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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

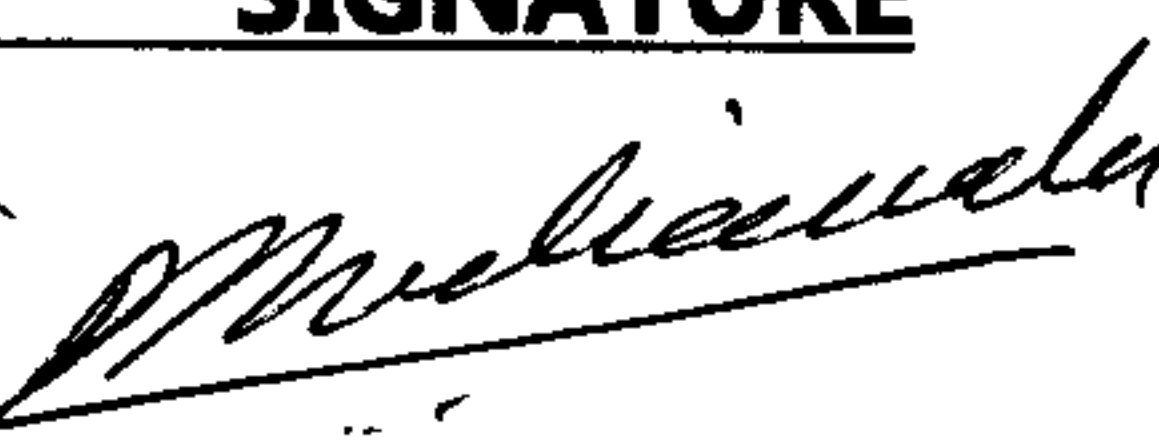
IA 403/2017 in C.P. No. 195/241-242-246/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.02.2018**

Name of the Company: Sanjay Bhagwanji Attara
V/s.
Komoline Aerospace Ltd. & Ors.

Section of the Companies Act: Section 241-242-246 of the Companies Act, 2013

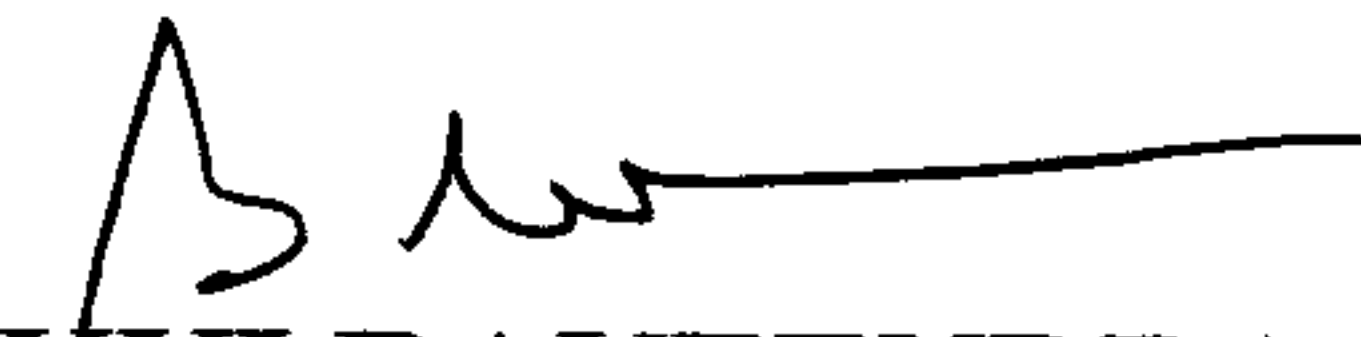
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	PAVANS-GODIAWALA	ADVOCATE	RESPONDENT NO. 2	
2.	Apurva Vakil	Advocate	Orig. Petitioner	

ORDER

Learned Advocate Mr. Apurva Vakil present for Applicant. Learned Advocate Mr. Pavan Godiawala present for Respondent No. 2 in IA 403/2017.

Common order pronounced in open court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 7th day of February, 2018.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

**IA 403 of 2017 in CP No. 195/241-242-
246/NCLT/AHM/2017**

In the matter of:

Sanjay Bhagwanji Attara
61, Sarthi Row House,
Near Drive in Cinema
Memnagar,
Ahmedabad 380 052

