

20
**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**TP No. 109/397-398/NCLT/AHM/2016 (New)
CP No. 77/397-398/CLB/MB/2015 (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 20.09.2017**

Name of the Company: Pinakin Kharwar
V/s.
Rudraksh Synthetics 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>
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1.

2.

ORDER

None present for Petitioner. None present for Respondent.

Order pronounced in open court. Vide separate Sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 20th day of September, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

**TP No. 109/397-398/NCLT/AHM/2016 (New)
CP No. 77/397-398/CLB/MB/2015 (Old)**

In the matter of:

M/s. Rudraksh Synthetics Pvt. Ltd.
Plot No. 5535,
Road No. 55
GIDC,
Sachin
SURAT 394 230

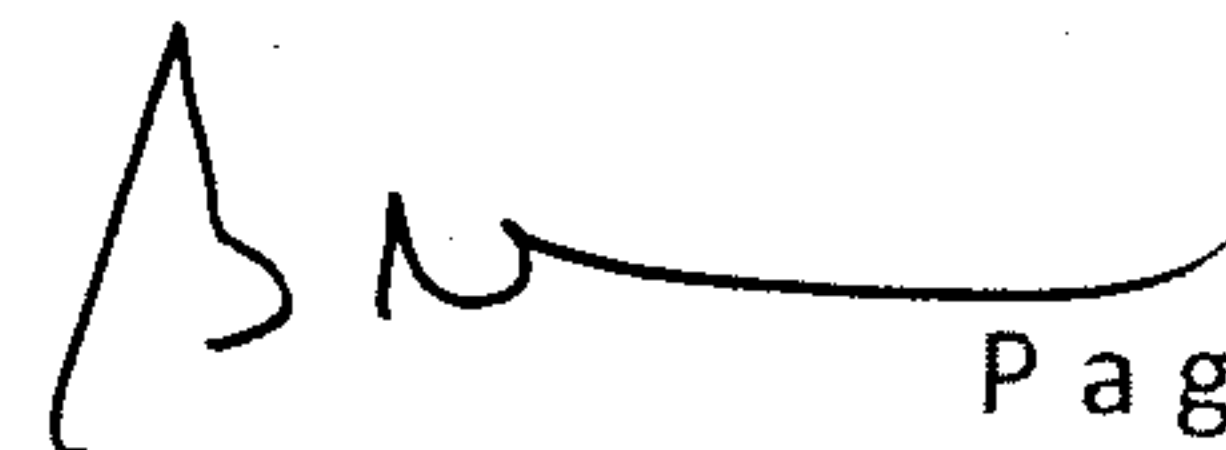
1. Pinakin Kharwar
10-A Pallavi Apartment
Next to Empire Motors
Opp. Rundh Jakat Naka
Dumas Road
Piplod
SURAT 395 007

Petitioner

VERSUS

1. Rudraksh Synthetics Pvt. Ltd.
Plot No. 5535,
Road No. 55
GIDC,
Sachin
SURAT 394 230
2. Naresh Thakordas Mandlewala
114, Rukshmani Maher Nagar,
Adajan Char Rasta
Adajan
Surat 395 009
3. Hemant Thakordas Mandlewala
114, Rukshmani Maher Nagar Society
Adajan
Surat 395 009

Respondents



Order delivered on 20th September, 2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Appearance:

For the petitioners Learned advocate Mr. S. Suriyanarayanan
For the respondents Learned PCS Mr. Dhiren Dave

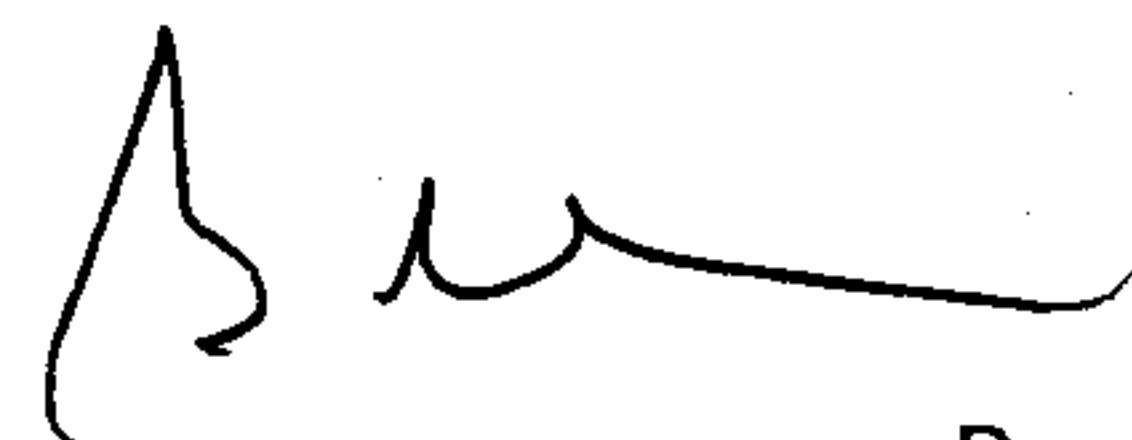
ORDER

01. This petition is filed by a shareholder in M/s. Rudraksh Synthetics P. Ltd., (hereinafter called as the first respondent company) claiming that himself and his wife together hold 32.66% of the paid up share capital of the first respondent company.
02. It is the case of the petitioner that he and his wife holds 5,00,000 shares out of 15,4,100 shares of the first respondent company. Petitioner also pleaded that his wife gave power of attorney in favour of the petitioner for filing this petition. Petitioner also submitted special power of attorney dated 21.09.2015 executed by his wife in favour of petitioner giving authority to file this petition against the first respondent company. It is not disputed by the respondents that the petitioner and his wife together hold 36.22% of the equity shares of the first respondent company. However, it is pleaded by the respondents that it is not described by the petitioner that himself and his wife are together filing this



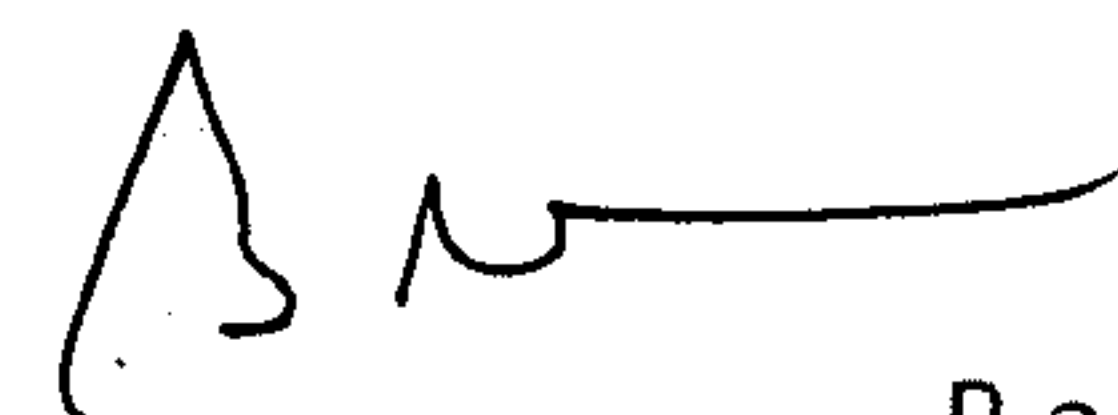
petition or he filed this petition as general power of attorney holder of his wife. No doubt it is not specifically mentioned in the cause title or in the body of the petition that this petition is filed by petitioner on behalf of his wife but it is stated in page 7 of the petition that himself and his wife together hold 32.66% of equity shares of the first respondent company and his wife has executed special power of attorney in his favour. Therefore, it is implied that this petition is filed by the petitioner on his behalf and on behalf of his wife as power of attorney holder. Therefore, contention of the learned PCS for the respondents that the petitioner is not eligible to file this application does not stand to reason. Hence, petitioner is eligible to file this petition. Hence petitioner is eligible to file this petition.

