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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 16/241/NCLT/AHM/2017

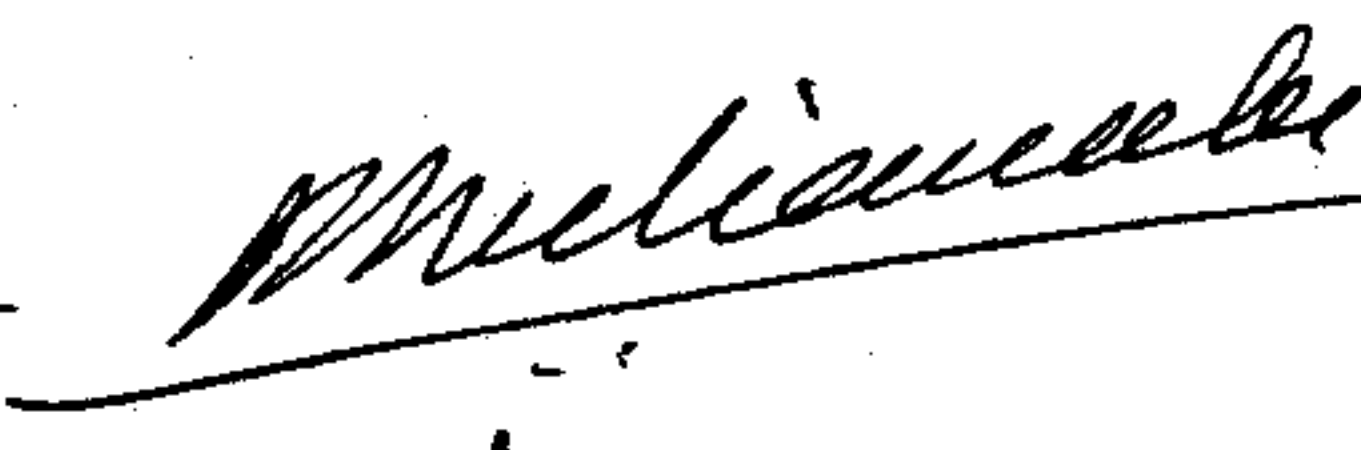
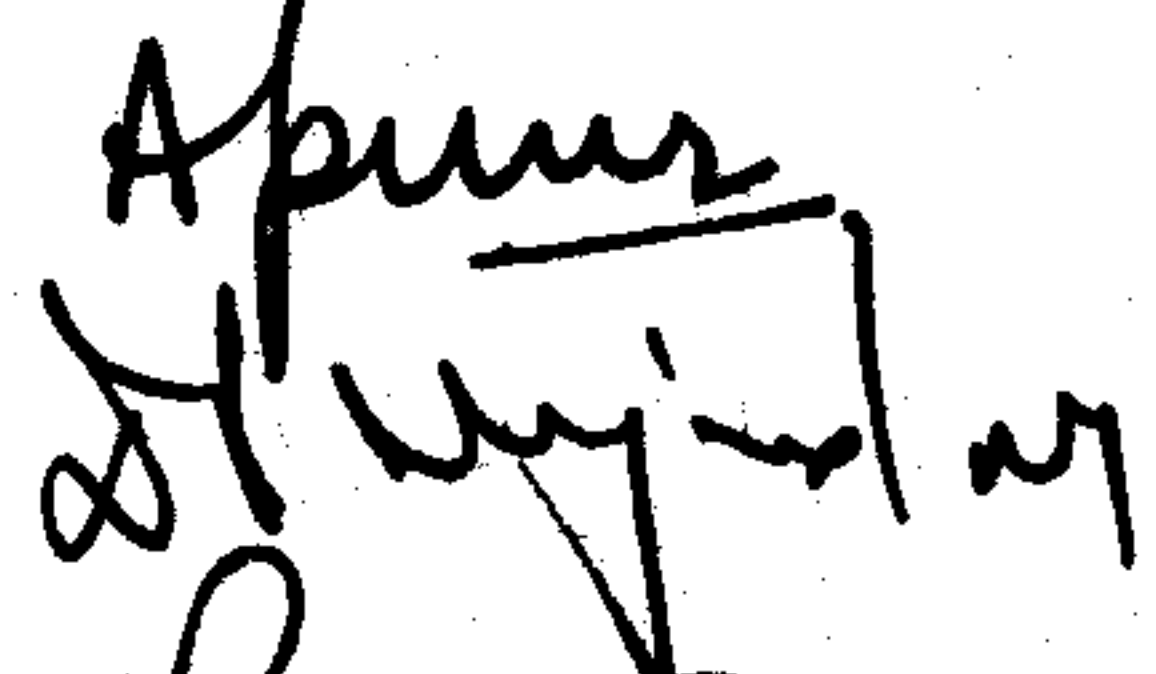
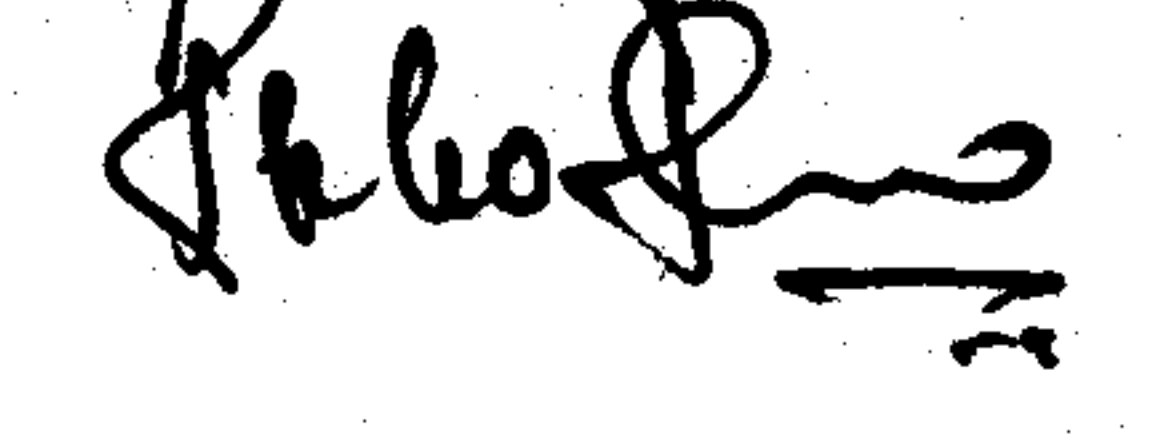
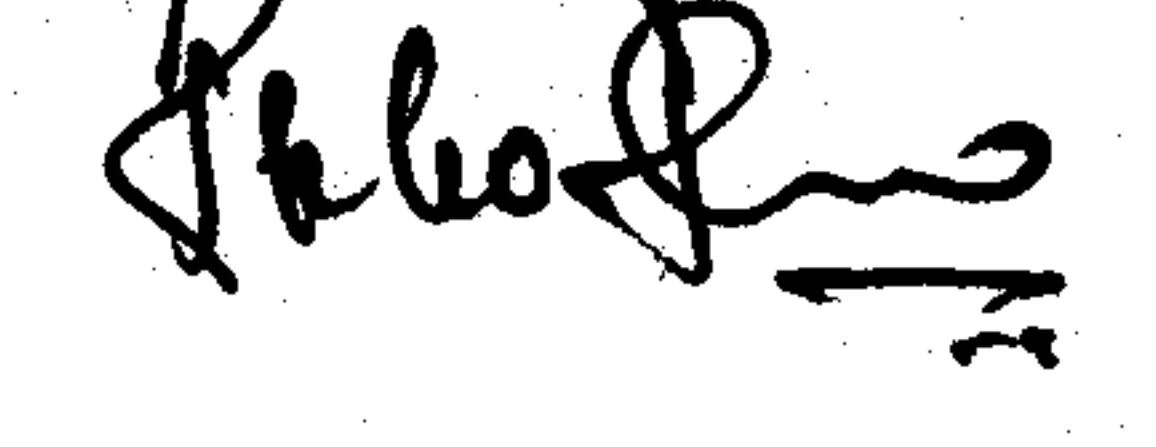
Coram:

**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 13.10.2017**

Name of the Company: Bahubali Shantilal Shah
V/s.
The Lok Prakashan Ltd. & Ors

Section of the Companies Act: Section 241 of the Companies Act, 2013


<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	PAVAN S. GODIAWALA	ADVOCATE	PETITIONER	
2.	APURVA VAKIL	Advocate	R-3	
3.	DIVYANG MAJUMDAR	F.C.A.	R. 6	
4.	RAJU KOTHARI	Adv	Resp 4	

ORDER

Learned Advocate Mr. Pavan Godiawala present for Petitioner. None present for Respondent No.2. Learned Advocate Mr. Apurva Vakil present for Respondent No.3. Learned Advocate Mr. Raju Kothari present for Respondent No.4. Learned FCA Mr. Divyang Majmudar present for Respondent No.6.

Order on admission and on interim relief pronounced in open Court. Vide Separate Sheets.

List the CP 64/2017 and IA 275/2017 on 02.11.2017 for naming the independent director and for fixing the remuneration after hearing both parties.

 13.10.17
**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 13th day of October, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

CP No. 16/241/NCLT/AHM/2017

In the matter of:

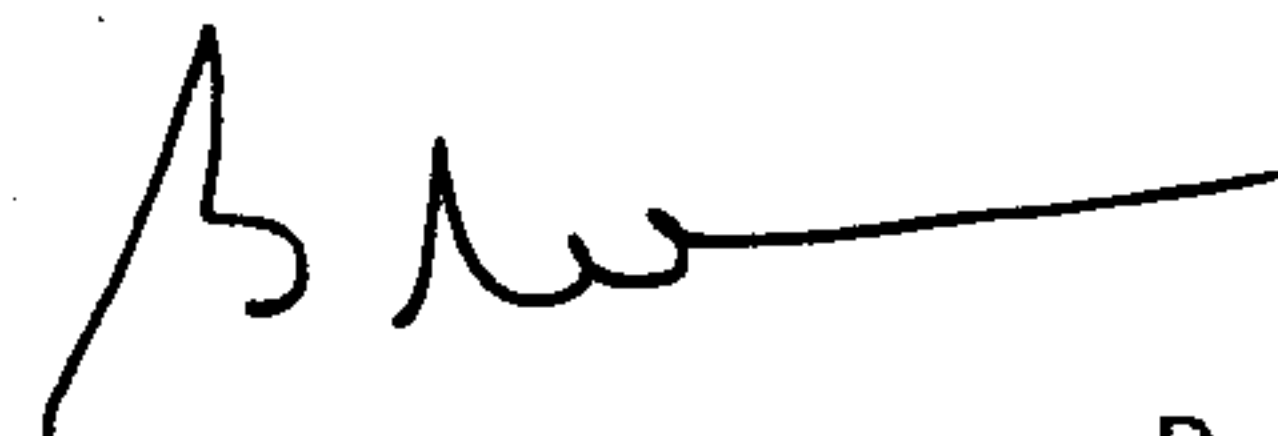
Lok Prakashan Ltd.
having its registered office at
Gujarat Samachar Bhavan, Khanpur
Ahmedabad, Gujarat State

1. Mr. Bahubali Shantilal Shah
Residing at 15 Nandi Hills
Satellite Road
Ahmedabad

Petitioner

VERSUS

1. The Lok Prakashan Limited
Gujarat Samachar Bhavan
Khanpur
Ahmedabad
2. Smt. Smrutiben Shreyanshbhai Shah
Gujarat Samachar Bhavan
Khanpur
Ahmedabad
3. Shri Shreyansbhai Shantilal Shah
Gujarat Samachar Bhavan
Khanpur
Ahmedabad
4. Shri Shrenik Arvindbhai Sheth
Ahmedabad, Gujarat



