

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI**

**T.C.P NO. 86/397-398/CLB/NCLT/MB/MAH/2014**

Under Sections 397 and 398, of the Companies Act, 1956 and 241 and 242  
of the Companies Act, 2013.

In the matter of

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|---|---|----------------|
| 1. Sadashiv Shankar Patil,              | ) |                |
| A/P Aitwade Khurd, Taluka Walwa,        | ) |                |
| District Sangli-415 411, Maharashtra.   | ) |                |
|   | ) |                |
| 2. Appaso Lingappa Kharade,             | ) |                |
| A/P Aitwade Khurd, Taluka Walwa,        | ) |                |
| District Sangli-415 411, Maharashtra.   | ) |                |
|   | ) |                |
| 3. Appasaheb Shivling Shete,            | ) |                |
| A/P Aitwade Khurd, Taluka Walwa,        | ) |                |
| District Sangli-415 411, Maharashtra.   | ) |                |
|   | ) |                |
| 4. Sudhir Babaso Shete,                 | ) |                |
| A/P Kadoli, Taluka Panhala,             | ) |                |
| District Kolhapur-416 112, Maharashtra. | ) |                |
|   | ) |                |
| 5. Kusum Shrikant Shete,                | ) |                |
| A/P Kadoli, Taluka Panhala,             | ) |                |
| District Kolhapur-416 112, Maharashtra. | ) |                |
|   | ) |                |
| 6. Kanchan Krishanath Shete,            | ) |                |
| A/P Aitwade Khurd, Taluka Walwa,        | ) |                |
| District Sangli-415 411, Maharashtra.   | ) |                |
|   | ) |                |
| 7. Suvarna Shrikant Karvekar,           | ) |                |
| A/P Chikurde, Taluka Walwa,             | ) |                |
| District Sangli-415 411, Maharashtra.   | ) |                |
|   | ) |                |
| 8. Appasaheb Shivling Shete,            | ) |                |
| A/P Kadoli, Taluka Panhala,             | ) |                |
| District Kolhapur-416 112, Maharashtra. | ) | .. Petitioners |

V/s

- |  |   |  |
|--|---|--|
| 1. Warana Agro Private Limited,            | ) |  |
| a Company registered under Companies       | ) |  |
| Act, 1956, having its Registered Office at | ) |  |
| A/P Amrutnagar, Taluka Panhala,            | ) |  |
| District Kolhapur-416 113, Maharashtra.    | ) |  |
|  | ) |  |
| 2. Ashok Nilkant Todkar,                   | ) |  |
| A/P Amrutnagar, Taluka Panhala,            | ) |  |
| District Kolhapur-416 113, Maharashtra.    | ) |  |
|  | ) |  |

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3. Shankar Bandu Shete, )  
A/P Aitwade Khurd, Taluka Walwa, )  
District Sangli-415 411, Maharashtra. )  
)  
4. Shivganga Vilas Shete, )  
A/P Aitwade Khurd, Taluka Walwa, )  
District Sangli-415 411, Maharashtra. ) .. Respondents

Order delivered on: 22<sup>nd</sup> December, 2017

**Coram:** 1. **Hon'ble Shri M.K. Shrawat, Member (Judicial)**  
2. **Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)**

For the Petitioners : Mr. Chirag R. Sonecha, Advocate  
For the Respondents : Mr. Ashok N. Todkar, Respondent No.2  
Amicus Curie : Mr. Omkar V. Deosthale

**Per: M.K. Shrawat, Member (Judicial).**

**ORDER**

1. The Petitioner has filed this Company Petition on **13<sup>th</sup> October, 2014**, invoking provisions of Sections 397, 398, 399 read with Section 402, 403 and 406 and other applicable provisions of the Companies Act, 1956 and presently applicable provisions of Companies Act, 2013.

2. **Petitioner No.1** (P1) is a shareholder of Respondent No.1 Company holding **3,500 equity shares** of face value of Rs.10/- each, aggregating to 8.97% of the issued, subscribed and paid-up equity share capital of the Respondent No.1 Company. P1 is a subscriber to the Memorandum and Articles of Association of the Respondent No.1 Company. P1 is also a **First Director** of Respondent No.1 Company.

2.1 **Petitioner No.2** (P2) is a shareholder of Respondent No.1 Company holding **3,500 equity shares** of face value of Rs.10/- each, aggregating to 8.97% of the issued, subscribed and paid-up equity share capital of the

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Respondent No.1 Company. P2 is a subscriber to the Memorandum and Articles of Association of the Respondent No.1 Company. P2 is also a **First Director** of Respondent No.1 Company.

2.2 **Petitioner No.3** (P3) is a shareholder of Respondent No.1 Company holding **3,500 equity shares** of face value of Rs.10/- each, aggregating to 8.97% of the issued, subscribed and paid-up equity share capital of the Respondent No.1 Company. P3 is a subscriber to the Memorandum and Articles of Association of the Respondent No.1 Company. P3 is also a **First Director of Respondent No.1 Company.** Company except Memorandum and Articles of Association in which P3 is holding 10 shares.

2.3. **Petitioner No.4** (P4) is a shareholder of Respondent No.1 Company holding 3,000 equity shares of face value of Rs.10/- each, aggregating to 7.69% of the issued, subscribed and paid-up equity share capital of the Respondent No.1 Company. P4 is a subscriber to the Memorandum and Articles of Association of the Respondent No.1 Company. P4 is also a first Director of Respondent No.1 Company.

2.4 **Petitioner No.5** (P5) is a shareholder of Respondent No.1 Company holding 3,500 equity shares of face value of Rs.10/- each, aggregating to 8.97% of the issued, subscribed and paid-up equity share capital of the Respondent No.1 Company. P5 is a subscriber to the Memorandum and Articles of Association of the Respondent No.1 Company. P5 is also a first Director of Respondent No.1 Company. As on date, P5 does not possess any document to prove her shareholding in Respondent No.1 Company except Memorandum and Articles of Association in which P5 is holding 10 shares.

