have filed an application to buyout the shareholding of the petitioners. Respondents have also alleged that the petitioners are competing the business of KSPL group through SFPL Crop Life Sciences Pvt. Ltd. and KVS IPL. Respondents alleged that petitioners have created an environment to damage the reputation of Respondent No. 1 by way of anti-campaign in the business circle and by giving false advertisements, by writing letters to Bankers, by giving public notice not to deal with property of MIPL and contacted dealers etc. of KSPL.

80. In this context it is necessary to consider the prayers made by the petitioners and respondents in various applications filed by them which are mentioned in para 55 of this order. This Tribunal has gone through the pleadings in all the pending applications filed by the petitioners and respondents and in brief they have already been narrated in the order.
81. In the interest of the shareholders of KSPL, in the interest of SPK group, JPK group and taking into consideration the Arbitral Award has not reached finality and not yet implemented, the following order is passed by this Tribunal.

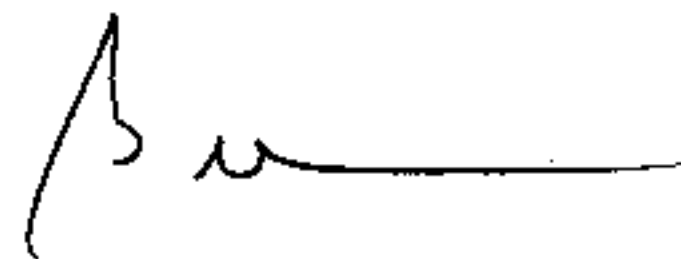




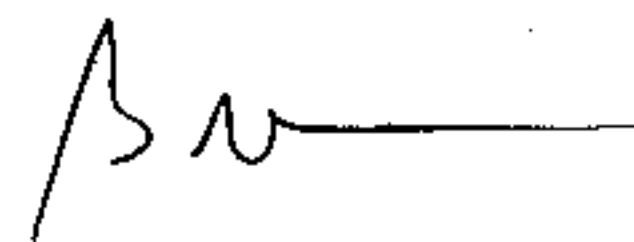
- (i) Hon'ble Justice Mr. K.K. Lahoti who is functioning as Observer cum Facilitator is appointed as Interim Administrator of the first respondent company without superseding the existing Board of Directors of KSPL.
- (ii) Interim Administrator Hon'ble Justice Mr. K.K. Lahoti is empowered to propose names of two Independent Directors in the Board of Directors of the first respondent company within three weeks for approval of this Tribunal. Independent Directors must be having experience in management of company affairs with special knowledge in seeds business.
- (iii) Interim Administrator Hon'ble Justice Mr. K.K. Lahoti shall, within one month, after appointment of two Independent Directors shall conduct meeting of the Board of Directors of the 1<sup>st</sup> respondent company following the provisions of the Companies Act, 2013 and Articles of Association of KSPL with the following agenda: -
  - (a) Appointment of independent Chartered Accountant firm to assess the fair market value of the shares of the first respondent company as on the date of filing of Company Petition No. 17 of 2014 and to fix the remuneration of Chartered Accountants so appointed.



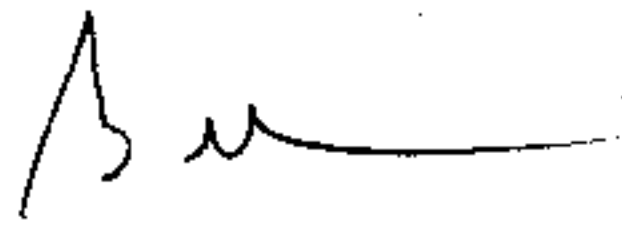
- (b) Appointment of Special Auditors team to audit accounts of the first respondent company for the financial year 2013-14 to 2016-17 and to fix remuneration of the Chartered Accountants.
- (iv) Agenda of all kinds of meeting of KSPL shall be approved by Interim Administrator before notice of meeting is given.
- (v) All meetings shall be conducted in accordance with interim orders in force and the directions given in this order, in the presence and as per the instructions of Interim Administrator.
- (vi) There shall not be any change in the shareholding pattern and Directors of the first respondent company until further orders except as provided in this order regarding appointment of Independent Directors.
- (vii) Sale of Akola properties of KSPL by the first respondent company shall be according to the order of the Company Law Board dated 25.04.2014 and under the supervision of Interim Administrator and as per the resolutions of the Board of Directors of KSPL.



