

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri V. P. Singh
Hon'ble Member (J)

&

Shri Jinan K R
Hon'ble Member (J)

C.P. No. 70/2014

In the Matter of :

Sections 210, 397, 398, 399, 402, 406 and 407 of the
Companies Act, 1956/2013;

-And-

In the Matter of :

Alpha Overseas International Private Limited, a company
Incorporated under the provisions of the Companies Act,
1956 and having its registered office at 8/1, William Jones
Sarani, Kolkata - 700016;

-And-

Navneet Rohatgi, C/o- Arvind Jayaswal, 20A, Camac Street,
6th floor, Kolkata- 700 016;

...PETITIONERS

-Versus-

1. Alpha Overseas International Private Limited, a company

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incorporated under the provisions of the Companies Act, 1956 and having its registered office at 8/1, William Jones Sarani, Kolkata- 700 016;

2. Ashis Bansal, working for gain at 8/1, William Jones Sarani, Kolkata- 700 016;
3. Aarti Bansal, working for gain at 8/1, William Jones Sarani, Kolkata- 700 016;
4. Alpha Stichart Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 8/1, William Jones Sarani, Kolkata- 700 016;
5. Dalit Marketing Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 8/1, William Jones Sarani, Kolkata- 700 016;
6. Shark Barter Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 8/1, William Jones Sarani, Kolkata- 700 016;
7. Abhishek Agarwal, working for gain at 8/1, William Jones Sarani, Kolkata- 700 016;
8. Agarwal Ramesh & Co. (Auditor) having its office at 19,

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B.B.Ganguly Street, Kolkata- 700 001;

....RESPONDENTS

Counsel on Record

1. Mr. Jishnu Saha, Advocate] For Respondents 1 to 6
2. Miss Rajshree Kajaria, Advocate]

Date of Pronouncing the Order : 12.12.2017

ORDER

Per Shri V.P.Singh, Member(J):

The Petitioner has filed this Company Petition under section 210,397,398,399,402,406 and 407 of the Companies Act, 1956 on the allegations of Oppression and Mismanagement.

2. The brief Facts of the case, as stated in the Company Petition, are that on or about 16/04/2014, Petitioner namely, Navneet Rohtagi applied under the sections above of Companies Act, 1956 before this Tribunal which was numbered as C.P No- 56/14. In the said company petition, petitioner has stated that Respondent 1 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 8/1, William Jones Sarani, Kolkata.

3. It is also stated that the petitioner currently held 20% of the subscribed share capital in the Respondent No 1

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Company. The petitioner has in the company Petition alleged numerous/vivid acts of Mismanagement in the Respondent No 1 Company by Respondent 2 and Respondent 3 which are allegedly prejudicial and oppressive to the petitioner.

4. Petitioner has further stated that he initially has placed a personal guarantee along with Respondent 2 and Respondent 3 in respect of the financial assistance provided by the Citi Bank N.A and petitioner was one of the promoter director and shareholder of the Company besides Respondent No 2.

5. It is further stated in the petition that petitioner had only 20% shares in the Company as opposed to the answering Respondents collective holding of 80% and over a period the Respondent No. 3,4,5 and 6 also became shareholders of the Respondent No 1 Company. The Board of Directors was last constituted in the year 1998 with the existing directors as Petitioner, Respondent 2 and Respondent 3.

6. The petitioner has stated that the subject matter of the Company petition is a dispute about the Board Meeting dated 27th October 2012, of which the notice was not properly served/ communicated to the Petitioner. Information about the Annual General Meeting, the financial result of the Company, were concealed from the Petitioner. In or around April 2014, Petition under section 144 of CRPC, being M.P Case No. 209/2014 was filed before the Executive Magistrate at Kolkata. In the circumstances; the petitioner has filed this

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petition under section 397/398 of the Companies Act, 1956.