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2.5 **Petitioner No.6** (P6) is a shareholder of Respondent No.1 Company holding 3,500 equity shares of face value of Rs.10/- each, aggregating to 8.97% of the issued, subscribed and paid-up equity share capital of the Respondent No.1 Company. P6 is a subscriber to the Memorandum and Articles of Association of the Respondent No.1 Company. P6 is also a first Director of Respondent No.1 Company. As on date, P6 does not possess any document to prove her shareholding in Respondent No.1 Company except Memorandum and Articles of Association in which P6 is holding 10 shares.

2.6 **Petitioner No.7** (P7) is a shareholder of Respondent No.1 Company holding 3,500 equity shares of face value of Rs.10/- each, aggregating to 8.97% of the issued, subscribed and paid-up equity share capital of the Respondent No.1 Company. P7 is a subscriber to the Memorandum and Articles of Association of the Respondent No.1 Company. P7 is also a first Director of Respondent No.1 Company. As on date, P7 does not possess any document to prove her shareholding in Respondent No.1 Company except Memorandum and Articles of Association in which P7 is holding 10 shares.

2.7 **Petitioner No.8** (P8) is a shareholder of Respondent No.1 Company holding 3,500 equity shares of face value of Rs.10/- each, aggregating to 8.97% of the issued, subscribed and paid-up equity share capital of the Respondent No.1 Company. P8 is a subscriber to the Memorandum and Articles of Association of the Respondent No.1 Company. P8 is also a first Director of Respondent No.1 Company. As on date, P8 does not possess any document to prove her shareholding in Respondent No.1 Company except Memorandum and Articles of Association in which P8 is holding 10 shares.

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3. **Respondent No. 1** (R1 Company) is M/s. Warana Agro Private Limited, a Company registered under the Companies Act, 1956, having its Registered Office at A/P Amrutnagar, Taluka Panhala, District Kolhapur-416 113, Maharashtra. The said **Company was incorporated on 9<sup>th</sup> March, 1995**. Presently, the authorised share capital of the Respondent No.1 Company is Rs.5,00,000/- (Rupees Five lakhs only) divided into 50,000 equity shares of face value of Rs.10/- each. The issued, subscribed and paid-up share capital of the Respondent No.1 Company is Rs.3,90,000/- (Rupees Three lakhs ninety thousand only) divided into 39,000 equity shares of face value of Rs.10/- each. The R1 **Company is engaged in the business of manufacturing, buying, selling, import, export of all kinds of spices, pickles and agro-based products**, etc. A copy of Memorandum of Association of R1 Company is on record.

3.1 **Respondent No.2** (R2) is a shareholder of R1 Company holding 13,400 equity shares of face value of Rs.10/- each, aggregating to 34.35% of the issued, subscribed and paid-up equity share capital of R1 Company. R2 is a subscriber to the Memorandum and Articles of Association of R1 Company. R2 is also a first Director of R1 Company.

3.2 **Respondent No.3** (R3) is a subscriber to the Memorandum and Articles of Association of R1 Company. R3 is also a first Director of R1 Company. As on date R3 does not hold any shares in R1 Company.

3.3 **Respondent No.4** (R4) is a subscriber to the Memorandum and Articles of Association of R1 Company. R4 is also a first Director of R1 Company. As on date R4 does not hold any shares in R1 Company.

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4. **Facts of the case in brief are as under:-**

- (a) **Petitioners in their Petition** submitted that R2 has been appointed as Chairman of R1 Company from the date of its incorporation. Annual remuneration of Rs.35,000/ (Rupees thirty five thousand only) was paid to him by R1 Company for the services rendered by R2.
- (b) Petitioners submitted that in the year 1996, it was decided to increase the share capital of R1 Company from Rs.1,100/- to Rs.3,90,000/-. It was agreed between the 11 first Directors of R1 Company that five first Directors will be allotted 3,590 equity shares each and the rest 6 first Directors will be allotted 3,490 equity shares each. The allotment of fresh shares and the post issue shareholding were as follows:-

Sr. No.	Name of Members	Agreed allotment of fresh Shares	Agreed post issue Shareholding
1	Mr. Ashok Todkar (R2)	3,950	3,600
2	Mr. Shankar Shete (R3)	3,950	3,600
3	Mr. Appaso Lingappa Kharade (P2)	3,950	3,600
4	Mr. Sudhir Shete (P4)	3,950	3,600
5	Mr. Sadashiv Patil (P1)	3,950	3,600
6	Mr. Appaso Shete (P3)	3,490	3,500
7	Mrs. Shivganga Shete (R4)	3,490	3,500
8	Mrs. Kanchan Shete (P6)	3,490	3,500
9	Mr. Balaso Sitaram Patil	3,490	3,500
10	Mrs. Suhasini Kore	3,490	3,500
11	Mrs. Kusum Shete (P5)	3,490	3,500
<b>Total Shares</b>		<b>38,890</b>	<b>39,000</b>

Petitioners submitted that all the members of R1 Company agreed to the above shareholding pattern and accordingly consented by signing

certain documents presented by R2. All powers in relation to increase in share capital were given to R2 as he was Chairman of R1 Company. Subsequently, R2 informed Petitioners that had completed all the procedures for the purpose of increasing share capital of R1 Company as agreed.

- (c) Petitioners stated that in the years 1999-2000, entire 3,500 shares of **Mr. Balaso Sitaram Patil were forfeited due to non-payment of call money and the said entire 3,500 shares were allotted to P7 for consideration. Similarly, entire 3,500 shares of Mrs. Suhasini Kore were forfeited due to non-payment of call money and the said entire 3,500 shares were allotted to P8 for consideration.** Petitioners stated that the aforesaid allotments were done by unanimous consent of all the Directors of R1 Company by following all the procedures prescribed in law and Articles and Association of R1 Company. Such documents are in the possession of **R2, who has possession and control over the registered office where he resides also.**
- (d) Petitioners submitted that in the year 2002, it was decided to avail **Government subsidy** for R1 Company. Subsidy was finalised in 2005. R1 Company got the subsidy in two instalments – one in **December, 2006 amounting to Rs.3,92,000/-** and the other in **December, 2007 amounting to Rs.3,18,634/-**. These amounts were reflected in R1 Company's bank statements of Bank of India, Amrutnagar Branch and Warana Sahakari Bank respectively.