03. Admittedly the first respondent company was incorporated on 05.02.2011. Admittedly construction of process house of the first respondent company located in the land owned by Nagina Processors Pvt. Ltd. was started in the first quarter of 2010 and after installing machines production was started in October, 2010. Admittedly, petitioner worked as a full time printing master in the first respondent company since 15.08.2010 on monthly salary.
04. It is the case of the petitioner that respondents No. 2 and 3 promised him to give 50% share in the first respondent company as well as Directorship and employment as Printing Master and that is how he joined the first respondent company. But,



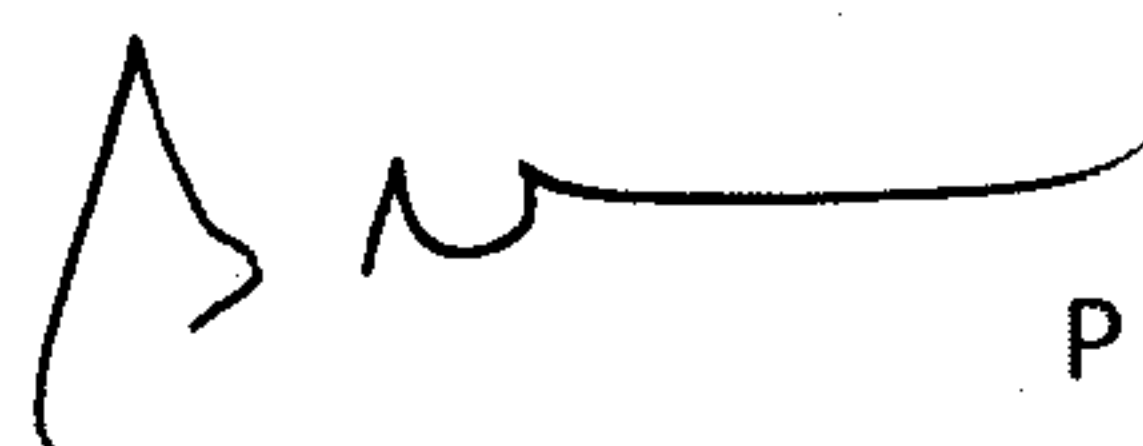
according to the petitioner, respondents No. 2 and 3 allotted only 3,00,000 shares @ Rs. 10/- each on 11.09.2010, 1,00,000 shares on 28.10.2010 and another 1,00,000 shares on 01.11.2010 but in the returns filed in the Office of the Registrar of Companies, date of allotment is shown as 12.05.2011. Wife of petitioner was allotted 2,00,000 shares @ Rs. 10/- fully paid up on 28.12.2010 and did not allot further shares. Petitioner further pleaded that in September 2015 when he conducted search of the website of Ministry of Corporate Affairs he came to know that respondents have not allotted 50% shares to the petitioner group but allotted further equity shares of 5,00,000 each to respondent No. 2 and 3 on 20.04.2010 and 12.05.2011 behind the back of the petitioner.

05. Although petitioner was made Director of the first respondent company with the powers to sign cheques and operate the bank account of the first respondent company in Allahabad Bank, Nanpura Branch, Surat, he was removed as Director in the Annual General Meeting held on 08.10.2015 without following the provisions of the Companies Act and Articles of Association of the first respondent company. On this aspect it is stated by the petitioner that the notice for the Board Meeting held on 29.08.2015 was received by him on 25.08.2015 although the notice is dated 20.08.2015. Grounds stated in the notice is petitioner is not attending the day to day work of the first respondent company and petitioner is disclosing the trade secrets to its rivals in the business. Petitioner gave detailed reply to the allegations mentioned in the notice by letter dated 28.08.2015.



Respondents without giving reply to the letter of the petitioner dated 28.08.2015, issued notice dated 29.08.2015 for convening Extra Ordinary General Meeting for removing the petitioner from the Board of Directors of the first respondent company in the meeting scheduled to be held on 08.10.2015. Notice dated 29.08.2015 issued for the Extra Ordinary General Meeting was received by petitioner on 16.09.2015 and it was posted on 14.09.2015.

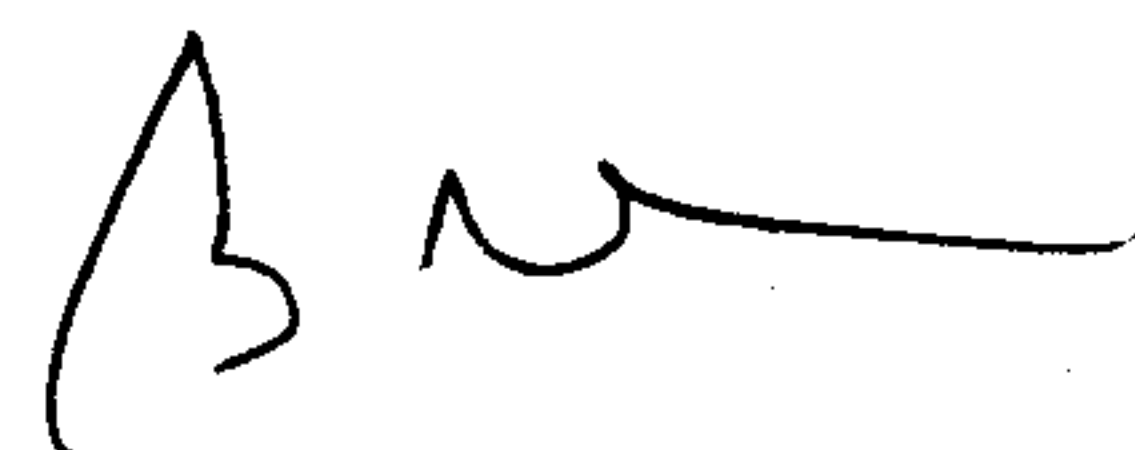
06. It is contended by the learned counsel for the petitioner that the removal of petitioner as Director of the first respondent company is illegal and without valid reasons.
07. It is also stated that the petitioner was not allowed to draw his monthly salary on the pretext of huge outstanding and loss in the process house business. Petitioner admitted that the respondents have decided to stop the process house activities and to sell the property of Rudraksh Synthetics P. Ltd. and Nagina Processors Pvt. Ltd. so that losses are curtailed. Production activities were stopped with effect from 01.02.2013 with an understanding to sell Rudraksh (process house) and Nagina (land on which the process house stands).
08. It is stated by the petitioner that because of the high price quoted by respondents No. 2 and 3, nobody came to purchase. Again respondents No. 2 and 3 started the process house in the Month



June, 2012³ inspite of objections from the petitioner but respondents could not run the process house on their own and framed out the property to Devi Processors P. Ltd. in the month May, 2014. Salary of the petitioner as Printing Master has not been paid till June, 2013 @ Rs. 2.00 lacs per month for 18 months. Petitioner was not given access to the accounts of the first respondent company. The first respondent company restarted the process house. Petitioner has stated that in the middle of 2014 authorisation to the petitioner to operate the bank account of the first respondent company in Allahabad Bank, Nanpura Branch, Surat was invoked by respondents No. 2 and 3 by using their brute majority in the Board of Directors of the first respondent company. Petitioner was not given any notice of the Board of Directors meeting or General Meetings and, in fact, such meetings were never held. It is also stated that no accounts were circulated or supplied to the petitioner. Since the atmosphere was totally vitiated and suffocating, the petitioner had no alternative except to stop going to the registered office of the first respondent company since May 2013.