7. The petitioner has further contended that in fact, owing to skill in marketing and manufacturing of leather goods, and in view of the environmental directives received from the Hon'ble Supreme Court, he shifted to Chennai along with his family members to look after the tannery work, but in or around 2011, the manufacturing activity was brought back to Bantola, near Kolkata. In such circumstances, Chennai operations were wound up, and this process continued until the beginning of 2014 and all this while, he travelled between Kolkata to Chennai.

8. The main dispute started in the year 2014 when he returned to Kolkata as he was not allowed to enter the office premise. After the enquiries made, the petitioner found the cash credit limit of short borrowing has been increased to Rs. 15 crores in 2012 and Rs. 20 crores in 2014 without the active consent of the petitioner. Petitioner further contends that this increase in the borrowing limit, the increase in directors Remuneration, is without notice to the Petitioner and appropriate Board Resolution. Therefore, such Board Resolution, ratifying the increase in bank limits of Citi Bank, increase in directors remuneration is illegal, null and void.

9. The petitioner has further submitted that the Respondent No 2 and Respondent 3 are also involved in syphoning of funds belonging to Respondent No 1 company

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and resultantly have acted against them. Respondent 2 being director of Respondent 1 has not acted in fiduciary capacity rather has acted for the extraneous purpose for unlawful gain.

10. Petitioner has further contended that without prior notice to a director convening of a Board Meeting is against the law and the resolution passed therein are illegal, null and void.

11. In reply to the above petition, the Respondents have filed a reply. It is stated therein that a bare perusal of cause title of the Company petition will bear out that the Petitioner has falsely and wrongfully representing that he resides at 20 A, Camac Street, 6th floor, Kolkata-700016, whereas in fact the Petitioner has at all material times been residing and is still wrongfully occupying a rented flat of the Respondent 1 Company at Rani Mayammai Towers, Flat 6 B, Block -1, MRC Nagar, RA Puram, Chennai-600028.

12. It is further contended by the Respondents that the personal Guarantee to the extent of Rs. 6.50 crores placed with CITI Bank initially by the petitioner along with Respondent 2 and Respondent 3 was not renewed/extended after January 2013. So far as Board Meeting dated 27th October 2012 is concerned, a proper and valid constructive notice was given/served upon the petitioner despite that he chose not to participate in the same; even when the resolution adopted in the meeting was communicated to the

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petitioner. It is further alleged that the petitioner has refused to vacate the official guest house of the company and did not relocate to Kolkata resuming rendering services to the Respondent 1 as a full-time officer and employee thereof.

13. It is further contended by the Respondents that in any event, the issues and matters covered by section 397/398 of the Companies Act, 1956, about Oppression and Mismanagement of a company, are directorial complaints and therefore, can never be the subject matter of section 397/398 petition under the Companies Act 1956.

14. It is further contended that for determination of section 397/398 it is irrelevant whether the Oppression/Mismanagement occurred by way of directorial Complaint rather it should be established that the conduct was harsh, burdensome, wrong, malafide, collateral purpose vis-a-vis action was against probity and good conduct.

15. It is further submitted that the disputes raised in the company petition are not maintainable on account of the fiduciary duties of a director, as petitioner is one of the director of the Respondent No 1 Company. He himself has acquiesced his right and the petition is frivolous, fabricated. Petitioner by his own admission, that directorial complaints in respect of the affairs of the Respondent 1 Company, cannot be entertained U/S 397,398 of the companies Act 1956. Because the employment of a director as an executive of the

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Company is a mandate/prerogative of the shareholders of the company, even when it is alleged that the company is in the nature of Quasi- partnership.

16. Ld. Advocate further contended that it is settled law that the petitioners could not even claim the legitimate expectation as there was no specific promise that the petitioners would be given directorship permanently.

17. It is further submitted that in the instant case, the majority shareholders in a Board Meeting dated 27 October 2012 has clearly decided not to continue to employ the petitioner or to continue to pay salary to him. This being a matter of the Company's indoor management, the petitioner in the Company petition cannot agitate the same.