Applicant

Versus

1. Komoline Aerospace Limited.
110-124 Om Tower, Satellite Road
Ahmedabad 380 015

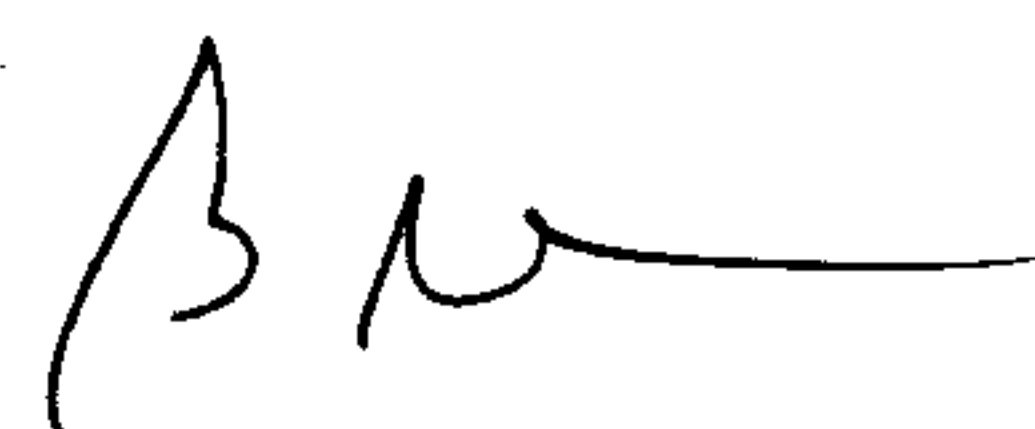
CIN : U29219GJ1991PLC070436

2. Mr. Niraj Nagindas Shah
17, Shivalik Floratte,
Opp. Khodiyar Mandir
Ambali Gam, Bopal, Ahmedabad

DIN : 00071910

3. Mr. Shaunak Hasmukhlal Shah
17, Retreat Residency, Bodakdev
Ahmedabad 380 059

DIN : 02356160



4. Mr. Bharat Samjibhai Patel
7, Shishir Bungalows,
3/4 Wood field Row House
Opp. Rajpath Club
S.G. Road
Ahmedabad 380 054

DIN : 00243783

5. Registrar of Companies
ROC Bhavan,
Opp. Rupal Park Society
Behind Ankur Bus Stop
Naranpura
Ahmedabad 380 013

Respondents

**IA 415 of 2017 in CP No. 195/241-242-
246/NCLT/AHM/2017**

Sanjay Bhagwanji Attara
61, Sarthi Row House,
Near Drive in Cinema
Memnagar,
Ahmedabad 380 052

Applicant

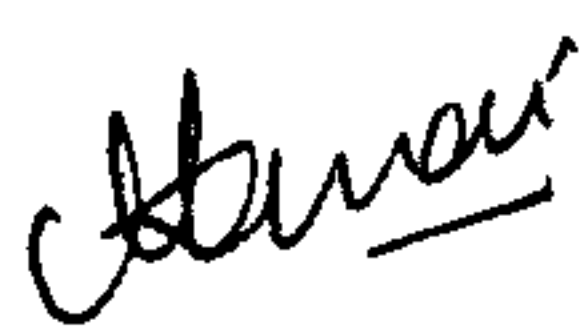
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DIN : 00243783

Respondents

Order delivered on 7th February, 2018

**CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial
Hon'ble Ms. Manorama Kumari, Member Judicial**

Appearance:

For the Applicant : Learned Advocate Mr. Apurva Vakil.

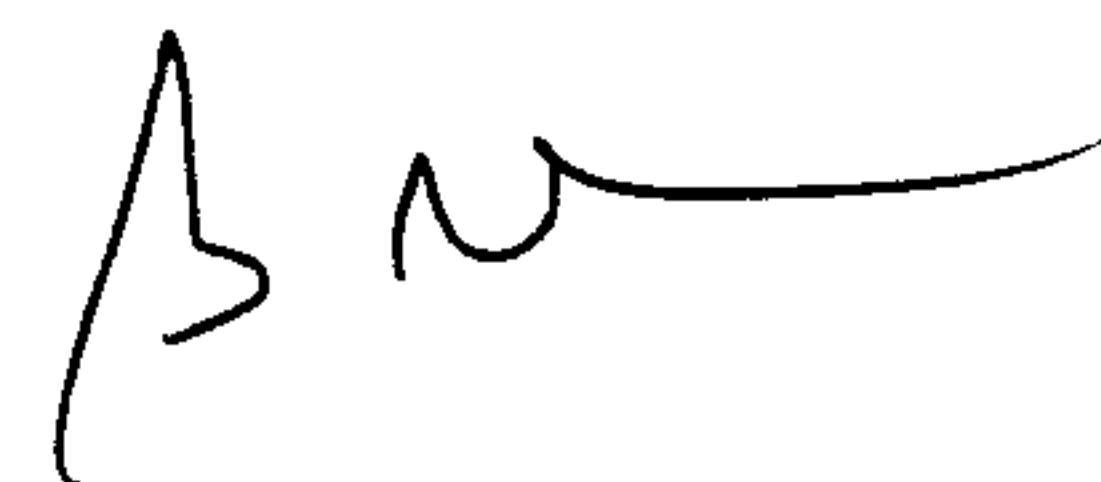
For the respondent : Learned Advocate Mr. Pavan
Godiawala for Respondent no.2.

Learned Advocate Mr. Jal Unwalla
with Learned Advocate Mr. Ishan
Joshi for Respondent no. 3.