09. Petitioner has prayed for the following reliefs in the petition.

- (a) Restrain respondents No. 2 and 3 from proceeding with the Extra Ordinary General Meeting to be held on 08.10.2016.

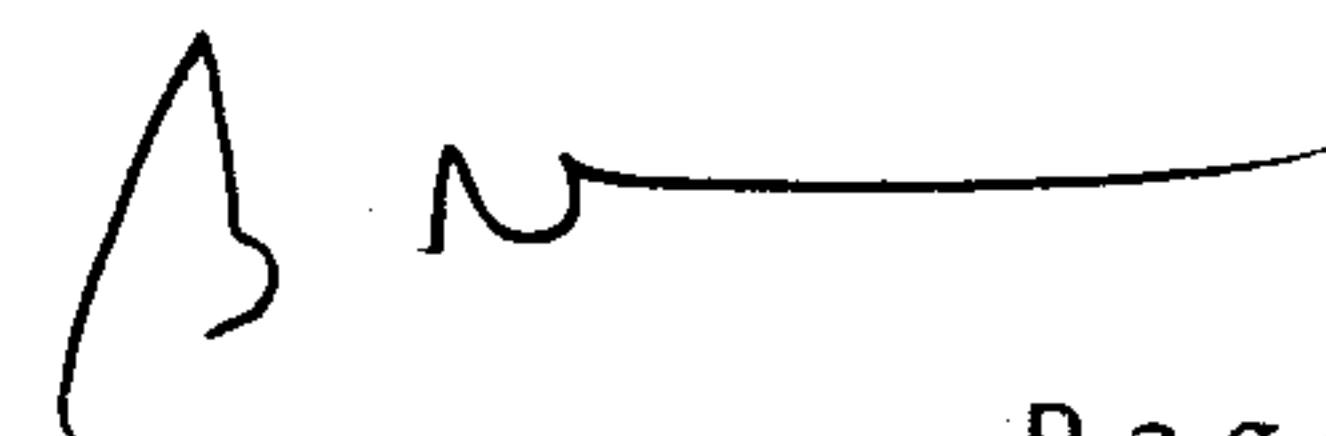


- (b) To declare handing over possession of the process house to third parties without the concurrence of the petitioner is illegal.
- (c) To order transfer of balance shares of the first respondent company to the petitioner aggregating to 50% of the paid up share capital.
- (d) To order to appoint relatives of petitioner and respondents No. 2 and 3 as Directors, alternative Directors on the Board of the first respondent company subject to the condition that the Directors of the petitioner shall not be not less than 50% of the Directors' strength.
- (e) To direct that all bank accounts of the company will be operated under the joint signatures of one person each from petitioner's group and from respondents No. 2 and 3 group.
- (f) To direct that all the company affairs shall be carried out under the authorised digital signatures of the petitioner and respondents.
- (g) To direct the respondents to pay the amount illegally earned by leaving possession of Nagina and the process house (Rudraksha) to third parties.

10. Respondents in reply pleaded that the petitioner was employed only as Printing Master in Rudraksh Synthetics P. Ltd. (process



House). There is zero percent investment by the petitioner in the first respondent company. Petitioner approached the respondents with folded hands for a job. Petitioner had no money to start business. Respondents No. 2 and 3 are successful people in textile and chemical fields. Respondents No. 2 and 3 chose to give a feeling of ownership to petitioner and his wife and they were given shares of the first respondent company. In fact, respondents landed funds to the petitioner and his wife and with those funds only the petitioner became member in the company. According to the respondents, Rs. 63.00 lacs were transferred from the accounts of respondents to petitioner and his wife and that money was invested by the petitioner in the first respondent company. Respondents denied that there was an understanding to give 50% of the shares in the first respondent company and Directorship as well as employment. Respondents made the petitioner as Director on 05.02.2011 with powers to sign cheques and operate bank accounts of the first respondent company in Allahabad Bank, Nanpura Branch, Surat. Petitioner, in addition of being Director, worked as full time Printing Mater in the first respondent company since 15.08.2010 at a monthly salary of Rs. 2.00 lacs. Petitioner was in-charge of production unit as printing master. Petitioner has joined Ravi Exports Ltd. as Printing Master. Petitioner with no investment started creating hurdles in the affairs of the first respondent company. Petitioner has withdrawn his salary in cash and the balance was paid by the first respondent company. Petitioner ran away from employment of the first respondent company and joined another company as employee and alleging



that the respondents not allowed the petitioner to continue. Respondents No. 2 and 3 stated that petitioner was removed after giving due notice and after considering his replies. Respondents further stated that the petitioner was removed as authorised signatory with his knowledge. Petitioner stopped attending the company business and took employment in another company which is competing with the first respondent company. It is stated by the respondents that petitioner did not state any acts of oppression and mismanagement qua shareholding of petitioner. According to respondents, some of the prayers are not at all maintainable and he has to approach the Civil Court. According to the respondents there are no acts of oppression and mismanagement.

11. In the rejoinder it is stated that the averments that Rs. 63.00 lacs were transferred by respondents No. 2 and 3 to the petitioner and, therefore, practically there is zero investment of the petitioner in the first respondent company are false.
12. Proprietary firms viz. Naresh Chemicals, Shwe Hinthra Trading Company and Krishna Sales issued notices dated 07.10.2015 calling upon the petitioner to repay the amount which were transferred to him. Petitioner gave reply to them denying the borrowing. Petitioner in the reply also denied that the amounts given by the aforesaid companies were invested in the first respondent company.



13. It is also stated in the rejoinder that when wife of petitioner gave power of attorney, there is no need to state that this petition is filed on behalf of his wife also. Respondent No. 3 suppressed material evidence regarding legal notice issued to the petitioner and replies given by the petitioner. Petitioner also alleged in the rejoinder that respondents No. 2 and 3 and their family members siphoned funds of the first respondent company by falsifying the accounts. In the financial statement for the year ended 31.03.2014, out of total purchase of Rs. 1.5 crores, purchases from five related parties amount to Rs. 1.47 crores and it is clear example of siphoning of funds. Petitioner has stated that there is no evidence of convening of Board Meetings and Annual General Meetings and no such notice was given to the petitioner at any point of time. Respondents have not produced original accounts such as books and notices of General Meetings, minutes etc. Petitioner alleged that handing over the process house to Devi Processors without the knowledge of the petitioner is nothing but an illegal act.