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- (e) Till 2005, before finalisation of subsidy, Board Meetings and AGMs were held regularly. Since then R2 stopped sending Notices to other Directors of R1 Company and started running the R1 Company as if he is the sole Owner / Proprietor. R2 started neglecting the Petitioners and stopped answering their phone calls. R2 also avoided attending meetings called by the Petitioners.
- (f) Petitioners submitted that the Annual Accounts for the year 2005-06 of R1 Company was not prepared, which was the sole responsibility of R2. **R2 was residing in the registered office of R1 Company** and was in possession of all the documents of R1 Company. R2 was the Managing Director and Chairman of R1 Company. Since the AGM was not held for the year 2005-06, Petitioners started asking R2 why did not he call the AGM and why the Annual Accounts are not finalised. R2 informed Petitioners that the accounts are sent for writing and once they are ready he will get the same audited and then call the AGM. However, the accounts were not shown to the Petitioners and the AGM was not called by R2.
- (g) Petitioners stated that one when P1 and P2 went together to the registered office of R1 Company, R2 abused and shouted at them.
- (h) Petitioners submitted that they have called a meeting of all the members on 15<sup>th</sup> August, 2007 at the office of R1 Company to enquire about the accounts up to 31<sup>st</sup> March, 2007 from R2. R2 was absent in the said meeting. It was decided in the said meeting to give two months' time to R2 to convene the AGM and produce the accounts before the Directors. It was further decided to meet Mr. Dilip Pange,



Company Secretary, Kolhapur, in December 2007 along with account to take his suggestion on it. R3 and R4 did not sign the Minutes of the Meeting, though they were present at the meeting.

- (i) Petitioners submitted that R2 failed to show account of R1 Company in the given time. Petitioners still took an appointment with Mr. Dilip Pange, Company Secretary and met him in December, 2007. In this meeting, R2 was also present. R2 told that he wants to wind-up R1 Company. However, Mr. Dilip Pange, after going through the financials and assets of R1 Company, suggested not to wind-up R1 Company as it has plenty of assets and modern machinery. Mr. Dilip Pange also suggested to prepare the accounts and carry out all the compliances under corporate laws, but R2 did not do so though he took responsibility of preparing the accounts at the meeting. This is mentioned in proceedings of meeting held on 23<sup>rd</sup> December, 2007.
- (j) Petitioners submitted that since R2 failed to show accounts and financial statements of R1 Company for the year 2005-06 and 2006-07 in spite of their repeated follow-ups, they finally approached Mr. S.V. Mali, Chartered Accountant, Sangli, Auditor of R1 Company. Mr. S.V. Mali gave financial statements (Balance Sheet, Profit & Loss Account, Auditor's Report, Annual Return) of R1 Company till 2005-06 (except Annual Return of 2005-6). From the financial statements, Petitioners were shocked to learn that **R2 had fraudulently increased paid-up share capital of R1 Company from Rs.3,90,000/- to Rs.5,00,000/- by keeping the Petitioners in dark.** This was reflected in the balance sheet of 2005-06. Copies of annual accounts (Notice, Directors' Report, Auditor's Report, Profit

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and Loss Account and Balance Sheet of Financial Years 2003-04, 2004-05 which were filed RoC, Pune and also of 2005-06 are on record. No intimation was given to Petitioners regarding increase in share capital. No Form was filed with RoC, Pune regarding increase of share capital. This issue was discussed by the Petitioners in their meeting held on 25<sup>th</sup> September, 2008. In Annual Return given by Mr. S.V. Mali, Chartered Accountant, shareholding of R2 in R1 Company was inflated and Annual Return figures did not correspond to balance sheet figures. In Annual Return, **R2's shareholding was inflated to 9,900 shares whereas the actual shareholding was 3,600 shares, it is alleged.** Annual Return of the year 2003-04 is not signed by P4. Copies of Annual Returns of Financial Years 2003-04, 2004-05 received from Mr. S.V. Mali, Chartered Accountant are on record.

- (k) Petitioners submitted that they found themselves in deadlock and decided not to take any action till the latest accounts and shareholding documents are received from R2. When the Petitioners asked Mr. S.V. Mali, Chartered Accountant regarding increase in share capital, he told them that R2 showed him documents based on which he prepared account of 2005-06. Later it was found that the documents shown to Mr. S.V. Mali, Chartered Accountant were fraudulent, relying on which he had prepared incorrect account. Balance sheet of 2005-06 was used for getting subsidy from the Government. Mr. S.V. Mali, Chartered Accountant told the Petitioners to take public search of R1 Company in the office of RoC, Pune.

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- (l) Petitioners submitted that on taking public search of R1 Company in the office of RoC, Pune, they were taken aback to learn that R2 had increased his shareholding in R1 Company by changing Annual Return data and by replacing pages thereof thereby diluting the shareholding of Petitioners in R1 Company without the knowledge of Petitioners. Copies of Annual Returns for FY 2003-04 and FY 2004-05 filed with RoC, Pune are on record.
- (m) Petitioners submit that **P4**, who is also on the Board R1 Company, is **brother-in-law of R2**. He had full trust in R2. He blindly signed balance sheets and other financial statements of R1 Company trusting R2. When other Petitioners proved P4 as to how financial statements filed by R2 were fraudulent, incorrect, wrong and not matching with the figures of what is mentioned in Annual Return and how in between pages of Annual Return were replaced, P4 realised that he has been cheated along with other Petitioners by R2 and immediately stepped out of R1 Company and decided to be with other Petitioners.
- (n) Petitioners submitted that they have noticed following points during the Public Search of R1 Company at the office of Roc, Pune:-
- a) In Annual Returns of 2003-04 and 2004-05 of R1 Company, R2 had fraudulently increased his shareholding by reducing shareholding of Petitioners
  - b) Annual Return had incorrect information and did not provide sufficient data.