COMMON ORDER

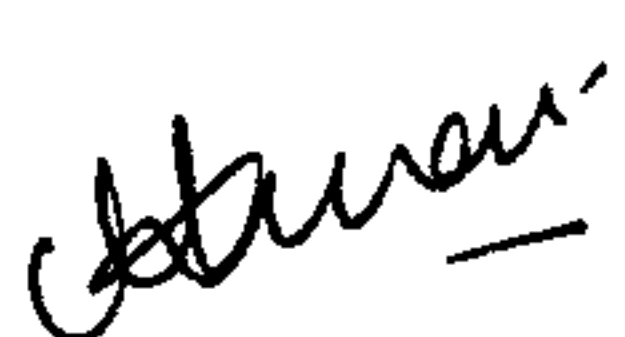
[per: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial]

01. Applicant in both these applications filed CP No. 195 of 2017 in
the matter of Section 241 read with Section 246 of the
Companies Act, 2013 alleging acts of oppression and
mismanagement.



02. Original petitioner initially filed IA No. 403 of 2017 alleging inaction on the part of the respondent company and not getting its accounts audited and not holding the Annual General Meeting of the shareholders on or before 30.09.2017 as per the provisions of the Companies Act. In IA No. 403 of 2017 applicants prayed for the following reliefs: -

- (a) To direct Registrar of Companies, Gujarat to produce applications, if any, made by the first respondent company seeking time for holding meeting beyond 30.09.2017 for the financial year 2016-17 and granting of extension, if any.
- (b) To declare appointment of M/s. Shah & Bhatt, Chartered Accountants as statutory Auditor of the first respondent company is bad in law and restrain them from auditing of accounts for the financial year 2016-17.
- (c) To appoint statutory Auditors of the first respondent company for the financial year 2016-17.
- (d) To direct respondents No. 2 to 4 to get the first respondent company audited by newly appointed statutory Auditors by prescribing time limit.





(e) To direct respondent No. 2 to 4 to hold the Annual General Meeting of the members of the first respondent company for the financial year 2016-17 within the time limit as the Tribunal deem fit.

(f) To direct the respondents to include following business to be transacted at the Annual General Meeting to be held for the financial year 2016-17.

(i) Consideration of audited financial statements and reports of the Board of Directors and Auditors for the financial year 2016-17;

(ii) Declaration of dividend;

(iii) Appointment of directors in place of those retiring;

(iv) Appointment of statutory Auditors for financial year 2017-18 and determination of their remuneration.

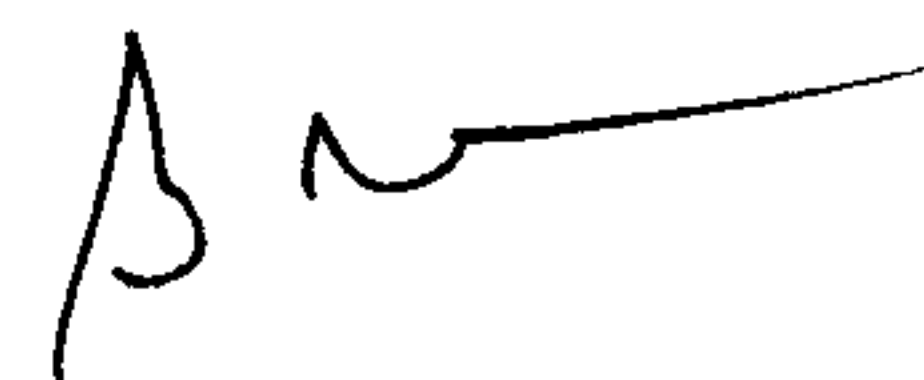
03. Thereafter, original petitioners filed IA 415 of 2017 stating that after the Extra Ordinary General Meeting held on 07.12.2017 and after affirmation of affidavit supporting IA No. 403 of 2017, on 09.12.2017, the applicant received a notice dated

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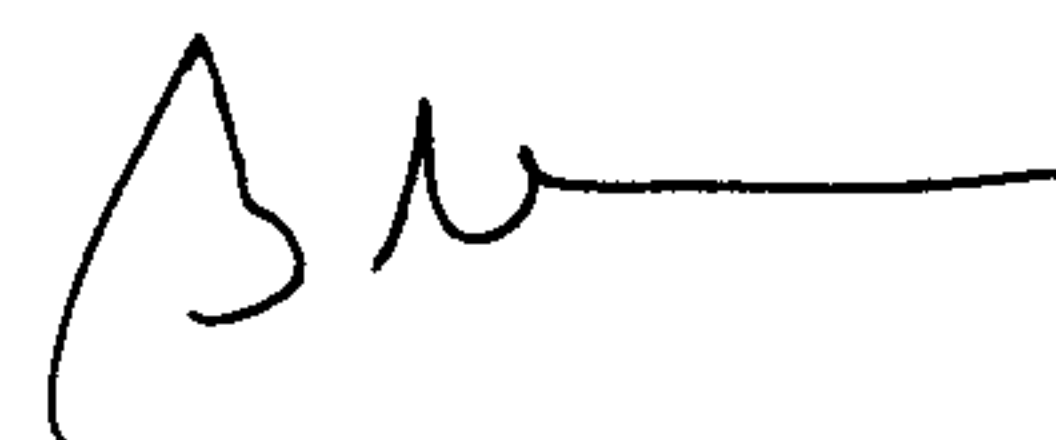
07.12.2017 issued to shareholders of the first respondent company for holding Annual General Meeting for financial year 2016-17 on 30.12.2017 at 11.30 a.m. at the Registered Office of the first respondent company along with independent Auditor's report dated 07.12.2017 and audited financial statements dated 07.12.2017.