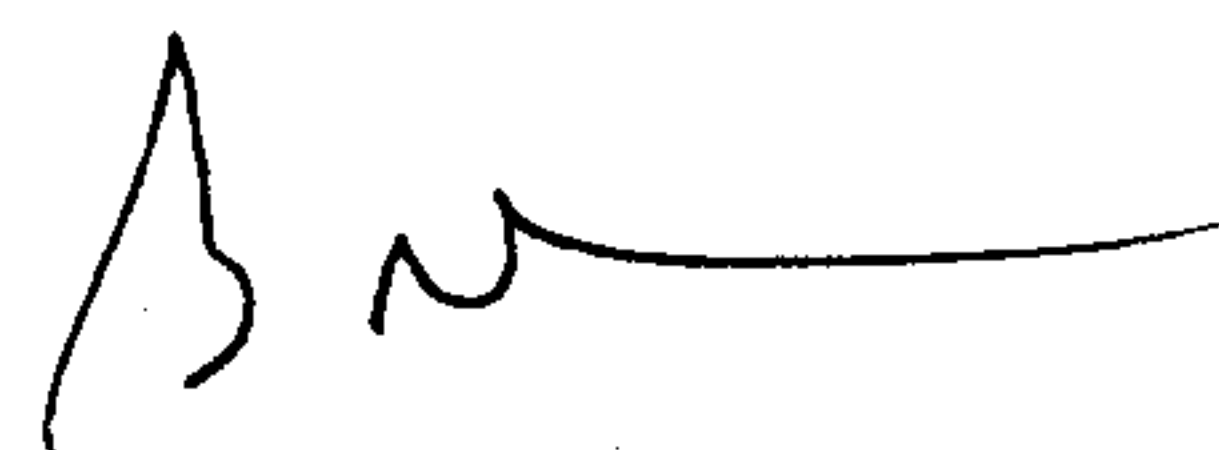
14. Learned counsel appearing for the petitioner contended that although petitioner is a Director in the first respondent company till he was removed on 08.10.2015 he has not been served any notice of meeting of the Board of Directors except the notice in respect of the Board of Directors meeting convened on 29.08.2015 with the sole object of removing the petitioner as Director. It is also contended by the learned counsel appearing for the petitioner that without knowledge of the petitioner,



shareholding of respondents No. 2 and 3 have been increased by allotting 5,00,000 shares to each of them on 20.04.2010 and 12.05.2011 without knowledge of the petitioner and without giving any notice to the petitioner. Learned counsel for the petitioner also contended that removal of the petitioner as Director is also illegal.

15. On the other hand, learned counsel appearing for respondents No. 2 and 3 contended that the allotment of further shares of 5,00,000 each to respondents No. 2 and 3, even according to the petitioner, took place in 2011 and it has not been questioned by the petitioner except in this petition which is filed in September, 2015. He also contended that petitioner is Director of the first respondent company and on his own saying petitioner stopped coming to the company from 2013 and, therefore, petitioner is not entitled to question the allotment of further shares of 5,00,000 to each respondents No. 2 and 3 in the year 2010 and 2011.

16. In a number of judgements, Hon'ble Supreme Court considered in extenso the scope of sections 397 and 398 of the Companies Act, 1956 that are corresponding to Section 241 and Section 242 of the Companies Act, 2013. Hon'ble Supreme Court mainly referred to the following judgements in order to conclude what oppression would be: -

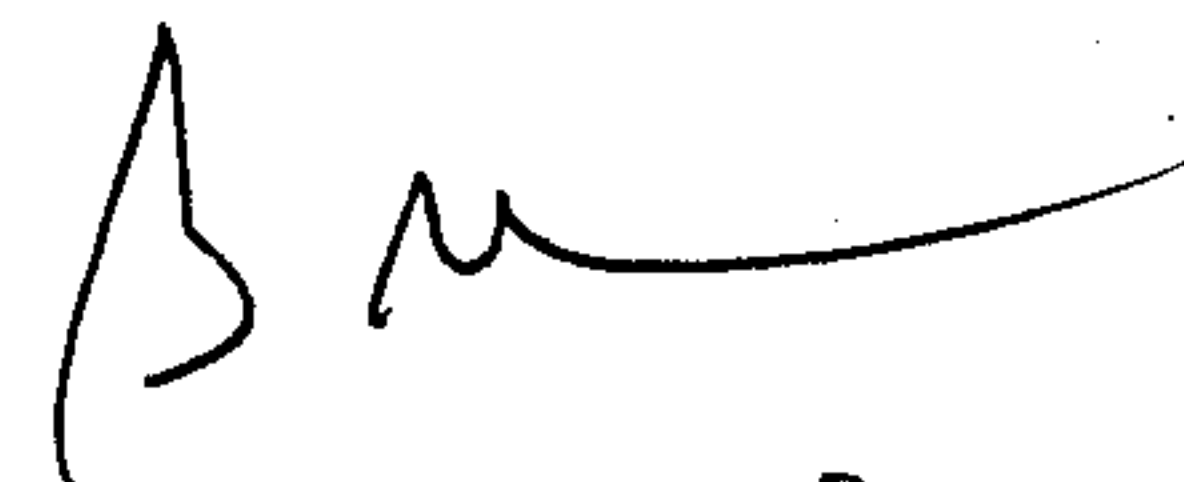


- (a) Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. [191] 3 SCC
- (b) (b) M.S. Madhusoodhanan v. Kerala Kaumudi (P) Ltd. [2004] 9 SCC 204,
- (c) Dale & Carrington Investment (P) Ltd. v. P.K. Prathapan [2005] 1 SCC 212,
- (d) Sangramsinh P. Gaekwad v. Shantadevi P Gaekwad [2—5] 11 SCC 314 and
- (e) Kamal Kumar Dutta v. Ruby General Hospital Ltd. [2006] 7 SCC 613.

Hon'ble Supreme Court held when oppression would be made out

V.S. Krishnan and others vs. Westfort Hi-tech Hospitals Ltd.,
[2008] 83 CLA 371 (SC)

- (1) Where the conduct is harsh, burdensome and wrong
- (2) Where the conduct is mala fide and is for collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-à-vis the others
- (3) The action is against probity and good conduct
- (4) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the

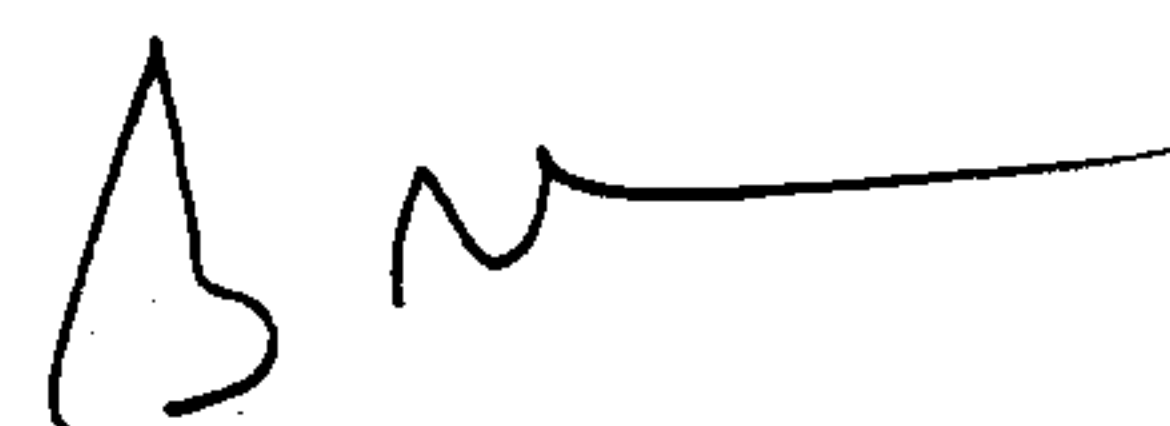


test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(5) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the CLB under section 402 to set right, remedy or put an end to such oppression is very wide.