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- c) Non filing of financial statements for and from the year 2005-2006.
  - d) Accounts filed were incorrect and false.
  - e) Satisfaction Form was not filed with RoC, Pune.
  - f) No document is available with RoC, Pune regarding issue of Capital, which took place in the year 1996.
- (o) Petitioners alleged that in the Annual Returns for 2003-04 and 2004-2005 filed with RoC, Pune, R2 fraudulently increased his shareholding in R1 Company. In Annual Returns R2 inflated his shareholding to 9,900 shares aggregating to 25.38% of the issued, subscribed and paid-up share capital and reduced the shareholdings of Petitioners in R1 Company to gain control over R1 Company. Petitioners submitted that as per the Annual Returns for the years 2003-04 and 2004-05 available with RoC, Pune, shareholding of Members in R1 Company is as following:-

Sr. No.	Name of Members	Shareholding as per Annual Return 2003-2004	Shareholding as per Annual Return 2004-2005
1	Mr. Ashok Todkar (R2)	9,900	9,900
2	Mr. Shankar Shete (R3)	3,500	3,500
3	Mr. Appaso Lingappa Kharade (P2)	3,500	3,500
4	Mr. Sudhir Shete (P4)	5,000	3,000
5	Mr. Sadashiv Patil (P1)	3,500	3,500
6	Mr. Appaso Shete (P3)	Not shown	Not shown
7	Mrs. Shivganga Shete (R4)	Not shown	Not shown
8	Mrs. Kanchan Shete (P6)	Not shown	Not shown
9	Mrs. Suvarna Karvekar (P7)	Not shown	Not shown
10	Mrs. Pushpa Shete (P8)	Not shown	Not shown



11	Mrs. Kusum Shete (P5)	Not shown	Not shown
<b>Total Shares</b>		<b>25,400</b>	<b>23,400</b>

(p) Petitioners submitted that in the Annual Returns of the years 2003-04 and 2004-05 of R1 Company filed by R2 with the RoC, Pune contained following incorrect, false and misleading statements:-

- (a) Last page of Annual Return of 2003-04 is not signed.
- (b) Pages of Annual Return of 2003-04 and 2004-05 are missing.
- (c) Shares are not tallying with that of shares outstanding.
- (d) Shareholding of P4 in R1 Company is shown as 5,000 shares in 2003-04 whereas in 2004-05 it is shown as 3,000 though he did not transfer or surrender any of his shares.
- (e) As per balance sheet of financial year ended 31<sup>st</sup> March, 2004 an amount of Rs.34,552/- is shown as unsecured loan whereas balance sheet abstract of Annual Return of 2003-04 shows unsecured loan amount as 147L which is not clear. Similarly, in the balance sheet of financial year ended 31<sup>st</sup> March, 2005 an amount of Rs.36,090/- is shown as unsecured loan whereas balance sheet abstract of Annual Return of 2004-05 shows unsecured loan amount as 15,84,000/-.
- (f) Annual Returns balance sheet abstracts of both the financial years ended 31<sup>st</sup> March, 2004 and 31<sup>st</sup> March, 2005, show a difference of Rs.5,000/- than that of Balance sheets of financial years ended 31<sup>st</sup> March, 2004 and 31<sup>st</sup> March, 2005.
- (g) Information of only five members of R1 Company viz. R2, R3, P2, P4 and P1 is provided in Annual Returns of 2003-04 and 2004-05. Information of remaining members of R1 Company is missing in Annual Returns of 2003-04.

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- (h) Pages of Annual Return were replaced by R2 at P4 signed the end page.
- (q) Petitioners submitted that in the **meeting held on 25<sup>th</sup> September, 2008**, R2 provided only Daybook and Ledger of 2006-07 and 2007-08. Based on these books provided, Petitioners started preparing accounts. Petitioners felt something is going wrong in the accounts of R1 Company. Pages bearing number 11 and 13 of the Daybook of R1 Company of FY 2006-07 were not provided in spite of regular demands to R2. Copies of Daybook of 2006-07 and 2007-08 as also copies of Ledger of 2006-07 and 2007-08 are on record.
- (r) Petitioners submitted that on **3<sup>rd</sup> October, 2008**, Petitioners convened a meeting in which R2 was also present. In the said meeting it was resolved to **freeze bank account** transactions of R1 Company with Bank of India, Amrutnagar Branch. It was decided that bank will only credit money to the said account, but will not debit it. Bank of India Amrutnagar Branch was communicated accordingly in writing. R2 also agreed and signed the communication, though he did not sign Minutes of the meeting held on 3<sup>rd</sup> October, 2008. A copy of the said communication to Bank of India Amrutnagar Branch is on record. Bank of India Amrutnagar Branch stopped transactions for few days, but later started transacting with the signature of R2 only.
- (s) Petitioners submitted that later on meetings were also held on 31<sup>st</sup> March, 2009, 16<sup>th</sup> May, 2010, 19<sup>th</sup> June, 2011 (Notice sent to R2 by Registered Post), 27<sup>th</sup> June, 2011 (Notice sent to R2 by Registered Post) and 26<sup>th</sup> December, 2012. Proceedings of these meetings are



maintained in a notebook in writing. Copy of said proceedings is on record. Petitioners stated that in all these meetings R2 showed disinterest in carrying on R1 Company's business and **he wanted wind-up R1 Company.** He refused to sign the minutes of the meetings he attended. R2 failed to show accounts of R1 Company to the Petitioners in spite of sending him notices through registered post as also by other means of communication such as telephone.

- (t) Petitioners submitted that a meeting was convened on 19<sup>th</sup> June, 2011 by the Petitioners. Notice was sent to R2 by registered post. R2 attended the said meeting and begged for eight days' time i.e. up to 27<sup>th</sup> June, 2011 to show the accounts and other details of R1 Company to the Petitioners. Petitioners gave him a final chance, but R2 chose not to attend the said meeting. R2 sent an undated letter to P1 and P2, which was received by them on 26<sup>th</sup> June, 2011, making false allegations and stating that R2 will not meet the Petitioners and if Petitioners want to meet him they can do so through their representative who should be a Chartered Accountant. A copy of the said letter is on record.
- (u) Petitioners submitted that financial statements of R1 Company are not prepared for and from the year 2006-07 and R1 Company had defaulted in filing financial statements for and from financial year 2005-06. Moreover, figures in financial statement of FY 2005-06 are false, incorrect, fraudulent, misleading, etc. Petitioners stated that the status of R1 Company on MCA site is marked as "**Dormant**". Petitioners do not know how much are the assets and liabilities of R1 Company of which the Petitioners are the owners.