04. It is averred in IA No. 415 of 2017 by the applicant that, M/s. Shah & Bhatt, Chartered Accounts were appointed in the EOGM held on 07.12.2017 at about 11.30 a.m. and within the span of few hours the Auditors completed auditing work of the accounts of the first respondent company for financial year 2016-17 without following accounting standards, standards of quality control and standards on assurance engagement.
05. It is also stated in the application that after receipt of draft of Auditor's report and unattested financial statements, draft of Directors, Report has been prepared for consideration of the Board of Directors of the first respondent company and decision to call the meeting of the Board of Directors of the first respondent company on 07.12.2017 has been taken. It appears that the Board of Directors on 07.12.2017 approved the draft financial statements. It is also stated that on 07.12.2017 itself notices for the Board Meeting was issued and on the same day it was resolved to convene General Body Meeting on 07.12.2017. The Board convened on 07.12.2017 has no authority since there was no seven days' notice. No notice of



the Board Meeting was issued to the applicant. No minutes was circulated to the applicant. Notice of the Annual General Meeting on 30.12.2017 was despatched on 07.12.2017 and the notice was received by the applicant on 09.12.2017. Therefore, excluding 09.12.2017 and date of scheduled AGM on 30.12.2017 there is only 20 days time gap. Therefore, there is no clear 21 days' notice either in writing or through electronic mode. It is alleged that New Auditor colluded with respondents No. 2 to 4 and hurriedly finalised the statutory audit within a span of twelve hours which is practically impossible. It is stated that the statutory Auditors of a public limited company requires compliance of provisions of the Act including that of Section 128, 129, 133 & 143, Rules thereof and standards recommended by the Institute of Chartered Accountants of India including the accounting standards (ASs) on Quality Control and Standard (Sqc) on Assurance Engagement.

06. It is stated that the New Auditors by expressing the opinion that financial statements for financial year 1026-17 are giving true and fair view of the state of affairs of the first respondent company have misrepresented the correct facts and true legal position to the members of the first respondent company. It is also stated by the applicant that when the first respondent company was not having possession of original financial data and records on account of its seizure by Police Department on 07.06.2017 how the audit was carried out on the basis of regenerated data, documents and records. The regenerated

data, documents and records are not fully acceptable. It is stated that, in this circumstances, the New Auditor ought to have expressed qualified opinion on true and fair state of affairs of the first respondent company. It is also stated that the Auditors' Report shall include a statement on the following matter: -

"whether any fraud by the Company or any fraud on the Company by its officers or employees has been noticed or reported during the year; if yes, the nature and the amount involved is to be indicated."

Whereas, clause (x) of Annexure – "A" to the Independent Auditor's Report, the New Auditor while reporting on aforesaid clause 3 (x) of the order has stated as under: -

"During the course of our examination of the books and records of the Company, carried out in accordance with the generally accepted auditing practices in India, and according to the information and explanations given to us, we have neither come across any instance of material fraud on or by the company, noticed or reported during the year, nor have we been informed of any such case by the Management except the matter, specified in Emphasis of Matter Paragraph of the Independent Auditor's Report"