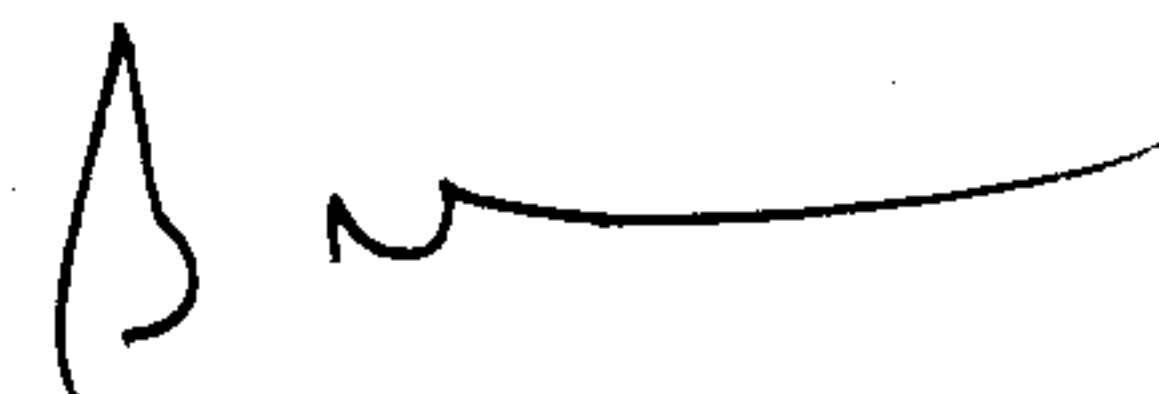
(6) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/ basically a question of fact.

17. The first and foremost grievance of the petitioner is that he was not allotted 50% shares in the paid up capital of the first respondent company as agreed upon. Respondents denied any such agreement to give 50% of the paid up capital to the petitioner. Admittedly, petitioner and his wife are having 32.66% of the paid up share capital of the first respondent company. Petitioner did not file any document to show that there is arrangement/understanding or agreement to give 50% of the paid



up share capital to the petitioner and or his wife. Therefore, there is no basis for the grievance of the petitioner.

18. It is pertinent to refer to the investment of the petitioner in the first respondent company. It is the case of the petitioner that he has invested 50% of the capital. Respondents, in reply, stated that in order to give him the feeling of ownership, they have landed funds to petitioner and his wife and those amounts which comes to Rs. 62.00 lacs were invested by the petitioner in the company. According to the respondents from their accounts Rs. 63.00 lacs were transferred to the account of petitioner. In support of the plea, respondents filed annexure "A" showing the amounts transferred from the accounts of Naresh Mandlewala, Rakesh Mandlewala, Hemant Mandlewala, Rameshbhai Shah, Rohit Patelwala to the account of petitioner. In the rejoinder, petitioner stated that some proprietorship firms viz. Naresh Chemicals, Shwe Hinthra Trading Company and Krishna Sales gave five notices dated 07.10.2015 to the petitioner demanding money stating that they are payable to them. Petitioner got issued replies to lenders dated 26.10.2015 stating that he is not liable to pay the amounts demanded by the aforesaid proprietorship firms. He has filed copies of reply notices as annexure "A" to the rejoinder. Therefore, the theory put forward by the respondents that it is the respondents No. 2 and 3 that funded the petitioners to subscribe for the shares in the first respondent company do not merit acceptance in light of annexure "A" reply notices issued by the petitioner to his lenders.

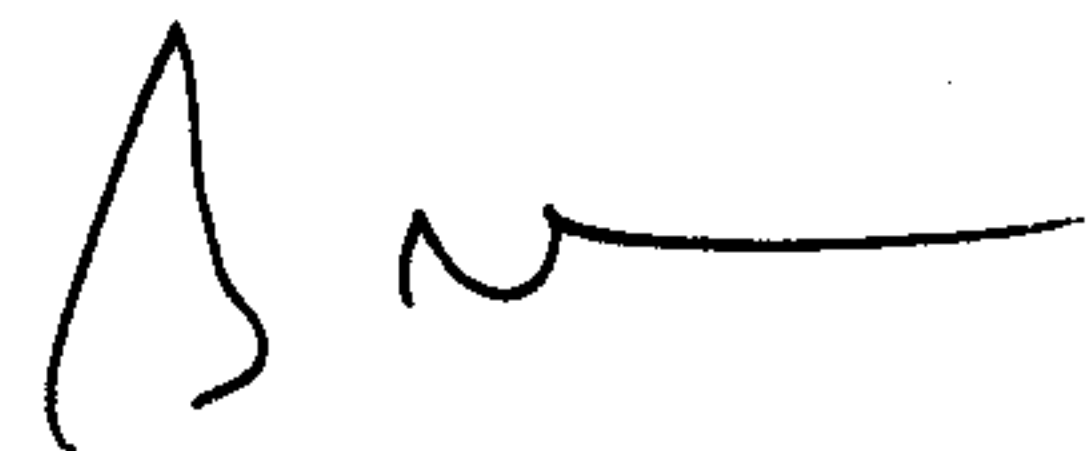


19. Therefore, it can only be said that there is investment of the petitioner in the first respondent company but there is no understanding to give 50% share capital to the petitioner in the first respondent company. Petitioner and his wife were given 32.66% of the paid up shareholding of the first respondent company. When such is the case, petitioner cannot make any grievance on the ground that he was not allotted 50% paid up share capital of the first respondent company.
20. Coming to the aspect of further allotment of 5,00,000 lac shares to respondents No. 2 and 3 on 20.04.2010 and 12.05.2011, it was for the first time questioned only in the Company Petition filed in September, 2015. Prior to that, although petitioner is in the Board as Director, he did not question the same. According to petitioner, he was attending the company till May 2013. Therefore, allotment of shares to respondents No. 2 and 3 that took place in the year 2010 and 2011 cannot be questioned by the petitioner in September, 2015, more so when petitioner happened to be Director till he was removed on 08.10.2015. It is only after notice to reminder petitioner as Director was issued, he raised the issue of further allotment of shares to respondents No. 2 and 3 in this petition. If the further allotment of shares affected the shareholding of the petitioner and his wife, they would have raised this issue immediately thereafter or at least when petitioner stopped coming to the company from May 2013. Therefore, the belated challenge made to the allotment of shares to respondents