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- (v) The statutory registers, books and papers, account books, vouchers, minutes and other important documents, which the law mandates to keep and maintain at the registered office of every Company, are not kept and maintained. R2 does not show any documents of R1 Company to the Petitioners and does not even allow the Petitioners to keep and maintain statutory registers and documents even after repeated requests by the Petitioners.
- (w) Petitioners submitted that every Company is required to call and hold Board Meetings at least once in every quarter. Board meeting of R1 Company is not called / held from the end of the year 2005 i.e. finalisation of subsidy.
- (x) Petitioners submitted that every Company is required to call and hold Annual General Meeting once in a year. Annual General Meeting of R1 Company is not called / held for and from the year 2006.
- (y) Petitioners submitted that as per audited balance sheet of R1 Company, as on 31<sup>st</sup> March, 2006, closing stock was shown as Rs.3,93,276/-. As per ledge account of 2006-07, additional stock of Rs.2,62,989/- was purchased by R1 Company whereas sales of R1 Company in that year after deducting sales return was Rs.2,98,346/. In ledger account of 2007-08, additional stock of R.1,56,108/- was purchased by R1 Company whereas sales of R1 Company in that year after deducting sales return was Rs.1,64,853/-, which seemed very unnatural because when Petitioners went to the office of R1 Company in the year 2007-2008, they saw R1 Company had a stock of about
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Rs.20,000/- to Rs.30,000/-. Moreover, income from vehicle owned by R1 Company was now shown although its expense were regularly debited to the profit and loss account of R1 Company. This vehicle was sold on 10<sup>th</sup> March, 2011 by R2 without any authority to do so.

- (z) Petitioners submitted that without the permission of Petitioners, R2 opened a bank account with Warana Sahakari Bank, Kolhapur Branch in the name of R1 Company and kept signing powers with him for transactions with the bank. Second subsidy amount received from Government was credited to this account. Petitioners were not aware about receipt of second subsidy money and R2 has taken out the said money for his personal gain.
- (aa) Petitioners submitted that R2 paid insurance premiums and personal loan of his family using R1 Company's funds. In many places in statements, bank account is debited in the name of Mrs. Usha Todkar, wife of R2 and at one place it is debited in the name of Anup Todkar, son of R2. Rs.18,063/- NEFT is done to someone's account.
- (bb) Petitioners submitted that it came to their notice in mid-2012 that on **17<sup>th</sup> June, 2011, R3 transferred 3,500 shares of R1 Company to R2.** This transfer was given effect by executing a sale deed on non-judicial stamp paper. No share transfer form as prescribed under the Companies Act was used in this transfer. Further, no Board meeting was called or notice was given to any Members / Petitioners, which was required as per regulations 11 and 12 of Articles of Association of R1 Company. Any other member would have bought those shares at a higher price. Those shares were transferred at a

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price less than 70% of its market value at the time of sale i.e. for a consideration of Rs.98,000/- whereas the original market value of those 3,500 shares could be more than Rs.8,50,000/-.

- (cc) Petitioners submitted that it came to the notice in mid-2012 that another share transaction of the same kind took place on **6<sup>th</sup> June, 2011, which involved transfer of 4,000 shares of R1 Company by R4** to Mrs. Usha Ashok Todkar. At the time of this transfer, R4 held only **3,500 shares**. This transfer was also given effect by executing a sale deed on non-judicial stamp paper. No share transfer form as prescribed under the Companies Act was used in this transfer. The transfer was done without the knowledge of any Members / Petitioners and no procedure of Articles of Association and Company Law were followed. These 4,000 shares were transferred for a consideration of Rs.1,12,000/- whereas the original market value of those 4,000 shares was more than Rs.9,50,000/-.
- (dd) Petitioners stated that on 13<sup>th</sup> June, 2014, they sent notice of meeting for a meeting on 29<sup>th</sup> June, 2014 to sort out the pending issues to all members of R1 Company by registered post. In reply to this notice, all the members received a notice from R2 stating that R2 does not want to hear the Petitioners and the notice of meeting sent by Petitioners is invalid as per Company Act, 2013.
- (ee) Petitioners stated that **R2 sent a notice dated 28<sup>th</sup> June, 2014** to P1 and P2 stating the P1 and P2 were serving in government and semi-government office and concurrently, since 1995 they are on the Board of R1 Company. R2 alleged that P1 and P2 had to inform their

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respective offices that they were on the Board of R1 Company, but they did not do so. However, the fact is that **P1 retired from government service in the year 2002 and P2 retired from semi-government service in the year 2006.** R2 issued the notice to P1 and P2 in the year 2014 to distract the attention of P1 and P2 and keep them away from R1 Company which R2 did successfully from the year 2005 onwards.

- (ff) Petitioners stated that R2 along with his wife and children resides in the premises owned by R1 Company. A copy of **proof of ownership of property by R1 Company is on record.** R2 is not giving total access to the Petitioners for the purpose of inspection and collection of documents of R1 Company. R2, with *mala fide* intentions is not allowing the Petitioners to conduct R1 Company's business and also denying Petitioners right as shareholder in R1 Company. R2 has gained unlawful control of R1 Company and R2 runs R1 Company through Board of Directors consisting of himself, his wife and his son.
- (gg) Petitioners stated that R2 had applied for DIN on 19<sup>th</sup> January, 2011 and was **not having DIN from 2066 till 19<sup>th</sup> January, 2011.** He was acting as Chairman and Managing Director of R1 Company without authority of any members of R1 Company. Moreover, as per Companies Act 2013, R2 is not only disqualified but also should have vacated his office. However, R2 is still holding the post of Chairman and Managing Director of R1 Company an entering into contract on behalf of R1 Company.