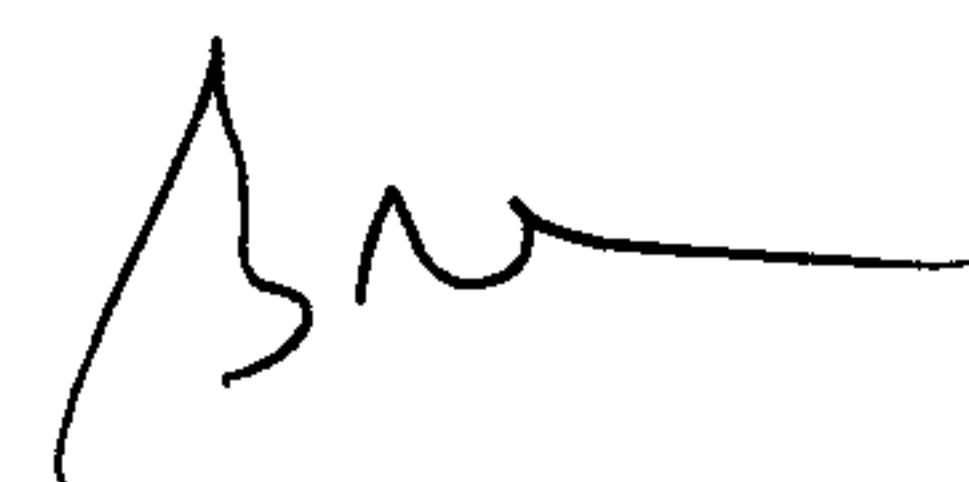
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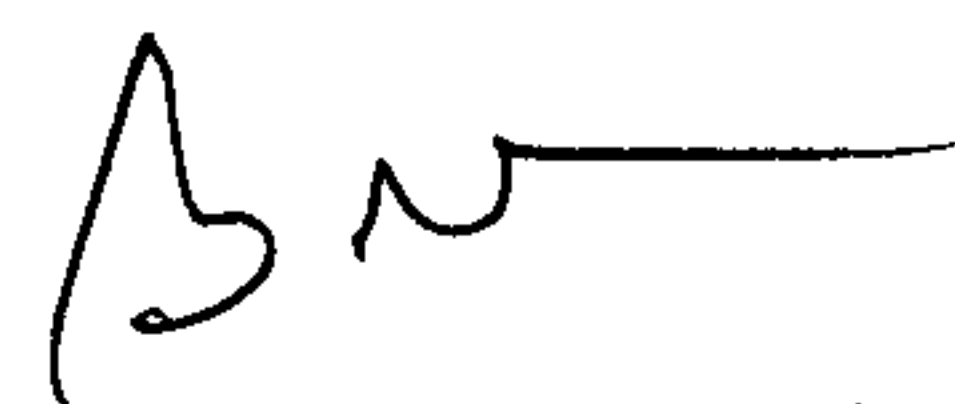
07. According to the applicant, the New Auditor has not reported correctly and adequately in respect of what is required to be reported in terms of clause 3 (x) of the Order. It is stated that the New Auditor had full knowledge of the Company Petition and, therefore, there is gross error and negligence on the part of the New Auditor. It is stated that reporting of the New Auditor on clause 3 (x) of the Companies (Auditor's Report) order 2016 is the misrepresentation of facts and position of law. It is stated that respondents are having 70% of the voting power, whereas the applicant holds 30% voting power and, therefore, in the AGM on 30.12.2017 the accounts would automatically be accepted and it would cause prejudice to the petitioners.

08. In view of the aforesaid developments, the applicant in IA No. 415 of 2017 has prayed for the following reliefs: -

- (a) To set aside the notice dated 07.12.2017 and restrain respondents from holding Annual General Meeting on 30.12.2017;
- (b) To appoint the firm of Independent Chartered Accounts to re-audit the accounts of the first respondent company for the financial year 2016-17;