5. Smt. Usha H. Masmudar alia
Smt. Mukti, Ellisbridge,
Ahmedabad
6. AASPAS Multimedia Ltd.
607, 6th Floor Sakar,
Nr. Gandhidham Railway Station
Ashram Road
Ahmedabad 380 009

Respondents

Order delivered on 13th October, 2017

CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial

Appearance:

For the petitioners:

Learned Senior Advocate Mr. Mihir
Thakore i/b. learned advocate Mr.
Pavan Godiawala

For the respondents:

Learned Senior advocate Mr. Kamal
Trivedi with learned advocate Ms.
Tanaya Shah for respondent No. 1

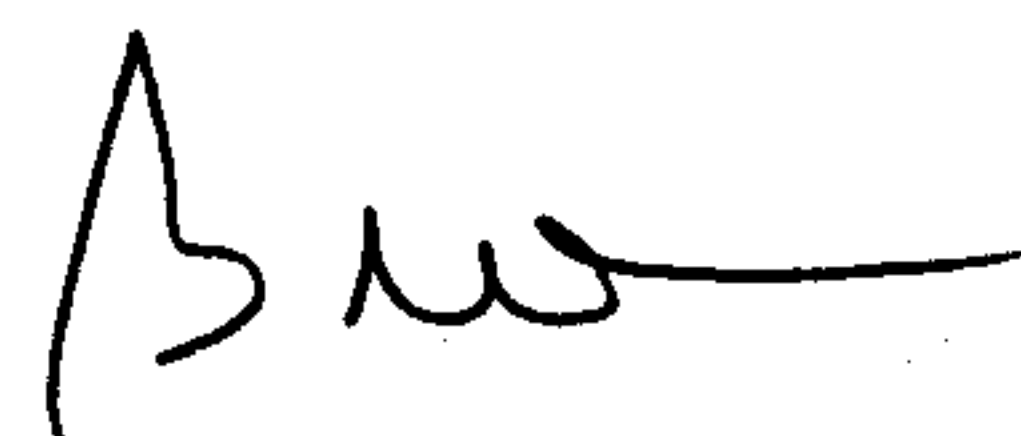
Learned Senior advocate Mr. Mihir Joshi
with learned advocate Mr. Apurva Vakil
for respondent No. 3

Learned advocate Mr. Anip Gandhi for
respondent No. 4

Learned Senior Advocate Mr. Shalin
Mehta with learned FCA Mr. Divyang
Majmudar for respondent No. 6

ORDER ON ADMISSION AND INTERIM RELIEF

01. The petitioner by himself is holding 22.79% shareholding in the
first respondent company, filed this petition under Section 241
of the Companies Act, 2013 claiming for the following reliefs: -

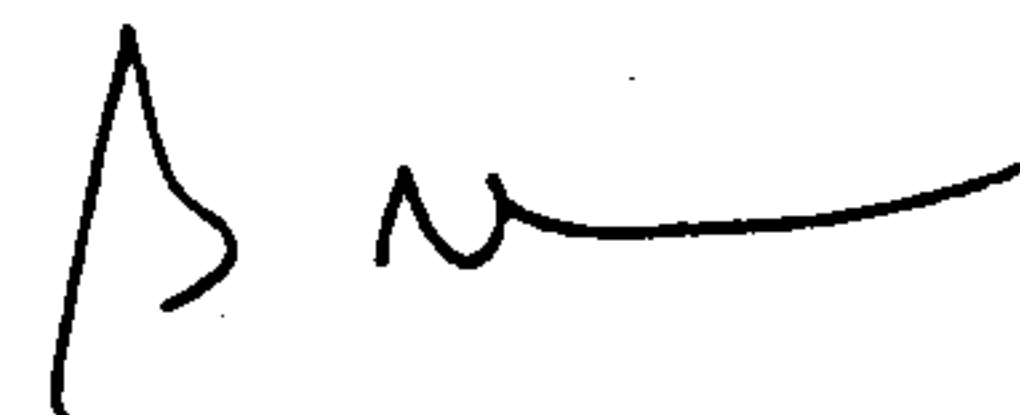


- (A) To value the assets including tangible and intangible and direct either the parties i.e. petitioner or respondents No. 2 and 3 to either buy or sell their equity shares to salvage the company to put an end to the acts of oppression and mismanagement

OR

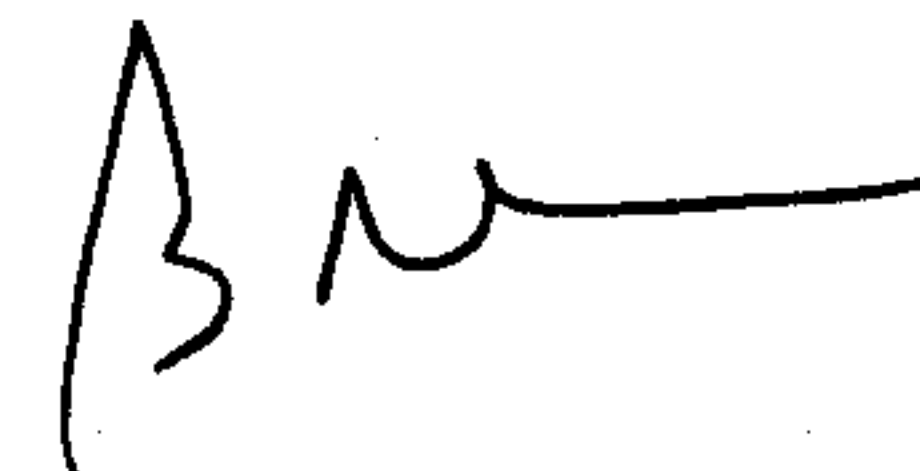
- (AA) To order for split of or demerging of the first respondent company through appointment of independent reputed valuer concerns and/or splitting of the shares and handing over the management pertaining to business of press with name "Gujarat Samachar" to either the petitioner or respondent Nos. 2 and 3 and residual business and with the tangible properties as part of the arrangement to bring an end to the acts of oppression and mismanagement.