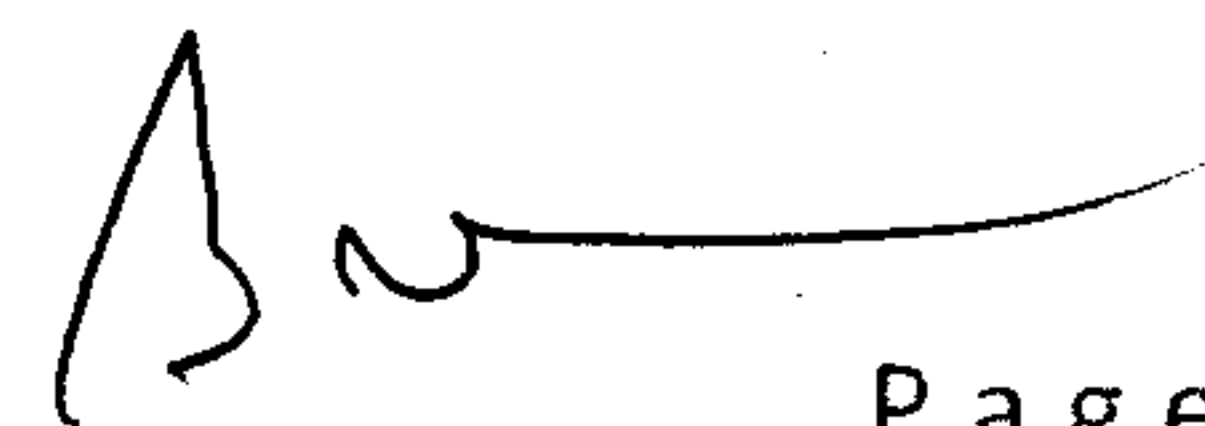


No. 2 and 3 disentitles the petitioner to obtain relief treating it as an act of oppression aimed to reduce shareholding of petitioner in the first respondent company.

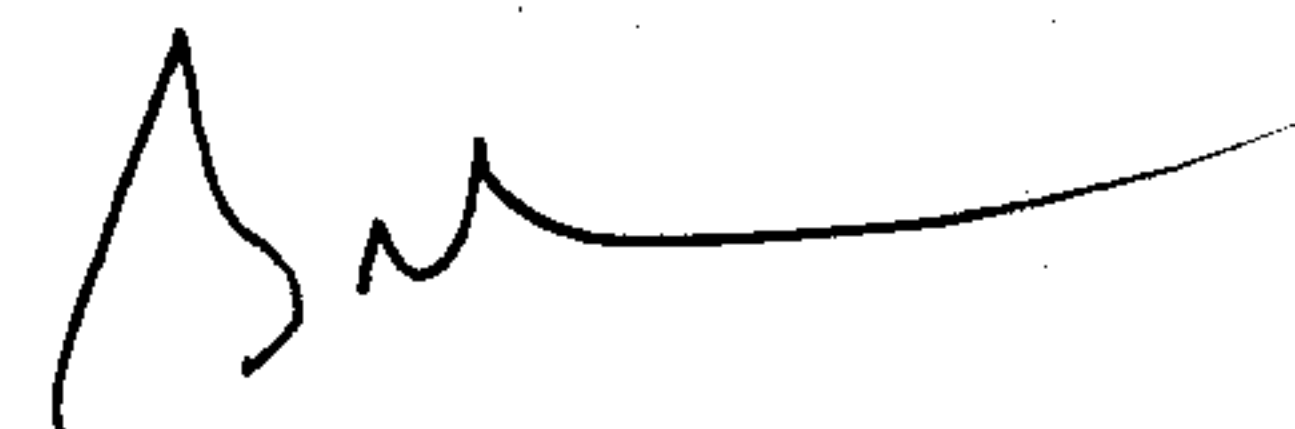
21. It is stated by the respondents that, for the first time, he searched the website of Ministry of Corporate Affairs in September, 2015 and then only he came to know about the allotment of further shares to respondent No. 2 and 3 in 2010 and 2011. It is not known what prevented the petitioner from searching the website prior to his removal or at least at the time when he stopped coming to the office and during his tenure as Director. Therefore, such kind of inaction and belated action cannot give raise to a cause of action to hold that the persons in management has committed the acts of oppression.
22. Petitioner was given cheque power in the year 2011 and he continued to have the cheque power till the middle of May 2014.
23. Coming to the aspect of removal of the petitioner as Director, it is within the knowledge of the petitioner that the production in the first respondent company (process house) was stopped on 01.02.2013. It is the statement of the petitioner that he stopped attending the company from May 2013. It is the case of the petitioner that he joined Ravi Export Ltd. leaving the first respondent company as printing master.



24. It is also in the knowledge of the petitioner that he was not called for any Board Meeting or any General Meetings or at least it is in the knowledge of the petitioner that no Board Meetings or General Meetings were held in respect of the first respondent company but petitioner being a director did not raise any objection on those aspects till he was proposed to be removed. As can be seen from the notice dated 20.08.2015 it served on the petitioner on 25.08.2015. It is clear from the notice that the reasons for removal of the petitioner as Director is petitioner is not attending day to day activities of the first respondent company and petitioner is revealing the trade secrets of the company to the competitors. Contention of learned counsel for petitioner is that when the petitioner is not attending to the day to day affairs of the company, then how he would reveal the company affairs to the so-called competitors of the first respondent company. Here one has to see that petitioner is a Printing Master having technical experience. Petitioner is taken into the business either as an employee or as a Director of the first respondent company for the purpose of running the process house. It is a fact that there are several process houses in and around Surat. It is a fact that petitioner worked for considerable time in the first respondent company's process house, at least from 2011 to 2013. Therefore, petitioner must know what are the trade secrets and the processing secrets of the first respondent company. Therefore, argument of the learned counsel for the respondent that when the petitioner did not attend to the day to day affairs of the first



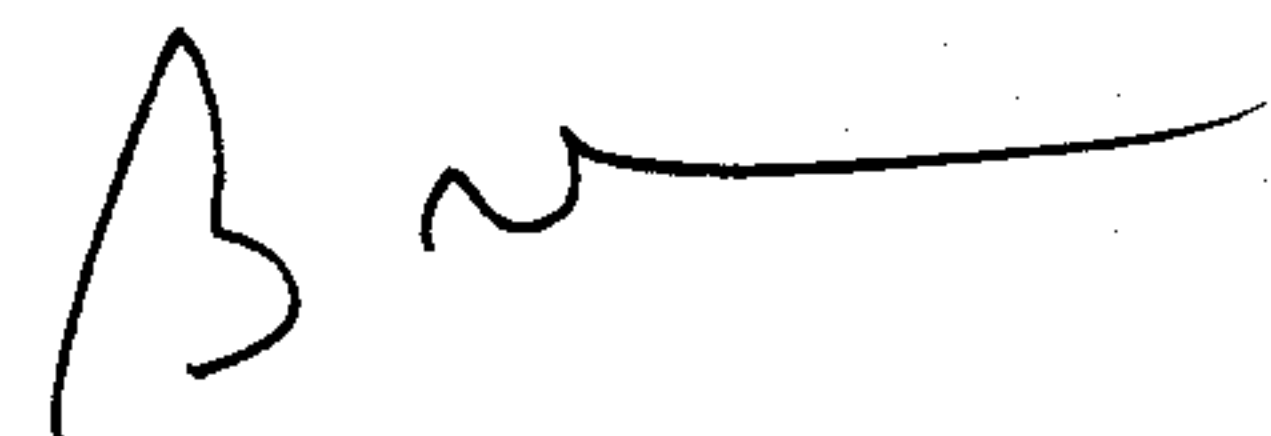
respondent company from May 2013, there is no possibility of the petitioner revealing the trade secrets to the competitors, do not merit acceptance, especially in the light of the fact that the petitioner stopped coming to the first respondent company only from May 2013 and he joined another process house. Therefore, the reasons given in the notice dated 20.08.2015 for removal of the petitioner, are not whimsical or fanciful reasons and it has some basis. It is not as if that petitioner being Director of the first respondent company has not been served with notice of the meeting of the Board of Directors. Petitioner having received the notice for the Board Meeting dated 29.08.2015 also sent reply to the notice dated 20.08.2015 stating that he should not be removed as Director. Petitioner and his wife were served notice of EOGM dated 29.08.2015 on 16.09.2015. Therefore, it is not as if the petitioner was removed without giving notice or without giving sufficient opportunity to give explanation to the notice. In this context, learned counsel appearing for the petitioner relied upon the decision of the Company Law Board decision in Varshaben S. Trivedi vs. Shree Sadguru Switch Gears (P) Ltd. reported in [2015] 188 CompCas 485 (CLB). In that decision, petitioner was removed from the Directorship without following due procedure and without giving any proper, convincing and cogent reason for removing the Director. In that case averment of non-receipt of notice for any Board Meetings were found to be correct. In that case, it was also proved that the conduct of the respondents amounts to oppression and mismanagement in the affairs of the company. Under those facts and circumstances,