18. It is submitted that this Tribunal to decide the issues, matters, and disputes raised in the Company Petition related to oppression and Mismanagement and here in the instant petition there is no such dispute. Any allegation about any procedural irregularity in arriving decision cannot justify interference with the same as it is the settled law that the court will not pass an order in futility, which can be undone, by an act of any of the parties to the litigation.

19. The respondent further contended that moreover, the petitioner has wrongfully invoked the jurisdiction of the Tribunal without any case of Oppression and Mismanagement,

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the petitioner had lacklustre approach in the management of the Company as he never visited the office of the Respondent 1 Company at Kolkata between July 2011 and February 2014 and nor he participated in the business of the Company and thus C.P is a dressed up petition only to harass the Respondents.

20. The Respondent also submitted that he suddenly came over in March 2014 and demanded that he be reinstated as a working director and be paid salary as such since October 2012 despite continuing to reside in Chennai even after the closure of the Chennai Unit of Respondent 1 company having never participated in the manufacturing or commercial activities since then (2011) and having had due notice of the termination of his status as a working director.

21. Respondent(s) further submitted that upon not acceding/refusal of his demand the petitioner started threatening the respondents with dire consequences and interfering with the day-to-day business of the Company. On 28th March, 2014, the petitioner physically assaulted some of the office staff and prevented discharging the official duties. In these circumstances, the respondent(s) were compelled and constrained to lodge an FIR on March 29th, 2014 under section 144(2) Cr.P.C.

22. It is further submitted that the respondents(s) also filed a complaint under section 156(3) Cr.P.C.. Petitioner wrote

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defamatory letter to various authorities and the same was circulated amongst the various members of the business community. Thus, the relief sought for in the C.P should not be granted.

23. In the Rejoinder, the petitioner has submitted that the question of wrongfully occupying a rented flat of Respondent No 1 Company doesn't arise as it cannot be construed to be a tenanted flat in view of the petitioners shareholding in the company.

24. The petitioner has further contended that moreover, Respondent 3 is not a validly appointed director and the petitioner never induced respondent 2 or respondent 3 to open a unit of the Respondent 1 at Chennai due to mushrooming growth and profit maximization rather it had to be shifted for environmental issues, neither the Chennai unit failed, nor there was any act of mismanagement or theft, siphoning of funds or any such act as alleged by R- 2 or R -3.

25. The petitioner also submitted that due to environmental safeguard issued by the Supreme court the entire production unit of leather garments from Raw hides was shifted from Kolkata to Chennai but there was no refusal on the part of the petitioner to relocate to Kolkata or to participate in the business of the Respondent 1 company; nor such any proposal of full-time employee was given to the petitioner.

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26. By pleadings of the parties, the following issues have arisen.

1. Whether the Board Resolution dated 27th October 2012 was passed without any notice to the petitioner, if so, it's effect.

2. Whether the alleged acts of the respondents regarding managing the affairs of R-1 company amounts to oppression and mismanagement?

27. By the pleadings of the parties admittedly the petitioner's shareholding is 20% and the respondents 80% in the R-1 company. The petitioner has alleged that initially, the limits with the City Bank N.A. were of Rs.6.5 crores in the year 2011. These bank limits have been subsequently increased to Rs.15 crores in the year 2012 and further to Rs.20 crores in the year 2014, and this has been done without any knowledge to the petitioner though the petitioner is a Director in the said company. The petitioner has further alleged that no notice of A.G.M. Or Board Meeting has been issued to the petitioner in spite of being a Director of the company. The financial results of the company are not informed to the petitioner. The petitioner in spite of being a Director is not being allowed to participate in the Board Meeting and management of the company; all the books and records are being concealed from the petitioner.

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28. The petitioner has further alleged that the respondent nos.2 and 3 have increased the salary from Rs.60,000/- to Rs.1,70,000/- per month, whereas the petitioner receives the remuneration as Rs.60,000/- per month plus perks total Rs.90,000/- per month and this continued up to September 2012. The petitioner has alleged that the acts mentioned above amount to oppression and mismanagement committed in respect of affairs of the company by the Respondents.