- (B) To direct respondent No. 6 from restoring the funds, assets of the first respondent company as clandestinely used and direct to make payment of the advertisement as got published since its inception to the company with the running interest amount at the rate of 18% per annum till payment is made to the first respondent company.



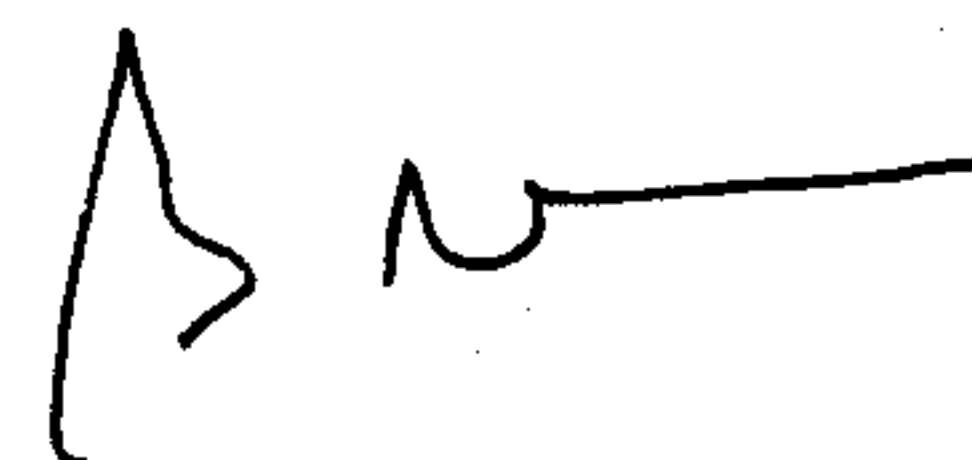
02. Following are the interim reliefs prayed in the petition: -

- (1) to allow the petitioner to sign cheques of salary on behalf of the company in order to ensure compliance of statutory and contractual liabilities and such day to day expenses to be met for the smooth working of the company business.
- (2) to restrain respondent No. 3 from representing himself as the Editor and permit the petitioner to act as the Editor in the overall interest of the first respondent company.
- (3) to permit the petitioner to induct Directors on the Board of the first respondent company and permit the petitioner to act as the Chairman to convene and hold the meetings of the Board of Directors and Annual General Meeting.
- (4) to direct respondent No.6 to deposit Rs. 1.00 crore to the first respondent company for the advertisement as published in the Gujarat Samachar newspapers and restrain respondent No. 6 from representing as a part of daily "Gujarat Samachar".

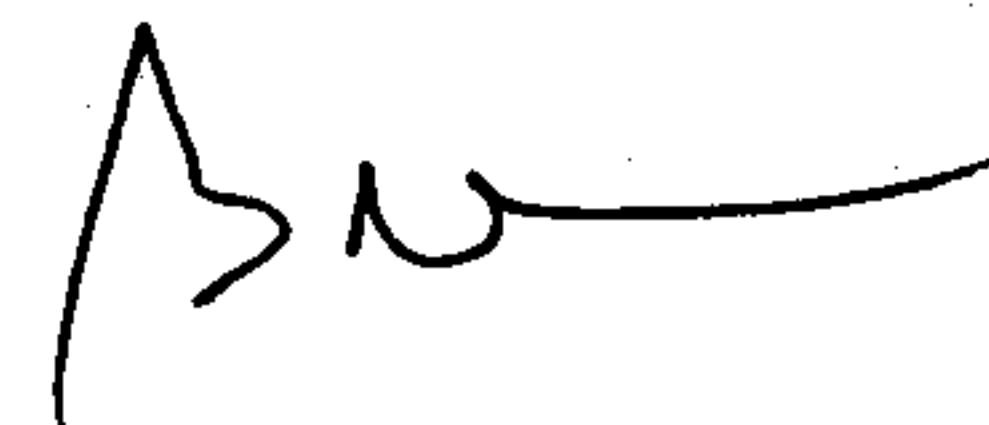


(5) pending disposal of the petition to appoint fresh statutory auditor, internal auditor and Company Secretary for statutory compliances.

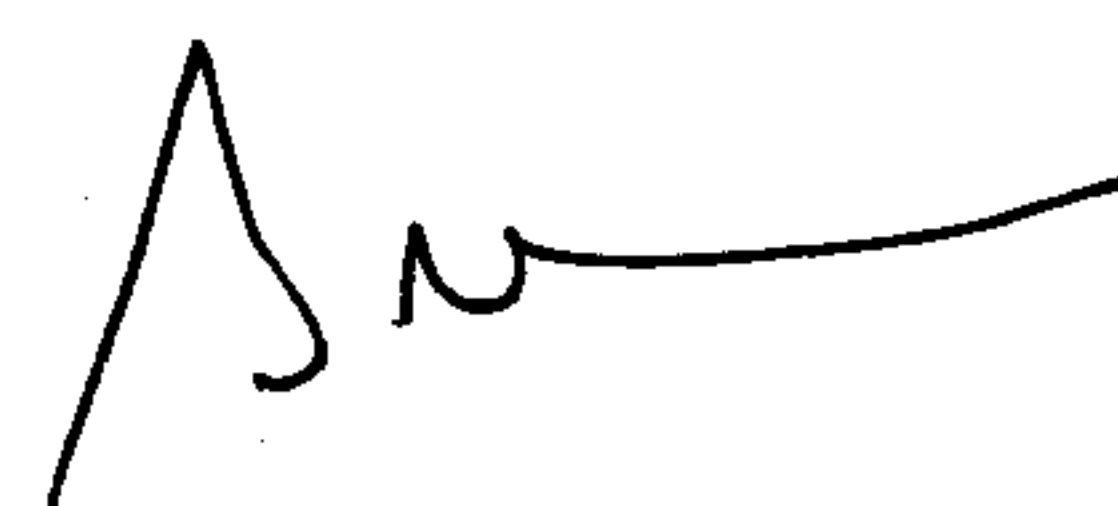
03. In this petition, both the parties took several months' time on the ground of settlement. Ultimately, respondents No. 2, 3 and 6 filed reply in the petition and respondent No. 3 filed reply in IA 275 OF 2017.
04. This matter was taken up for hearing on 10.10.2017 for admission of the petition and on interim relief. Heard Learned Senior Counsels appearing for the petitioner as well as for the respondents.
05. There is no dispute about the fact that the petitioner by himself is holding 22.79% of equity shareholding in the first respondent company. It is also a fact that petitioner along with others also is having shareholding in the first respondent company. Therefore, petitioner is eligible to file this petition.
06. Main contention of the learned counsels appearing for the respondents in this petition is that the petition is barred by limitation. Contention of the learned Senior counsel for the petitioner is that the acts alleged in the petition are continuous in nature and, therefore, this petition is not barred by limitation.