Hon'ble Company Law Board held that the action taken by the respondents removing the petitioner as Director was set aside. In the case on hand petitioner having been given employment as printing master and having been given the position of Director did not participate in the activities of the company, at least after 2013 till he filed the petition. In the case on hand even according to petitioner he received the notice but it was short notice. In the case on hand petitioner and his wife were served EOGM notice. In this case sufficient reasons were given for removal of the Director. Therefore, removal of the petitioner as Director in this case cannot be equated with the facts in the case relied upon by the learned counsel for the petitioner.

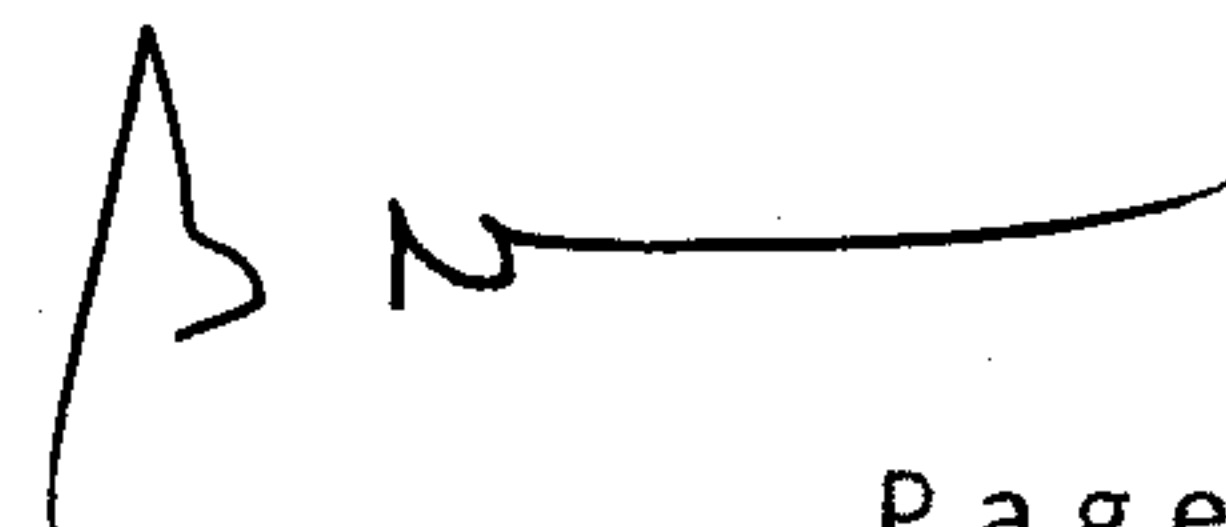
25. On the same aspect learned counsel for the petitioner relied upon another decision of the Company Law Board, Mumbai in Mohmad Rafiq Jafferbhai Bagwan vs. Sathyaprakash Subramainian and others reported in [2013] 117 CLA 227 (CLB). In that case there were certain irregularities in the accounts of the company and for that reason petitioner was not provided with the information required by him and on that account petitioner was removed as Director. Therefore, it was held that removal of petitioner as Director was not justified. The aforesaid decision is also not applicable to the facts of this case.

26. Learned counsel appearing for the petitioner relied upon another decision of Hon'ble Company Law Board, Chennai Bench in



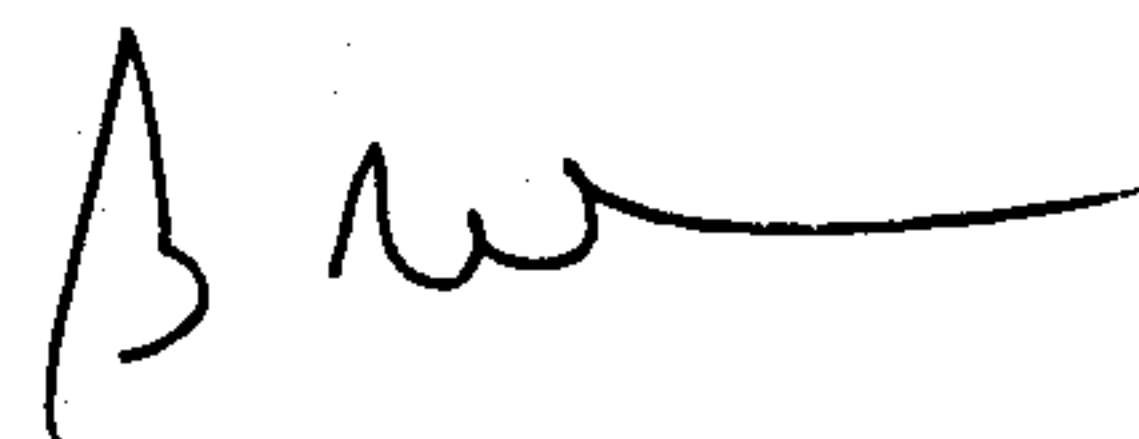
Scholastica Antorny vs. Azhimala Beach Resorts P. Ltd., reported in [2007] 139 CompCas 618 (CLB). In that decision, petitioner is promoter Director of the company and the Articles of Association of the company placed before the Board provides that the petitioner must be given directorship. In that case in the Annual General Meeting, Chairman conveyed to the members that petitioner who was absent expressed unwillingness for appointment as Director and hence reappointment of the petitioner as Director in that case was not considered. But it is the contention of the respondents that petitioner did not attend the Annual General Meeting and did not offer willingness for election to the post of Director. Finding those inconsistency in the version of the respondents it was observed that not re-electing the petitioner as Director is not justified. In view of the aforesaid facts and facts of those case, that decision is not applicable.