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- (hh) Petitioners submitted that taking into consideration all the facts mentioned in their Petition, the conduct of R2 is harsh, burdensome, wrongful, *mala fide*. R2 and Chairman and Managing Director of R1 Company also mismanaged the affairs of R1 Company for his personal gain. Petitioners submitted that, **under the circumstances, winding-up will be prejudicial to the interest of R1 Company, as also to the Petitioners.**

5. The Petitioner had prayed for the following **reliefs** in the Petition:-

- (a) To issue appropriate orders, directions and reliefs under Sections 397, 398, 402, 403, 406 and 408 of the Companies Act, 1956 to bring to an end to the aforesaid act of oppression and mismanagement being perpetrated by Respondents and necessary orders and reliefs in respect thereto, including as prayed for in the Petition;
- (b) To pass appropriate orders under Sections 397, 398, 402 and 403 of the Companies Act, 1956 for appropriate management of R1 Company and for that purpose to appoint such appropriate and fit person as this Hon'ble Bench may deem fit and proper as **Administrator** and/or appoint an **Independent Committee** for managing the affairs of R1 Company for such time and on such terms and conditions as this Hon'ble Bench may deem fit and proper;
- (c) To appoint suitable person as Special Commissioner or Officer for the special purpose of initialising all such records, documents, vouchers, agreement and other papers with regard

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to the affairs of R1 Company so that future controversy in this regard is limited;

- (d) To appoint Chartered Accountants as Special Auditors for carrying out special audit of R1 Company as this Hon'ble Bench deems fit and proper and to submit special audit report to this Hon'ble Bench;
- (e) To order and direct the Respondents, their respective servants, agents and assigns to make a full, free and complete disclosure of records of the R1 Company with regard to the affairs of R1 Company, the contracts entered into between R1 Company and the loans given or taken by R1 Company (if any) as well as in respect of the documents sought for by the Petitioners, *inter alia*, being:
  - i) Minutes of the Annual General Meetings and Extraordinary General Meetings of R1 Company since incorporation till the date on which provided;
  - ii) Minutes of Meetings of Board of Directors of R1 Company since incorporation till the date on which provided;
  - iii) Statutory registers maintained under the Act.
  - iv) Detailed report of inflow and outflow of funds and manner in which the same have been deployed / expended by R1 Company since incorporation till the date on which provided, together with supporting documents;

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- v) Bank statements of all bank accounts of R1 Company since incorporation till the date on which provided;
  - vi) Details of investments made and loans given by R1 Company since incorporation till the date on which provided;
  - vii) Details of financial arrangements entered into with Banks / Financial Institutions for availing loans by R1 Company since incorporation till the date on which provided;
- (f) To appoint such number of persons as may be deemed fit and proper to act as independent directors of R1 Company for such period as deemed fit by the Hon'ble Bench and on such terms and conditions as may be fixed by this Hon'ble Bench;
- (g) To pass a perpetual order of injunction restraining Respondents from in any manner whatsoever making any false and incorrect records in respect of R1 Company and/or filing any false and incorrect statutory records in respect of R1 Company with the Registrar of Companies, Pune and/or addressing any correspondence whatsoever for and on behalf of R1 Company;
- (h) To restrain R2 by an order and injunction *inter alia* restraining from transacting any business and/or conducting the meeting of the Board of Directors of R1 Company, pending the hearing and disposal of this Petition;

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- (i) To restrain the Respondents, their servants, gents and assigns by an order and injunction of this Hon'ble Bench from in any manner;
  - i) increasing, issuing and/or allotting any further shares in any form or manner whatsoever in R1 Company;
  - ii) transferring, pledging, encumbering, alienating or creating any third party rights in respect of the shareholding of R2 and R1 Company;
  - iii) investing, selling, disposing of, encumbering, alienating or creating any third party rights in respect of any property or assets of R1 Company;
  - iv) interfering with or disturbing the shareholding of the Petitioners in R1 Company;
  - v) creating any liability in R1 Company, giving loans or transfers in R1 Company;
  - vi) utilizing the funds of R1 Company for the purpose of instant litigation in any manner whatsoever;
- (j) To declare that the allotment of additional 6,300 equity shares to R2 appearing in Annual Return in *non-est*, null and void *ab initio*, patently illegal and has no effect whatsoever and not binding on R1 Company and the Petitioners;
- (k) To disclose and transfer all the documents pertaining to Petitioners to the management as the R2 currently resides at the registered office of the R1 Company thereby denying access to the management from obtaining the documents;

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- (l) To declare transfer of shares of R1 Company between R3 and R2 as void and invalid;
- (m) To declare transfer of shares of R1 Company between R4 and Mrs. Usha Todkar as void and invalid;
- (n) To direct R2 to prepare accounts from 2005-06 till date and all cost may be incurred by R2;
- (o) To distribute all the shares in equal among members as per agreed ratio at the time of increase of capital or ratio at the time of incorporation;
- (p) To distribute deposits and share application money of members among them in an agreed proportion.

6. **The Respondents in their Reply** submitted that:-

- (i) The Company Petition is false, frivolous, devoid of any merits and not maintainable. The Petition has been filed with the sole intention to harass the Respondents, especially R2, by making reckless allegations against him thereby to cover up their own acts and deeds of oppression, suppression and mismanagement. Respondents reserves their right to initiate appropriate action against the Petitioners for the same. Respondents denied each and every averment of the Petition.
- (ii) Several documents are concealed by the Petitioners that clearly and unmistakably indicated the falsehood of various claims and allegations made by the Petitioners.

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- (iii) Respondents do not admit the genuineness, correctness and admissibility of any of the documents produced (except those, which are specifically admitted). The Petitioners be directed to prove each and every documents produced by them from the point of admissibility of the same.
- (iv) The Petitioners are not coming to this Hon'ble Forum with clean hands and the Petition is vitiated by fraud and suppression of material facts.
- (v) The present Petition is nothing but abuse of process of law and even though filed ostensibly under Sections 397, 398, 399, 402, 403 and 406 of the Companies Act, 1956 is, in fact, filed with an oblique motive of pressurising the Respondents to sell the property of R1 Company and further to avoid their responsibility that they owe to R1 Company. Respondents further submitted that the present Petition is filed in furtherance of the personal cause of P1 against R2 and not in the interest of R1 Company. Petitioners themselves are responsible for the acts and deeds of oppression and mismanagement, as alleged against R2.
- (vi) The Petitioners have tried to *mala fide* keep this Hon'ble Bench in the ignorance of fact so as to obtain relief against the Respondents and especially against R2 by that contrivance.
- (vii) The Petitioners do not hold good record amongst the workers. In a Statement of Workers, it is specifically mentioned that many times P1 and P2 have taken away finished products ready for sale without any prior approval of the Board or relevant entries in the books of accounts. A copy of Statement of Workers is on record.