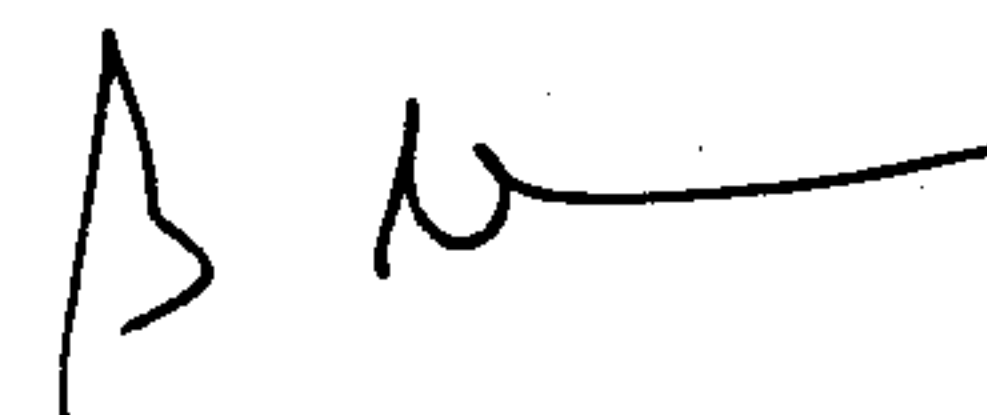
07. Section 433 of the Companies Act, 2013 says that the provisions of Limitation Act, 1963 apply to the proceedings or appeals before the Tribunal as the case may be. In view of the said proviso, the provisions of Limitation Act, 1963 are applicable in the proceedings initiated under Section 241 and 242 of the Companies Act. There is no specific provision in the Limitation Act which governs period of limitation for the petitioners to file a petition under Section 241 and 242 of the Companies Act. Therefore, one has to fall back on residual article 113 of the Limitation Act which says that period of limitation is three years from the date on which right to sue accrue. Now it has to be seen that what are the acts of oppression and mismanagement alleged in this case.
08. Petitioner alleges that respondents No. 2 and 3 are the Executive Directors of the 6th respondent company and the said company is managed by respondents No. 2 and 3. It is further alleged that various machineries and resources of the first respondent company came to be transferred and used by respondent No. 6 and the TV channel GSTV using the goodwill and reputation of Gujarat Samachar, a part of the first respondent company without any disclosure of interest under the provisions of the law by respondents No. 2 and 3 and misrepresentation gained before the public at large about the unit being part of the first respondent company and the said act is continuing one.



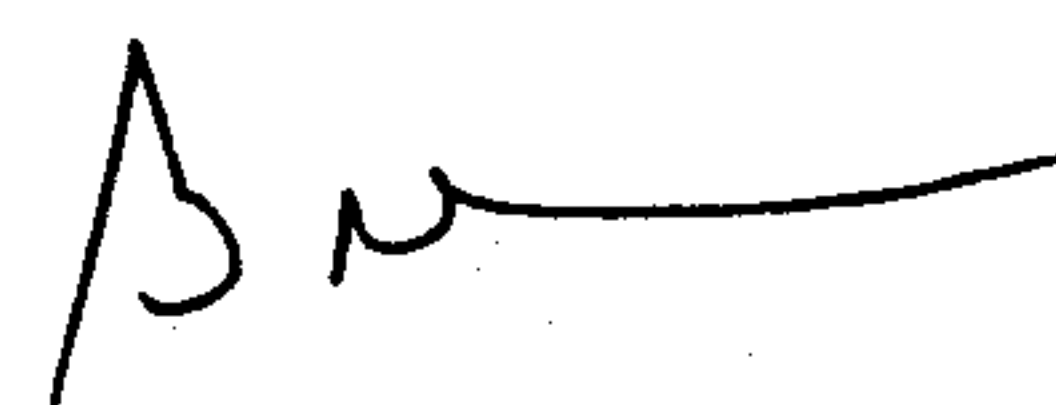
09. The first respondent company was never allowed to raise the invoices and bills for the advertisement of respondent No. 6 published in newspaper "Gujarat Samachar" of the first respondent company and it is also a continuing act.
10. Respondent No. 3 being one of the signing authority as well as publisher, usurped the powers of the Editor and though being the publisher has without declaration started to act as the Editor of the newspaper "Gujarat Samachar", a part of Lok Prakashan Limited. i.e. the first respondent company and it is a continuing act.
11. Respondents conducted Board Meeting on 30.06.2016 with agenda to approve Corporate Social Responsibility Policy, appointment of Internal Auditor and review the activities of the first respondent company. Respondents No. 2 and 3 snatched away attendance sheet stating that there was no Chairman and 10th March meeting was not called only circular resolution was passed.
12. It is alleged that respondent No. 2 and 3 has not missed a single opportunity to put hurdles in conducting either Board Meetings or Annual General Meetings.