27. Learned counsel for petitioner relied on the decision of the Hon'ble Company Law Board, New Delhi Bench in Sndershan Singh Sethi and Ors. vs. Sakhi Resorts and Farmlands P. Ltd. and Ors. reported in [2015] 190 CompCas 349 (CLB). This decision is based on principle of legitimate expectancy depending on the shareholding of petitioner in that case.
28. In the case on hand, there is no written understanding between the petitioners and respondents that petitioner should be continued as Director. There is no material on record to substantiate that there is any such oral commitments by the



respondents to continue the petitioner as Director or to have a Director from the petitioner's group. There is no provision in the Articles of Association that there should be Directors from the group of petitioner. Removal of the petitioner as Director was on certain grounds already narrated that are held to be sufficient for removal of the petitioner as Director. Therefore, the question of legitimate expectancy does not arise in this case. More so in order to exercise legitimate expectancy petitioner must be wilful and diligent enough to participate in the affairs of the company but not by running away from the company and joining another company and look towards Tribunal.

29. In view of the above discussion removal of the petitioner as Director of the first respondent company has to be upheld.
30. Contention of the learned PCS for the respondents is that an isolated single act of removal of Director would not entitle an aggrieved person to ask for relief of oppression and mismanagement invoking Section 241 of the Companies Act, 2013. On this aspect learned PCS appearing for the respondents No. 2 & 3 relied upon the decisions in Hanuman Prasad Bagri and others v.s Bagress Cereals (P) Ltd. and others reported in [2001]41 CLA 258 (SC). In that decision it is held that a Director even if illegally terminated cannot bring his grievance as to termination to winding up the company for that single and isolated act, even if it was doing good business and even if the Director could obtain each and every adequate relief in a suit in a court.

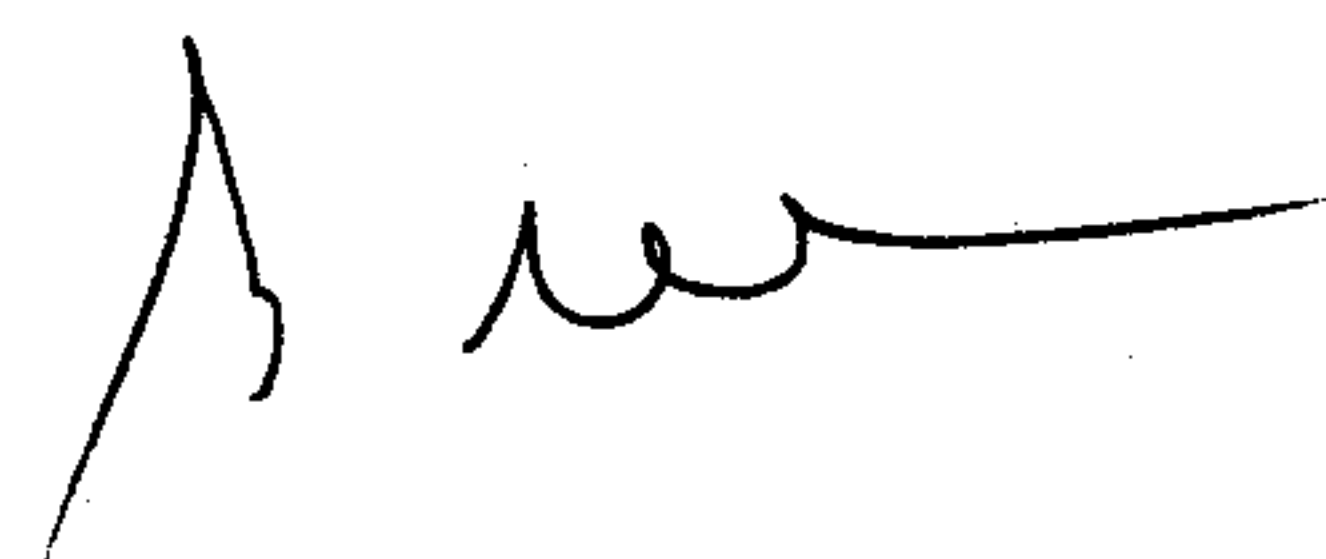


31. In the case on hand also the petitioner being a shareholder, he is entitled for profits in the company. Petitioner is also entitled to claim remuneration if any due to him by a suit in Civil Court. Therefore, on the ground that petitioner was removed as Director, it cannot be said that it is an act of oppression and mismanagement. As already said the petitioner did not raise his little finger till he received the proposal to remove him from the Directorship of the first respondent company.
32. The action of handling over the process unit Rudraksh by Respondents no. 2 and 3 to Devi Processors is a business decision which ought to have been taken in a Board Meeting with due notice to petitioner, but such act cannot be taken as act of oppression unless it is shown that prejudice or loss has been caused to petitioner and his wife as shareholders. After petitioner left the 1st Respondent company and when Respondents failed to run the process house there is no other alternative left to Respondents no. 2 and 3 except to handover process house to some other person.
33. In view of the above discussions, this Tribunal is of the considered view that no act of oppression and mismanagement is established. However, the fact remain the petitioner invested huge amount of money in the first respondent company and in Nagina Processors Pvt. Ltd. From the facts and circumstances of the case there is no



possibility of the petitioner actually participating in the affairs of the first respondent company by joining hands with the respondents. Therefore, even in the absence of proof of acts of oppression and mismanagement, in order to do substantial justice and on the principle of equity, this Tribunal is of the considered view that the petitioner must be allowed to have fair market value of the shares which he is holding in the first respondent company, if he is ready to walk out of the first respondent company.

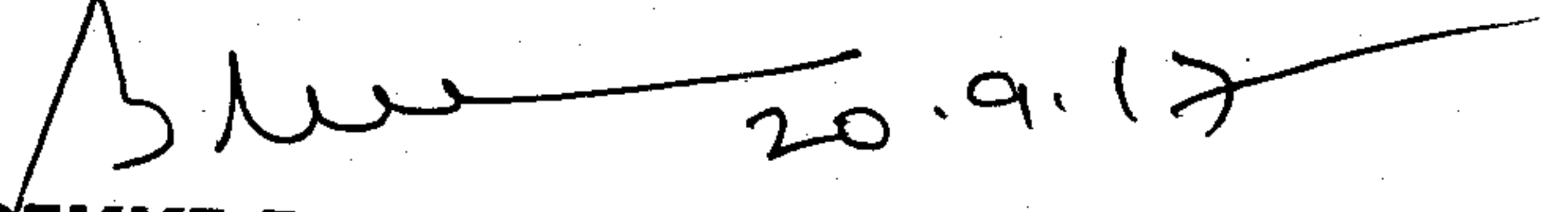
34. In absence of any material to hold that there were acts of oppression and mismanagement, petitioner is not entitled to ask relief of salary, appointment of Independent Directors and investigation of the affairs of the first respondent company.
35. This Tribunal hereby direct respondents No. 2 and 3 to purchase the shares of the petitioner and his wife if they are willing to sell their shares for a fair market value fixed by an independent valuer appointed by this Tribunal. Petitioner and his wife if they are willing to sell their shares, they shall file an application before this Tribunal within two months from the date of this order for appointment of independent valuer to assess fair market value of the shares of the first respondent company as on the date of filing of petition. In case if the petitioner and his wife file such application, this Tribunal shall appoint independent valuer to determine the fair market value of shares of the first respondent



company as on the date of filing of petition and further decide the mode and manner of transfer of shares.

36. This Company Petition is disposed of accordingly. Both the parties are directed to bear their own costs.

37. In view of the disposal of TP 109 of 2016, IA No. 7 of 2016 is closed.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on the 20th day of September, 2017.