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- (viii) Respondents denied contents of para 4 of the Petition, except for the fact that P3 is a holder and owner of 10 equity shares of Rs.10/- each and subscriber to the Memorandum and Articles of Association of R1 Company. Respondents denied shareholding of 3,500 equity shares of R1 Company in the name of P3. Respondents submitted that **Annual Return does not mention holding of 3,500 equity shares in the name of P3** as claimed in the Petition. Annual Return was signed by P4 and R2.
- (ix) Respondents submitted that the contents of para 6 are wrong and denied except for the fact that P5 is a holder and owner of 10 equity shares of Rs.10/- each and subscriber to the Memorandum and Articles of Association of R1 Company. Respondents submitted that **Annual Return does not mention holding of 3,500 equity shares in the name of P5 as claimed in the Petition.**
- (x) Respondents submitted that the contents of para 7 are wrong and denied except for the fact that P6 is a holder and owner of 10 equity shares of Rs.10/- each and subscriber to the Memorandum and Articles of Association of R1 Company. Respondents submitted that **Annual Return does not mention holding of 3,500 equity shares in the name of P6** as claimed in the Petition.
- (xi) Respondents submitted that the contents of para 8 and 9 are wrong and denied Annual Return does mention the holding of 3,500 equity shares in the name of P7 and P8 as claimed in the Petition. P7 and P8 do not have documents to prove the shareholding as claimed in the Petition.

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(xii) In reply to para 10 of the Petition, Respondents submitted that P2 was given authority to file Annual Accounts and Returns with RoC, Pune. P2 took the responsibility to file the same through Auditor Mr. S.V. Mali, Chartered Accountant, Sangli and took signatures of R2 and P4 on the last page of Annual Return. Due to lack of professional guidance and inadvertence, R2 signed the same. Respondents were under the impression that Annual Returns would have been filed with RoC, Pune through Auditor Mr. S.V. Mali, Chartered Accountant, and those Returns would have represented true and correct affairs of the Company. Respondents submitted that they are taken aback that incomplete Annual Returns were filed that lacked details with respect to Directors and their shareholdings. Petitioners have filed this Petition to avoid their liability and put the whole obligation on R2. R2 has not filed with R1 Company any transfer deed or have not made any changes in the shareholding pattern of R1 Company. Respondents have merely entered into an agreement **transferring the shares of Mr. Shankar Bandu Shete and Mrs. Shivganga Shete, however did not materialized.**

(xiii) Respondents submitted that contents of paras 13 and 14 of the Petition are misleading. Mr. Shankar Bandu Shete and Mrs. Shivganga Shete are subscribers to the Memorandum and Articles of Association and are first Directors of R1 Company. On 9<sup>th</sup> June, 2011 Mr. Shankar Bandu Shete and on 17<sup>th</sup> June, 2011 Mrs. Shivganga Shete executed agreements agreeing to transfer their entire share capital for a fair consideration. However, no transfer deeds were executed and the transfer was not approved in the Board Meeting and no changes were





made in the shareholding pattern of R1 Company. Therefore, Mr. **Shankar Bandu Shete and Mrs. Shivganga Shete are still shareholders and Directors of R1 Company.**

- (xiv) Respondents submitted that the contents of para 18 are wrong and denied. From the date of incorporation of R1 Company, R2 singlehandedly took active participation in conducting the business affairs of R1 Company. Remuneration of Rs.35,000/- p.a. for R2 and his wife together for taking active participation in the day-to-day work of R1 Company was promised, but it was paid only in the year 1995-96, after which both of them did not receive the salary amount till date. P1 has wilfully and *mala fidely* suppressed the facts and converted the salary amount due to R2 and his wife in the share application money, which is clearly showed in the balance sheet. Respondents further stated that when R1 Company was in need of cash, R2 introduced capital in R1 Company from his own resources which is evident from the balance sheet of R1 Company.
- (xv) Respondents submitted that the contents of para 19 are wrong and denied. Share capital of R1 Company was never Rs.1,100/-. Minimum share capital of the Company cannot be less than Rs.1,00,000/-.
- (xvi) Respondents submitted that the contents of para 20 are wrong and denied. Balaso Sitaram Patil is a subscriber to the Memorandum and Articles of Association of R1 Company and thus holder of 10 fully paid-up equity shares of R1 Company.

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(xvii) Respondents vehemently denied the contents of para 22.

Respondents submitted that R1 Company suffered cash crisis in the year between 2004-2006 which is evident from the balance sheet and directors' report of R1 Company. R1 Company was in need of working capital and hence R2 informed the Petitioners about the working capital requirement. Fearing that Petitioners may need to pump in some money in R1 Company, they stopped taking interest in the affairs of R1 Company. In Board meetings when R2 tried to intimate Petitioners about the working capital requirement, they deliberately kept themselves absent from attending other Board meetings that had been called. Thus, R2 owing allegiance to the employees of R1 Company and R1 Company decided to contribute money from his own resources.

(xviii) Respondents submitted that the contents of para 23 are wrong and denied. Responsibility for preparing financial statements were taken by P2. In the year 2006, provisions were introduced for Directors Identification Number and filing annual statements through e-form. For filing of e-form, DIN was made compulsory and R2 informed Petitioners about the same. However, P1, P2 and P4 ignored the same even after continuous follow-up by R2. Even as of now P1, P2 and P4 do not have DIN which is rejected by RoC. For the same reason, Chartered Accountant of R1 Company denied to file annual return and the financial statements of R1 Company and then the deadlock started in the management. Meetings for the same purpose were adjourned due to lack of quorum. Petitioners continued to be absent in the adjourned meetings. Therefore, **annual accounts from the year 2005-06 could not be finalised till date.** Thus, the status of R1

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Company changed to **dormant**. Owing to this, it is impossible to complete the requirements of Companies Act. Respondents further submitted that it is an individual's responsibility to file Forms and to comply with the provisions of Act, but it is collective responsibility of all the Directors on the Board. Owing to the wilful neglect and deceitful methods adopted by the Petitioners, **R1 Company run into huge losses**. These omissions were wilfully done by the Petitioners as their ulterior motive is **to grab the land of R1 Company** and they have no intention to run R1 Company smoothly.