29. In reply to the above, the Respondents have stated that the bank limit has been renewed and extended in January 2013. Regarding the Board Meeting dated 27.10.2012, the Respondents have alleged that proper and valid notice was given/ served upon the petitioner and disputed that he expressed his inability to participate in the same. Even then, the Resolution of the Meeting was communicated to the petitioner. The Respondents have further alleged that the petitioner has refused to vacate the official guest house of the company.

30. The Respondents have alleged that the majority shareholders in a Board Meeting dated 27th October 2012 have decided not to continue to employ the petitioner or to continue to pay salary to him, as this being the matter of company's internal management and the petitioner in the company petition cannot agitate the same.

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31. It is an undisputed fact that the petitioner's shareholding in the R-1 company is 20%. The petitioner claims that he is a Director of the company. Therefore, he has full authority to participate in the Board Meeting and A.G.M. As a Director of the company. He is also entitled to participate in managing the affairs of the company, and he is entirely excluded from the business of the company, and his salary and dividend are also not being paid by the company.

32. In reply to the above allegations, the Respondents have stated that in the year 1996, the Respondent nos.2 and 3 were induced by the petitioner to open a unit of the Respondent no.1 at Chennai with the assurance that the petitioner would be able to procure substantial business of the said unit and on such confidence, the respondent nos.2 and 3 invested vast sums into the Chennai unit in expectation of handsome returns.

33. The Respondents have further alleged that the petitioner has started a business in the name of his wife in Chennai under the name and style of Sukriti to which he devoted most of his time and attention and the Chennai unit failed for the reason of diverse acts of mismanagement, siphoning off funds and even theft, which losses had to be borne by the respondent nos. 2 and 3. Thus, it was decided to shut down the Chennai Unit in August 2011.

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34. Since shifting to Chennai in the year 1996, the petitioner had never participated in the business carried on by the Respondent-1 from its Kolkata Office. The petitioner has not involved in the affairs of the R-1 company as a Director and did not have the authority to sign cheques or to operate its bank accounts. Since the closure of Chennai Unit of the R-1 company, the petitioner has stopped participating in the affairs of the R-1 company and continues to wrongfully occupy a rented flat of the Respondent no.1 company at Chennai and to carry on his own business from Chennai.

35. The Respondents have further claimed that on 27th October 2012, a Resolution was passed by the Directors of the R-1 company to stop the salary and other emoluments of the petitioner unless the petitioner vacates the company's property in Chennai and resumes rendering services to the R-1 company as a full-time Officer and employee thereof. The Respondent has claimed that due notice of the said Board Meeting was issued to the petitioner, but he did not participate in the said meeting. Even after that, Resolution adopted in the meeting held on 27th October 2012 was communicated to the petitioner, but he refused to vacate the company's property in Chennai and to resume rendering services to the R-1 company as full-time Officer.

36. The Respondents have further alleged that it has become usual practice for the Respondent no.1 company to

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serve notice of board meetings and general meetings to the petitioner by ordinary post and to further give the notice of such meetings to the petitioner over the telephone. The petitioner has due notice of board meetings and general meetings of the respondent no.1 since the year 1996 and the petitioner has never complained of not having been served with the notice of board meeting or general meeting in spite of the fact that he has since then not attended general meeting or board meeting of the R-1.

37. By the above averments in the reply of the Respondents, it is clear that since 1996, the petitioner has not attended a board meeting or general meeting of the R-1 company. The Respondents claim that the petitioner has intentionally avoided attending the most of the General or the Board meeting in spite of due notice to him. The petitioner claims that he did not receive any notice of board meeting or general meeting and he has been excluded from the management and affairs of the R-1 company in spite of the fact that he has 20% shareholding in the R-1 company and he is one of the founder Promoter Directors of the Company. It is pertinent to mention that notices of the board meeting and general meetings have been sent by the Respondent to the petitioner through ordinary post and over the telephone. The Respondent has not filed any copy of the alleged notice of the board meeting or general meeting sent to the petitioner.