13. Respondent No. 2 wrote letter dated 03.09.2016 to the practicing Company Secretary with certain allegations systematically targeting the petitioner with intent to coerce and harass the petitioner and disrupt the affairs of the management.
14. Respondents No. 2 and 3 did not allow the first respondent company to adopt the latest technology such as computerisation etc. Respondents No. 2 and 3 failed to maintain harmony with the employees after demise of late Shri Shantilal Shah. There is no legal appointment of Editor and it is sheer violation of the mandatory laws. Even statutory auditor is working against the interest of the first respondent company and he is acting in consultation with Respondent No. 2. The first respondent company is paying salary to Mrs. Illa Parikh who is an employee of Gujarat Samachar but the said person is working with respondent No. 6. First respondent company is suffering systematic loss by publishing on regular basis the advertisement of respondent No. 6 without any payment and without any resolution for publication of advertisement of GSTV in the first respondent company's daily "Gujarat Samachar".
15. Respondent No. 3 is showing reluctance for signing the cheques and letter of credit. Respondent No. 2 addressed letter dated 13.01.2017 to the petitioner in order to defame the petitioner and to hide the irregularities committed by respondent No. 2.

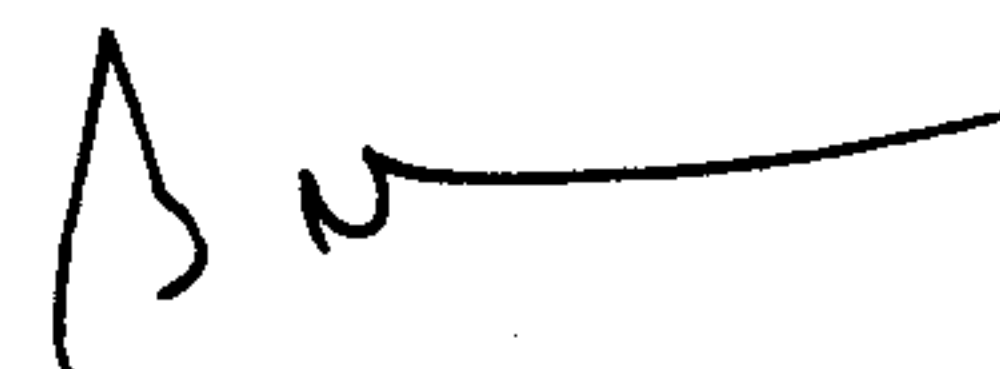


16. Respondents deposited demonetised old currency notes of Rs. 500/- and Rs. 1000/- for Rs. 6.00 lacs received from Vadodara in HDFC Bank, Ahmedabad without knowledge of the petitioner and it also caused hardship to the petitioner being Managing Director of the first respondent company. Respondents also tried to deposit demonetised notes worth Rs. 32.00 lacs with Rajkot Branch of HDFC Bank but bank did not allow to deposit the same since the petitioner refused to sign such letter of deposit.
17. Respondent No. 3 although not in the management, through respondent No. 2 who is wife, illegally remaining on the post of Editor.
18. Respondents No. 2 and 3 started giving the deteriorated and inferior quality of gifts in the Gift scheme and thereby reputation of the first respondent company is getting deteriorated. Respondents No. 2 and 3 did not handle legal matters of the first respondent company properly. Illegal uploading and registering the form appointing respondent No. 2 as Managing Director and certifying the forms by stranger practicing Company Secretary is an act of oppression and mismanagement alleged.
19. Most of the aforesaid acts alleged by the petitioner in the petition are denied by the respondents in their reply but for the purpose of deciding whether the petition is barred by limitation



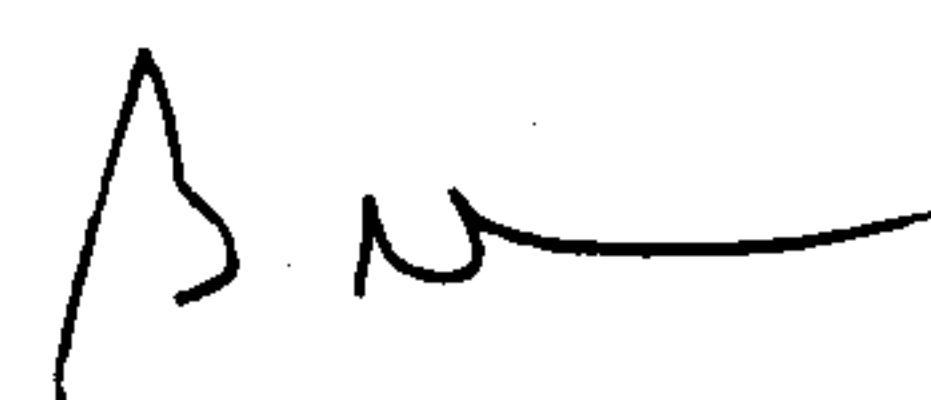
or not, this Tribunal has to take into consideration whether the acts of oppression alleged are continuing one or concluded one and if they are concluded, whether they are within three years from the date of filing this petition.

20. In the case on hand most of the acts of oppression and mismanagement are continuing one. The alleged act of desorting Board Meetings and some other acts are well within three years. Therefore, this petition is not barred by limitation.
21. Learned senior counsel appearing for respondents referred to the decision of this Tribunal in Power Finance Corporation Ltd. In that case it is held by this Tribunal that the acts of oppression and mismanagement are concluded acts. Moreover, in that case majority of the Board of Directors are the nominees of the lenders and they are in control of the management of Shree Maheshwari Hydel Power Corporation Ltd. In those circumstances it is held that CP No. 15 of 2017 is barred by limitation. Therefore, that decision is not applicable to this petition. Another decision referred by the learned senior counsel for respondents is of Amarnath Fab Private Ltd. In that decision petitioners were removed as Directors in the year 2007 and some respondents were appointed as Additional Directors of the company in 2006. In that case additional shares were allotted to respondents in the year 2004 and 2005 without following the procedures. In that case petitioners filed Civil Suit in the Civil Court and it was disposed of. Petition was filed