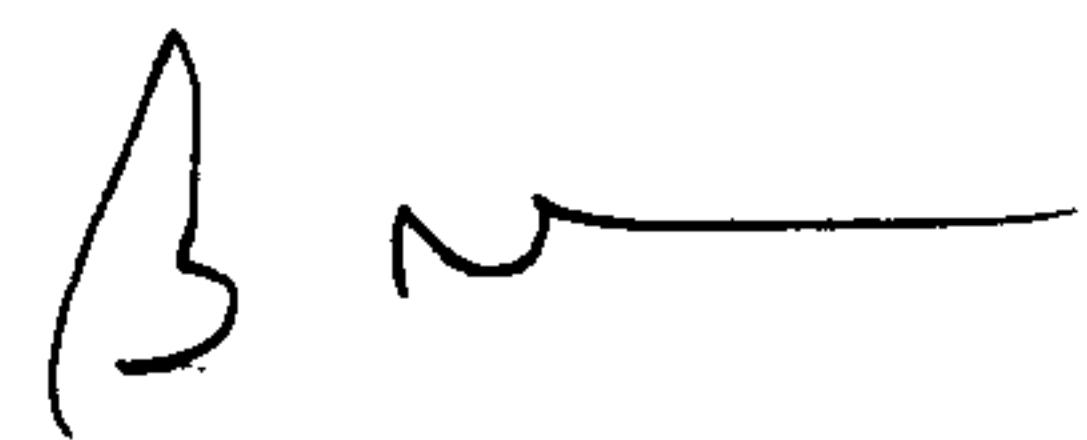


- (c) To appoint the firm of Independent Chartered Accountants to audit the accounts for the financial year 2017-18 and determine their remuneration;
 - (d) To direct respondents to issue fresh notice of clear 21 days for holding the AGM for FY 2016-17 on the date, time and venue;
 - (e) To direct respondent to notify the businesses to be transacted as stated in Section 102 (2) (a) to (iv) of the Act.
09. Respondent No. 2 filed reply stating that M/s. Mashar Shah & Associates, the earlier Chartered Accountants resigned on 23.10.2017 and on 24.10.2017 M/s. Shah & Bhatt, Chartered Accountants were asked to give their consent so that EOGM can be called for confirmation of their appointment to conduct audit of the first respondent company for financial year 2016-17. It is further stated that on 01.11.2017 a meeting of the Board of Directors of the first respondent company were held wherein resignation of M/s. Mashar Shah & Associates, Statutory Auditors and appointment of M/s. Shah & Bhatt as Statutory Auditors was discussed as one of Agenda items including fixing date, time and venue of EOGM. Notice for calling Board of Directors meeting on 01.11.2017 was issued on 23.10.2017 to respondents No. 2 and 3. It is stated that in EOGM dated 07.12.2017 appointment of M/s. Shah & Bhatt as Chartered



Accountants was confirmed. It is also stated that notice of AGM of members was sent by email as well as by post and the email communication through which the notice of AGM was sent to the petitioner was duly received on 08.12.2017 at 8.00 p.m. for the meeting to be conducted on 30.12.2017. According to respondent, email notice is permissible and email notice was served by giving clear 21 days of notice for the AGM.

10. According to the respondents, New Auditors were appointed as Tax Auditor on 01.11.2017. It is stated that in the AGM dated 07.12.2017 only Auditor's appointment was approved. It is stated by the respondents that petitioner having failed to stop AGM filed this petition to bring the company into jeopardy. It is stated that the New Auditor as Tax Auditor has started statutory function expeditiously considering the stipulated time limit to get the accounts audited and successfully completed the audit on the date of approval of the members of the company in the EOGM dated 07.12.2017. It is stated that petitioner by filing this application has suppressed rights of majority members. It is also stated that petitioner with oblique motive filed FIR against respondent No. 2 and 3. Registrar of Companies gave last extension till 31.12.2017 for holding Annual General Meeting.
11. Before going into the controversy in this application, it is necessary to state the certain events that took place in this case.



12. CP No. 195 of 2017 was listed for admission before this Tribunal on 18.09.2017. On that day, after hearing both the sides, petition was admitted. On 18.09.2017, learned Senior Counsel appearing for respondent made a statement that the company is not going to increase its shareholding till the next date of hearing. Thereafter, on 06.11.2017, petitioner without filing rejoinder within the given time, sought extension of time to file rejoinder on the ground that he needs copy of minutes of Board of Directors from 18.06.2016 to 23.02.2017. This Tribunal, considering the submissions of both the sides, directed the company to furnish attested copy of Board of Directors meeting and shareholders' meeting and relevant attendance sheets, if any, held during the period 18.06.2016 to 23.02.2017 and furnish attested copies of latest register of unsecured and secured loans given and taken by the company within two weeks. Thereafter, on 12.12.2017, petitioner represented that the documents furnished by the respondents are not attested and again sought time to file rejoinder. Thereafter, petitioner filed IA No. 415 of 2017 praying for the reliefs as stated in para No. 8 of this order. On 20.12.2017, IA 415/17 was listed for hearing.
13. It is pertinent to note that one of the main reliefs prayed in IA No. 403 of 2017 is to hold AGM for the year 2016-17. One of the reliefs prayed in IA No. 415 of 2017 is to set aside notice



dated 07.12.2017 and restrain from holding General Body meeting on 30.12.2017.

14. It is also pertinent to note that in IA 403 of 2017 relief is sought to declare the appointment of M/s. Shah & Bhatt, Chartered Accounts as statutory auditors of the first respondent company is bad in law and restrain them from auditing the accounts of the first respondent company.
15. Therefore, this Tribunal, considering all aforesaid aspects, on 22.12.2017 passed the following order: -

"Respondents are going to hold Annual General Meeting on 30.12.2017. Applicants raised the issue of 21 days' clear days' notice and the validity of appointment Statutory Auditor. The material placed on record show that notice of AGM was served on 09.12.2017. In view of the judgement of Hon'ble Delhi High Court in Bharatkumar Delwali vs. Bharat Carbon and Ribbon Mft. Ltd. there is no clear 21 days' notice for holding AGM on 30.12.2017. Therefore, this Tribunal hereby direct to conduct the AGM on 31.01.2018 by giving 21 days' clear notice to all the shareholders with the same agenda that was slated for the AGM on 30.12.2017 subject to further orders in the application.



Respondents shall file their documents, if any, serving a copy in advance to the applicant.

Applicant shall file rejoinder, if any, within one week after respondents file their documents, if any, serving a copy in advance to other side.

List the matter on 19.01.2018 for hearing."

16. Therefore, at present, in both the applications, following reliefs prayed would survive: -

(i) To appoint a firm of Chartered Accountants to re-audit the accounts of the first respondent company for the financial year 2016-17.