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38. The Hon'ble Supreme Court in the case of Dale and Carrington Investment (P) Ltd. -versus- P.K. Prathapan and Others (2005) 1 SCC 212 *has held that omission to give notice of the meeting amounts to oppression. Not sending notices to shareholders and directors and passing resolutions thereat is held oppressive to members and constitute mismanagement of the Companies.*

39. The petitioner asserted that the petitioner was the Promoter-Director of the Respondent no.1 company. Moreover, the notice of removal dated 27.10.2012, whereby and whereunder the petitioner's removal has been affected, not being served upon him.

40. In the light of the circumstances above, the contention of the petitioner that the removal of the petitioner is without any notice of the Board meeting dated 27.10.2012 can be discussed in the light of statutory provisions relating to conducting a valid meeting of the board of directors of the company. However, the board meeting held on the previous date, removing the petitioner from directorship has been contested by the petitioner.

41. The essential pre-requisite of conducting a valid board meeting is the serving of a valid board meeting notice and production of the minutes of the board meeting. Sections 173 and 174 of the Companies Act, 2013 contemplate the pre-requisite for holding a valid board meeting. No copy of

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the notice intimating the petitioner about the meeting of the Board of Director and asking him to attend the same has been placed on record to show that the petitioner was informed about the holding of the company in question. Thus, neither a copy of notice convening the board meeting nor the log book to record the signatures of the Directors attending the meeting of the Board of Directors was produced. In the absence of these documents and any other proof to show that the meeting was held as alleged, we are unable to accept that a meeting of the directors was held on 27.10.2012. If no valid meeting of the Board of Directors took place on that day, the question of removal of the petitioner as Director does not and cannot arise. The Respondent has failed to substantiate that notice was sent/served to the petitioner for holding board meeting dated 27.10.2012. Therefore, the issue relating to the removal of the petitioner from the Board of Directors of the company as committed by the petitioner is held to be illegal for want of proper statutory procedure.

42. The petitioner has also alleged that drawing limits of City Bank were increased to Rs.15 crores in 2012 and Rs.20 crores in 2014 whereas drawing limits in and around 2007 was to the extent of Rs.6.5 crores. The petitioner claims that these limits have been increased by the respondent no.2 in connivance with the respondent no.3 without the petitioner's consent. No board resolution rectifying the increase in bank limits could have been passed without any notice to the

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petitioner. The Respondent is claiming that every notice was being sent through ordinary post and telephone.

43. On perusal of the records, it appears that regarding bank limits there has been e-mail correspondence between the respondent and the petitioner. The petitioner has filed a copy of the e-mail dated 26.12.2012, which was issued by the respondent to the petitioner, wherein it is mentioned that "please note that we have forwarded you a set of documents towards the execution of the personal guarantee of the bank facilities extended to us by the City Bank N.A., Kolkata. These are necessary for the additional facilities that the company, Alpha Overseas International Pvt. Ltd. has sought from them. The same is required to meet the day to day discharge of the obligation and commitments of the company towards working capital shortfall. We have forwarded the same again as the first set of documents were mistakenly stamped on the company letter-heads and will be returned to us by the bank. Please send the same duly signed in original as marked on the documents at the earliest.

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Ashish Bansal

Alpha Overseas International Pvt. Ltd."

44. The above information shows that the Respondent was demanding to extend the personal guarantee for the bank facility but before giving a personal guarantee, it was necessary that board of Directors should have passed the

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resolution for seeking an extension of bank limits. The Respondent has failed to file any documents to show that the board resolution was passed for extending the bank limits after due notice to the petitioner who happens to be the Promoter Director and shareholder having 20% shareholding in the company. The respondent was seeking documents of personal guarantee for enhancement of bank limits of the R-1 company, but the respondent has failed to file any records to show that any board resolution was passed for seeking such extension and for that board resolution, proper notice was served on the petitioner. The Respondent had contended that the resolution was passed and information was given to the petitioner by ordinary post and telephone when other correspondences were being made by e-mail. Now the question arises why the notices of board meeting were not sent through e-mail when other communications were being made through e-mail. This itself creates doubt regarding posting of the notice of board meeting to the petitioner through ordinary post or on the telephone. However, When the petitioner denies that no board meeting notice was ever served on him, the burden lies on the respondent to prove that proper valid notice has been sent to the petitioner. But the respondent has not filed any document to show that the notice of board meeting was served on the petitioner.