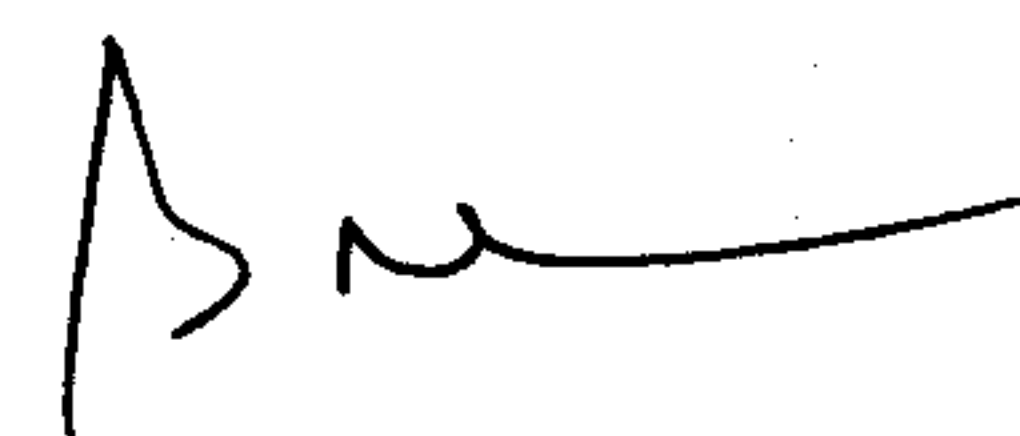
beyond three years of disposal of the suit. In that case inspite of granting time, petitioners did not even chose to file additional affidavit on the aspects of limitation and eligibility. Under those facts and circumstances CP 12 of 2016 relating to Amarnath Fab Private Limited is held as barred by limitation. Therefore, that decision is also not applicable to this petition.

22. In view of the above findings, petitioner is eligible to file this petition and the petition is within time. In view of the findings as there are certain alleged acts of oppression and mismanagement, though denied by the respondents, the application deserves to be admitted. The correctness or otherwise of acts of oppression and mismanagement can only be decided after the full-fledged hearing. Without admitting the petition, this Tribunal cannot go into the merits of the case. There plea of delay and latches as such cannot be taken into consideration at this stage unless a full-fledged hearing takes place as it involves several questions of fact.
23. In view of the aforesaid discussion, this petition is admitted.
24. Now, coming to the interim reliefs prayed in the main petition as well as in IA 275 of 2017, petitioner has prayed for several interim reliefs. During the course of arguments, learned senior counsel appearing for the petitioner, at this stage, insisted for only one relief viz. appointment of Independent Directors on the Board of Directors of the first respondent company pending hearing and final disposal of the petition to ensure that statutory and contractual liabilities and day to day expenses to be met with.



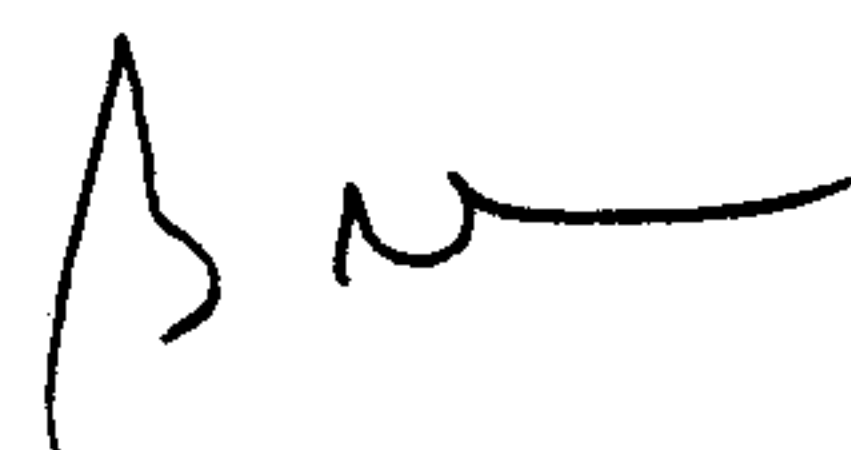
25. In support of his prayer for the aforesaid relief, learned senior counsel appearing for the petitioner contended that there is a deadlock in the management of the first respondent company. He submitted that petitioner and 2nd respondent are the Directors and there are two other Independent Directors, one appointed by the petitioner and one appointed by the second respondent. During the course of arguments, both sides admitted that the Independent Director selected by the petitioner is supporting the petitioner and the Independent Director selected by the 2nd respondent is supporting the 2nd respondent. In the result, among the four Directors, petitioner and one Independent Director is on one side and 2nd respondent and other Independent Director is on the other side. It is a fact that no Annual General Meeting was held for the last financial year. It is also a fact that no Board Meetings were held on regular basis. Learned senior counsel appearing for the respondents contended that the first respondent company is producing newspaper daily and the company is going on without any problem although there are disputes between the petitioner on one hand and respondents No. 2 and 3 on the other hand and there is no deadlock in the management of the first respondent company.

26. Learned senior counsel appearing for the petitioner brought to the notice of this Tribunal certain statements made in the reply of respondent No. 2. In page 204 of the reply of 2nd respondent,



it is stated that alleged acts of oppression and mismanagement are in fact operational issues pertaining to the affairs of the first respondent company. In page 213 to 216 of the reply, 2nd respondent has referred to certain proposals placed before the Board in the Board Meeting held on 27.09.2010 and recommendations made on various operational issues. In page 219 of the reply it is stated that the recommendations pertain to various operational issues which were not implemented in a manner envisaged by the resolutions. In the same page it is also stated that there are issues relating to procurement of newsprint. In page 219 in para n(xv) it is stated that respondent No. 2 has no objection to increase the strength of Board by inducting independent Professional Directors. In page 238 of the reply of the 2nd respondent it is held that even in the current year, never once a proper Board Meeting was held without any agenda or proper notice and Board Meeting was called on 16.02.2016 and on his protest a new meeting was called on 22.01.2016. Board of Directors meeting of 30.06.2016 is also not properly held.