(ii) To appoint Independent Chartered Accounts to audit the accounts for the financial year 2017-18

17. Other reliefs would not survive for the reason that AGM was held on 30.01.2018.

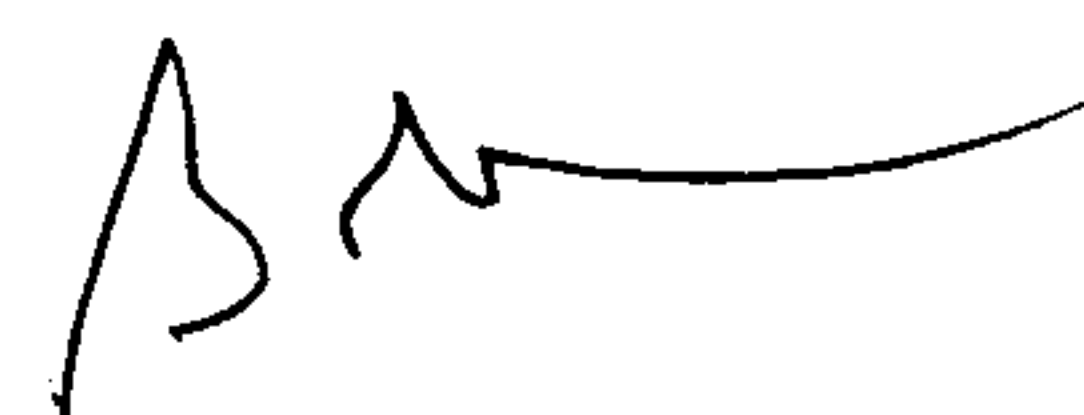
18. Applicants in IA No. 415 of 2017 is challenging validity of the appointment of Statutory Auditors M/s. Shah & Bhatt to audit the accounts of the first respondent company for the financial year 2016-17. The applicants in IA No. 415 of 2017 are also disputing as to how the accounts were finalised on one day i.e.



on 07.12.2017 when the appointment of New Auditors was approved in the EOGM dated 07.12.2017. Applicants are also disputing certain certificates issued by M/s. Shah & Bhatt, the New Auditors.

19. Reply of the respondents is that the New Auditors were appointed as Tax Auditors on 01.11.2017 itself and since then he is conducting audits of the company and they were finalised on 07.12.2017.
20. Board of Directors meeting were held on 01.11.2017. In the said meeting resignation of M/s. Mashar Shah & Associates, Chartered Accountants was accepted. Following are the resolution passed in respect of the new Auditors M/s. Shah & Bhatt: -

"FURTHER RESOLVED THAT pursuant to the provisions of sub section (8) of Section 139 of Companies Act, 2013 and all the applicable rules made thereunder (and subject to any enactment, re-enactment or amendment thereof) and further subject to the approval of Members in General Meeting of the Company, M/s. Shah & Bhatt, Chartered Accounts having FRN 140823W, having consented to act as Statutory Auditors in the casual vacancy so caused, be appointed as the Statutory Auditor to hold office as such till the conclusion of next Annual General Meeting

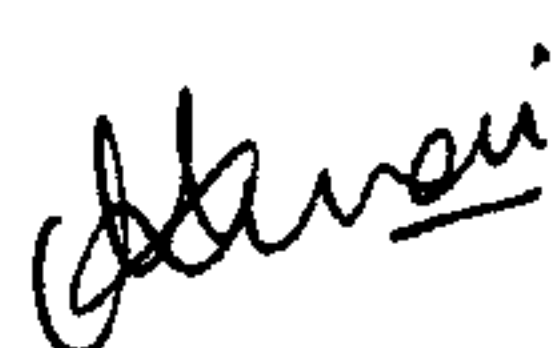


of members of the Company at remuneration to be decided by the members of the Company."

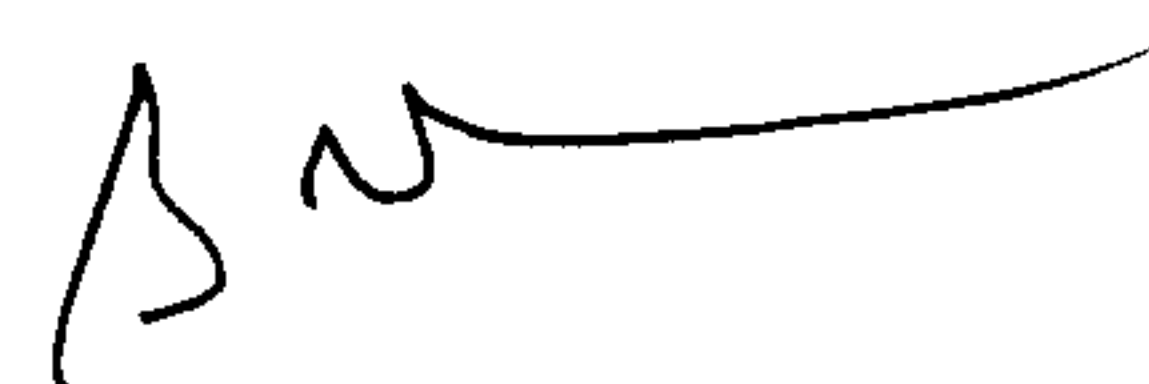
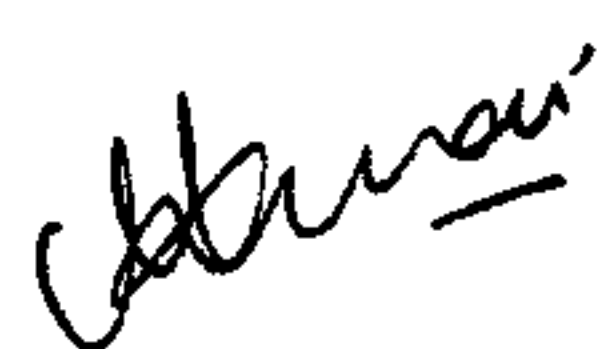
21. Resolution pertaining to the new Auditor in the EOGM held on 07.12.2017 is as follows: -