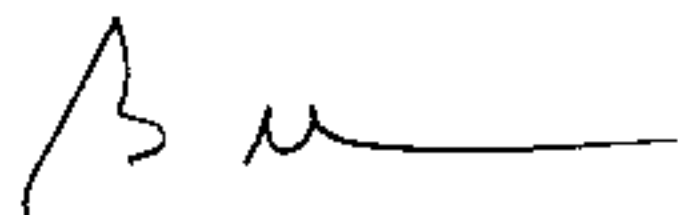
- (viii) The resolutions that had already been passed which are sub-judice in the Company Petition shall not be taken up in the Board Meetings of KSPL.
- (ix) There shall not be any resolution which goes against the resolutions passed on 26.03.2016 and 01.04.2016 and the resolutions passed on the basis of which Akola properties were sold, since they are sub-judice in Company Petition No. (17 of 2014) (TP No. 62 of 2016) and this Tribunal has to take final decision on it.
- (x) Respondent No. 3 shall not exercise the authority given to him under Section 113 of the Companies Act in the meeting of Board of Directors held on 01.04.2016, till further orders by this Tribunal.
- (xi) All interim orders that are in force shall be followed.
- (xii) The proceedings of all the meetings of KSPL shall be recorded by video and audio and send the same to this Tribunal.
- (xiii) Interim Administrator Hon'ble Justice Mr. K.K. Lahoti shall file a report in respect of each meeting conducted separately before this Tribunal.



- (xiv) Interim Administrator Hon'ble Justice Mr. K.K. Lahoti shall see that all the statutory obligations that are required to be carried out as per the provisions of the Companies Act and other acts and Articles of Association, shall be carried out within the period prescribed under the relevant Acts and Articles of Association.
- (xv) Interim Administrator Hon'ble Justice Mr. K.K. Lahoti is at liberty to seek further instruction(s) in case of any controversy in respect of which he feels the order of the Tribunal is necessary.
- (xvi) Interim Administrator Hon'ble Justice Mr. K.K. Lahoti is entitled for a remuneration of Rs. 1.00 lac (Rupees one lac only) for each meeting subject to maximum of Rs. 3.00 lacs (Rupees three lacs only) per month besides all facilities to which he is entitled as Judge of High Court in respect of transport, accommodation and ministerial assistance as and when meetings of KSPL are called for/ or conducted. Interim Administrator Hon'ble Justice Mr. K.K. Lahoti shall continue to act in that capacity till disposal of TP No. 62 of 2016.
- (xvii) Remuneration of Independent Directors shall be fixed by Interim Administrator.



- (xviii) Expenditure incurred in respect of remuneration of Interim Administrator, Independent Auditor appointed for determination of fair market value of the shares of the first respondent company (KSPL) and Special Audit team appointed to audit the accounts of the first respondent company (KSPL) and remuneration of Independent Directors shall be borne by KSPL for the time being and it is subject to final order passed in TP No. 62 of 2016.
- (xix) Interim Administrator and Independent Directors appointed are given immunity from all Civil, Criminal and other regulatory actions under the laws applicable in the conduct of the affairs of KSPL.
- (xx) In view of the above directions all the pending applications i.e. TP 62 A/16, TP 62 B/16, TP 62 C/16, TP 62 D/16 & TP 62 E/16 corresponding to CA Nos. 67 of 2015, 77 of 2015, 195 of 2015, 1 of 2016, 54 of 2016 and IA 4 of 2016 shall stand disposed of. However, both the parties are entitled to make use of the pleadings and documents filed in the applications for final disposal of TP No. 62 of 2016.
- (xxi) In case the Arbitral Award is confirmed and implemented, this Tribunal is of the view that there is no need to give findings on alleged acts of oppression and



mismanagement in the conduct of the affairs of the first respondent company.

- (xxii) TP No. 62 of 2016 is kept pending till Arbitral Award reach finality for the purpose of passing orders on the aspects of alleged acts of oppression and mismanagement taking into consideration the special audit report and the share valuation report of KSPL.
- (xxiii) List TP No. 62 of 2016 on 26.10.2017 for approval of names of Independent Directors proposed by the Interim Administrator.
- (xxiv) Order regarding costs will be passed at the time of final disposal of TP No. 62 of 2016.
- (xxv) Communicate copy of this order to Hon'ble Shri Justice K.K Lahoti (Retd.) with a request to act as Interim Administrator of KSPL.

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

*Pronounced by me in open court on the 12<sup>th</sup> day of September, 2017.*