45. The respondent has contended that on the basis of board resolution dated 27.10.2012, the respondent no.1 is no

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more a working director of the R-1 company and the payment of salary to the petitioner has been kept on hold whereas we have found that the respondent has failed to prove that the Board Meeting dated 27.10.2012 was adequately held after due notice to the petitioner. So, such board resolution cannot be given effect to, where the respondent has failed to prove that the petitioner had due notice of the board meeting and general meeting of the R-1. Respondents contended that since the year 1996, the petitioner has never complained of not having been served with notice of board meeting or general meeting, in spite of that he has not attended a single general meeting or board meeting of the R-1 company.

46. The respondent has further stated in the reply that although the personal guarantee to the extent of Rs.6.50 crores had been given by the petitioner to the bankers after January 2013, the petitioner did not either renew the said guarantees or give further personal guarantees or give additional personal guarantees that were required from the directors of the respondent no.1 for the increased limits that were sanctioned to the company. The Respondent further claims that the petitioner never made any contemporaneous complaints attempt complained in this regard either to the bankers or by the respondent no.1 or to the respondent nos. 2 and 3.

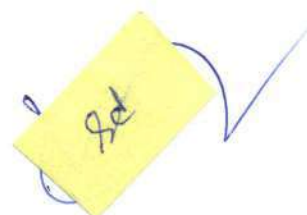
47. By above statement, it is clear that the respondent has

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claimed that after January 2013, the petitioner has not renewed the personal bank guarantee and has not given further guarantee for the increase bank limits that was sanctioned to the company. The foremost question that arises is that the respondent can only claim personal guarantee for the increased bank limits when the increase in the bank limits was approved by the Board of Directors. The respondents have failed to file any document to show that increase in bank limit of the R-1 company was done by the board resolution in the validly held board meeting of the R-1 company. It is also pertinent to mention that when R-1 is claiming that from 27.10.2012, the petitioner does not *remain a Director of the Company and Board of Directors has passed resolution to stop the salary payment of the petitioner.*

48. There is inconsistency in the claim of the respondents. On the one hand, they claim that after 27.10.2012 the petitioner does not remain a Director of the company and his salary was put on hold on account of a board resolution. Therefore after 27th Oct 2012, there was no basis for asking from petitioner to furnish personal guarantee for the extended bank limit of R-1. Respondent has failed to substantiate their claim that bank limit was extended by validly held Board meeting after due notice of the meeting to the petitioner.



49. The respondent has further stated in the reply that he would be willing to reinstate the petitioner as a working director of the R-1 company provided he closes down the business activities of Sukriti being carried on from Chennai, relocated to Kolkata upon giving up possession of the flat of the Respondent no.1 at Chennai and participate in the business of the R-1 company as a full-scale employee and officer thereof and once again give personal guarantees to the Citi Bank at par with the respondent nos.2 and 3 to secure the working capital limits obtained by the respondent no.1 from the said bank.

50. It is pertinent to mention that the respondent was managing the affairs of the company and the petitioner was looking after the factory at Chennai. The petitioner has claimed that due to pollution control norms, the manufacturing activity was stopped in Kolkata and it was shifted to Chennai and after that, it was again shifted to Kolkata. Regarding the allegation of opening a separate business in the name and style of Sukriti and harming the business of R-1, company, action can be initiated by the respondents in the validly held Board Meeting of the company. Respondent has not filed any evidence to show that explanation was called from the petitioner regarding the opening of parallel business against the interest of R-1 company or for not vacating company's guest house in Chennai. Board of Directors of R 1 company can take