RESOLVED THAT pursuant to the provisions of section 139 (8) and other applicable provisions, if any of the Companies Act, 2013 as amended from time to time or any other law for the time being in force (including any statutory modification or amendment thereto or re-enactment thereof for the time being in force), M/s. Shah & Bhatt, Chartered Accountants, Ahmedabad (Firm Registration No. 140823W) be and hereby appointed as Statutory Auditors of the company to fill up the casual vacancy caused by the resignation of M/s. Mashar Shah & Associates, Chartered Accountants, Ahmedabad at a remuneration and out of pocket expenses, as may be decided by the Board of Directors of the company, in consultation with them".

22. A reading of both the resolutions would go to show that the Board of Directors only recommend name of M/s. Shah & Bhatt were appointed as Statutory Auditors of the company for the financial year 2016-17 and whereas they were appointed as Statutory Auditors in the AGM held on 07.12.2017.



23. In this context it is necessary to refer to section 139 (8) which deals with appointment of Auditor in case of casual vacancy. It says that casual vacancy shall be filled up by the Board of Directors within 30 days and such appointment shall be approved by the company's AGM convened within three months of the recommendation of the Board. Therefore, Section 139(8) only gives power to Board of Directors to recommend the name of New Auditors in case of casual vacancy on the ground of resignation of auditors. In view of the said proviso appointment of new auditor, recommended by the Board of Directors shall be approved by the company at an AGM. Therefore, in the case on hand, the appointment of new Auditor even as per the Resolution of the Board of Directors and the resolution in the AGM placed on record along with rejoinder goes to show that name of the New Auditor was recommended by the Board of Directors and it was approved in the AGM. Therefore, the procedure contemplated under section 139 (8) has been followed by the company in appointing the new Auditor M/s Shah & Bhatt. Therefore, there is no illegality in appointing M/s. Shah & Bhatt as new Auditors of the first respondent company.
24. Next aspect is that when the appointment of New Auditor is approved in the EOGM on 07.12.2017, how it is possible he has audited the accounts of the company for the entire year on 07.12.2017 and they were approved by the Board of Directors and it was decided to place the said accounts before the Board on AGM dated 30.12.2017.



25. Contention of the learned senior counsel appearing for the respondents that the new Auditor continued with the audit work from 01.11.2017 do not merit acceptance in absence of material on record to show that the New Auditor was appointed as Tax Auditor. No material is placed on record to show that New Auditor M/s. Shah & Bhatt acted as Auditor of the company from 01.11.2017 and audited the accounts.
26. In this context, it is necessary to have re-audit of the accounts of the first respondent company for the financial year 2016-17 by appointing an Independent Auditor.
27. After re-audit by independent Auditor, if grave irregularities were found in the audited accounts made by M/s. Shah & Bhatt, then petitioners are at liberty to pray for further reliefs. The resolutions if any passed in the General Body Meeting on 30.01.2018 relating to Accounts of Respondent no. 1 Company for the year 2016-17 are subject to further orders based on Re-Audit Report.
28. In view of the above discussion this Tribunal hereby order to appoint M/s. A R. Sulakhe & Co., Ahmedabad Branch Office: 515, Loha Bhavan Opp. Old High Court, Near Income Tax Circle, Ashram Road, Ahmedabad-380009. E-mail: paras_jain83@yahoo.com M- 9925147466 as Independent Auditors to audit the accounts of the first respondent company for the year 2016-17 and place the audit report along with



report of the auditor before this Tribunal in a sealed cover within two months. The remuneration and expenses of independent Auditor appointed shall be shared by both parties equally. Registry is directed to send a copy of the order to the Independent Auditor.

29. IA No. 403 of 2017 and IA No. 415 of 2017 are disposed of accordingly.


Ms. Manorama Kumari
Member Judicial


Bikki Raveendra Babu
Member Judicial