27. From the aforesaid statements in the reply itself show that there are certain operational issues and there was a deadlock in the management of the first respondent company. Moreover, Directors are equal in strength in respect of both groups. During the course of argument it is brought to the notice of this Tribunal that, 2nd respondent Smt. Smrutiben Shreyanshbhai Shah wrote a letter dated 5th October, 2017 to all the Directors proposing



to convene a meeting of Board of Directors on 14th October, 2017 at the registered office of the company and proposed appointment of Hon'ble Justice P.B. Majmudar (Retired) as Chairman to oversee the proceedings of the meeting and in that letter she also proposed certain agenda items. Petitioner gave reply dated 9th October, 2017 stating that taking outside person as Chairman who is not a member of the Board is not permissible according to law. Petitioner also admitted that he is not against convening meeting of the Board.

28. The first respondent company that produces Gujarati newspaper daily is having widest circulation in the state of Gujarat and Mumbai. It is a fact that petitioner and respondent No. 3 are brothers and that they are unable to reconcile themselves inspite of granting several months' time for settlement of the disputes between them. Among four Directors of the first respondent company, two are on one side and other two are on the other side. In such circumstances, even a Board meeting is held it is not possible to adopt the resolution. Further, even if an observer is there, there is no guarantee that the Board Meeting will be held smoothly. Even assuming that a Board Meeting is held smoothly, there is no guarantee that the resolutions will be passed because either party has no majority. Moreover, respondent No. 2 in her reply in page 219 para n(xv) stated that she has no objection in increasing the strength of the Board by inducting independent professional directors. Moreover, in letter dated 05.10.2017 2nd respondent herself

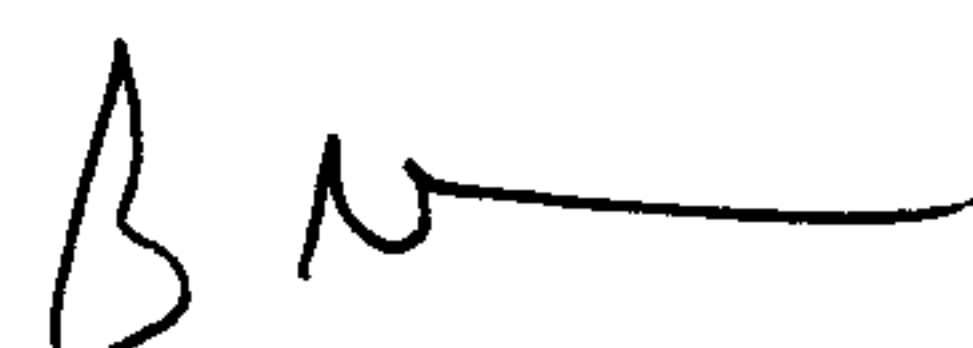


stated that she has no objection in increasing the strength of the Board by inducting independent professional directors. Moreover, in letter dated 05.10.2017 2nd respondent herself proposed the name of Hon'ble Justice P.B. Majmudar to be Chairman to oversee the proceedings of the Board Meeting. The law does not permit an outsider as Chairman of the Board meeting unless he is a Director in the Board. Article 182 of Articles of Association of the first respondent company reads as follows: -

Article 182 - Appointment of Chairman

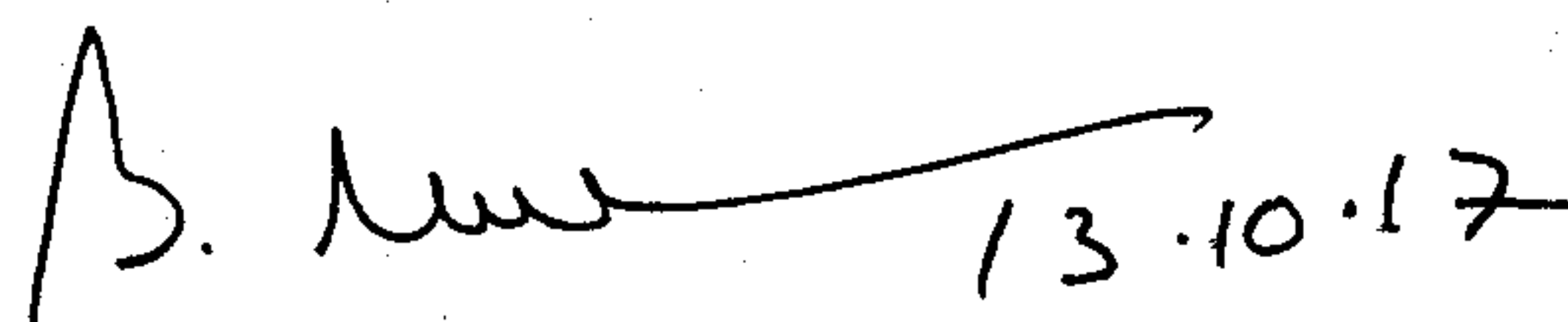
"The Directors from among their number may elect a Chairman of the Board of Directors. The Chairman shall have a casting vote at the Board meeting and the General meeting."

In view of the Article 182 also an outsider cannot act as Chairman of the Board unless he is appointed as a Director. Even appointment of an observer could not meet the situation. Further, the first respondent company has to comply with several statutory compliances, contractual obligations, operational issues and to attend day to day business like purchase of newsprint, payment of salary etc. Therefore, in the interest of the company and in order to run the management and business of the company smoothly, this Tribunal is of the considered view that it is necessary to appoint Independent Director on the Board of Directors of the first respondent



company who shall act as Chairman of the meeting of Board of Directors with casting vote. This has become an immediate necessity because the first respondent company has to hold the Annual General Meeting for the year 2016-2017 and it has to comply with all statutory and contractual compliances. Moreover, there are operational issues to be resolved and the management has to attend to day to day business and affairs of the first respondent company.

29. In the result, this petition is admitted. This Tribunal hereby appoint an Independent Director on the Board of Directors of the first respondent company who shall act as Chairman of the meeting of Board of Directors with casting vote until further orders.
30. List this CP no. 64/2017 and IA 275/2017 on 02.11.2017 for naming the Independent Director and for fixing remuneration of the Independent Director after hearing both parties.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on the 13th day of October, 2017.