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appropriate action against its director but only by adopting proper procedure as prescribed under the Companies Act. In this case, the respondent has failed to prove that board resolution was passed after due notice to the petitioner for removing the petitioner from the directorship and stopping his salary as Executive Director. It is also clear that the respondents are majority shareholders having 80% shareholding in the company. Therefore right of managing the affairs of the company is with the respondents. But minority shareholders' rights are also to be protected against the act of oppression and mismanagement. In this case, admittedly, the petitioner holds 20% shareholding in the R-1 company, and he is a founder Promoter Director of the company, and without any proper and validly held board meeting, he has been removed from the post of directorship and his salary and remuneration has been put on hold and he has been denied entry into the company premises. The petitioner is having 20% shareholding in the company. Therefore, he has every right to have access to the accounts of the company and to enter into the premises of the company.

52. The respondents have stated in the reply that with effect from October 2012, the petitioner has started threatening the respondents with dire consequences. Inasmuch as the respondents did not respond to such threat, the petitioner started demanding production of old books of accounts

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including cash books and ledgers, bank statement and customers ledgers and invoices, despite the fact that all the accounts of the respondent no.1 have been duly audited, and statutory returns have been filed up to the financial year 2012-13. Since it was evident that the petitioner was seeking production of old records and books of accounts with the sole object of disturbing the operation of the R-1 company by levelling false allegation against the respondents. The respondents refused to produce old records and statements to the petitioner. Even while inviting the petitioner to take inspection of all current books of accounts and records. Inasmuch as the petitioner thereafter started regularly visiting the Office of the R-1 attempting to incite the personal staff of the said respondent against respondent nos. 2 and 3 and wrongfully interfering with the day to day operations being carried on therefrom the respondents were compelled to stop the petitioner from visiting the office of the respondent no.1 except for attending the board meetings as and when called.

53. The respondents have further claimed that entry of the petitioner was denied in the company, then the petitioner was trying to forceful entry, and then complaint under section 144 Cr.PC was lodged against the petitioner.

54. The petitioner undoubtedly a Promoter Director and shareholder in R-1 company, whose shareholding is 20% as

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against the respondents, whose shareholding is 80% in the company. The petitioner minority shareholder's right is to be protected against the act of oppression and mismanagement. It appears that the respondents who are managing the affairs of the company have without issuing notices to the petitioner has removed the petitioner from the directorship of the company in the alleged board meeting dated 27th October, 2012 and stopped petitioner's salary and remuneration and denied petitioner's entry in the company. The respondents even refused to show the old accounts of the company to the petitioner, whereas the petitioner as Director and Promoter shareholder was entitled to have access to the accounts of the company. So, it is a clear-cut case of oppression of minority shareholders right. Therefore, this issue is decided affirmatively in favour of the petitioner, and it is held that no notice of the alleged board meeting dated 27.10.2012 was given to the petitioner and board resolution dated 27.10.2012 is not a valid Board Resolution. Therefore, the alleged Board Resolution dated 27.10.2012 cannot be given effect. The petitioner will be deemed to be a Director and Promoter of the company having 20% shareholding.

Order

Preliminary decree is being passed in the petition filed u/s 397 & 398 of the Companies Act 1956. Alleged Board Resolution Dated 27.10.2012 is set aside. The petitioner will

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be deemed to be a Director of the R-1 company since the time of his appointment on the same post. Respondents are directed to make payment of the arrears of salary and remuneration of the petitioner within 30 days from the date of order. The Respondents are further directed to give access to the accounts of the company, as required by the petitioner. It is also directed to the Respondents that the accounts of the R-1 company for three years should be audited by independent auditor and cost of the audit will be borne by R-1 company. The Petitioner and Respondents both group may decide the name of the auditor with consensus within 15 days from the date of the order, failing which both parties will be at liberty to give the names of three-three auditors within 21 days from the date of order. List on dated 1st Jan 2018 for F.O.

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(Jinan K.R.)
Member(J)

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(V.P.Singh)
Member(J)

Signed this, the 12th day of December, 2017