- (xix) Respondents submitted that the contents raised in para 24 of the Petition are without merits and false. It is stated that, in the year 2005 when subsidy was received, Petitioners started harassing R2 as the Petitioners were interested in the subsidy amount received by R1 Company. Petitioners sought proportionate distribution amongst the members of R1 Company, which in itself is an illegal act and unsubstantiated claim. Therefore, R2 did not accept the same. During visits to the registered office of R1 Company, Petitioners used to take finished stock of R1 Company for their personal use.
- (xx) Respondents submitted that the contents of para 25 are wrong and denied. R2 never received the Notice for the mentioned Board meeting; Petitioners have not presented any proof of delivery and R3 and R4 were also not present for the meeting as they were not aware of the same. Respondents submitted that the meeting of members cannot be held on public holiday; therefore, the business transacted and the decisions taken in the said meeting are not valid.

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(xxi) Respondents submitted that the contents of para 26 are not true as tried to be stated. R1 Company was suffering from cash crisis and did not have enough funds to appoint Consultant Mr. Dilip Pange, Company Secretary, Kolhapur. R2 alone was handling the day-to-day activity of R1 Company along with his wife and son even in the phase where R1 Company was in cash crisis and was suffering from losses. **R2 never demanded to wind up R1 Company.** Petitioners approached Mr. Dilip Pange, Company Secretary for voluntary winding up of R1 Company. Mr. Dilip Pange suggested to not wind up as R1 Company has plenty of assets and modern machinery.

(xxii) Respondents submitted that the contents of paras 27 and 28 are wrong as tried to be stated. Respondents admitted that due to lack of professional guidance, Form 2 was not filed with RoC. **The share capital of R1 Company was increased after passing Board Resolution and was approved in the Board meeting.** Petitioners took out of the registered office of R1 Company all the documents by force and are concealing these facts.

(xxiii) Respondents submitted that the contents of Para 30 are denied. Petitioners are Directors of R1 Company and they are wilfully trying to run away from their responsibility from the acts that are done by them in the Director's capacity.

(xxiv) Respondents submitted that the contents of paras 31, 32 and 33 are denied.

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- (xxv) Respondents submitted that as regards the contents of para 34, they do not admit the genuineness, correctness and admissibility of the documents produced and relied upon by the Petitioners.
- (xxvi) Respondents submitted that the contents of para 35 are not true and correct as has been tried to be stated. P1 along with hooligans entered the office premises and threatened R2 with life. They took the signatures of R2 by force on various letters including on blank pages and sent letters to the bank requesting them to seal the bank account. **R2 had filed a police complaint against the Petitioners** highlighting the actions of Petitioners and threatening the Respondents and the employees. A copy of Police Complaint is on record.
- (xxvii) Respondents submitted that the contents as raised in para 36 are without merits. Neither R2 nor his wife received any salary for the services towards R1 Company, but they never complained for the same. R2 is known for his dedication in R1 Company.
- (xxviii) Respondents submitted that the contents of para 37 are not true and correct and the same are denied. There was no outcome of the meeting held on 19<sup>th</sup> June, 2011. There were differences of opinion between R2 and P1.
- (xxix) Respondents submitted that the contents of para 38 are not true and correct and the same are denied. Financial statements of R1 Company are not filed with RoC for the reason of non-availability of DIN of P1, P2 and P4. R2 pumped cash into R1 Company, lead R1 Company
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successfully from losses to profits. Suddenly the Petitioners have started taking interest in the affairs of R1 Company. Petitioners gave an illegal and defamatory public notice in newspaper for closing R1 Company. A copy of public notice is on record.

(xxx) Respondents submitted that the contents of para 39 are wrong and denied. R1 Company had kept all the Statutory Registers, Account Books, Vouchers, Minutes and other documents, as required by law, at its registered office. Petitioners have forcefully taken away financial records of R1 Company for the years 2006-07, 2007-08 and 2008-09 out of the registered office and still all those documents are in the possession of Petitioners only.

(xxxi) Respondents submitted that the contents of para 43 are wrong and denied. The account with Warana Sahakari Bank, Kolhapur Branch was opened with the consent of all the Directors of R1 Company. P4 and R2 open the bank account for the purpose of subsidy. The subsidy amount credited in the bank account was debited by Bank of India (CC Account), who had provided working capital loan to R1 Company since 1996 to 2006. Subsidy amount was not used for personal gains. The second subsidy was also used for the purpose of R1 Company. This can be verified from the bank statement. However, Petitioners wanted the whole subsidy amount to be distributed among them.

(xxxii) Respondents submitted that the contents of para 44 are not true and correct as has been tried to be stated. Insurance premium of Mrs. Usha Todkar and Mr. Anup Todkar has not been paid by R2 using the

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money of R1 Company. However, R2 has paid the insurance premium for his own insurance.

(xxxiii) Respondents submitted, in reply to the contents of paras 45 and 46, that R3 and R4 are not able to look after the matters of R1 Company because of old age and thus they wanted to shift the pressure and hence R3 and R4 executed sale deeds agreeing to transfer their shares in the name of R2. As regards the finalisation, sale deed is not to be considered as the final step for transfer of shares as share transfer needs to be approved in the Board meeting. As no Board meeting was held, no transfer was done.

(xxxiv) Respondents submitted that the statements of para 47 are contentious and it is denied that the Respondents intended any loss or harm of R1 Company. As regards the contents of para 48 of the Petition, the same are not correct and have been drafted mischievously. **P1 was ex-government auditor and he had not taken permission** from the relevant authority for obtaining directorship in R1 Company. P1 is, therefore, ineligible to become Director of R1 Company. P1 has also acquired Government land illegally and hence Government had filed a Suit against him. P2 fraudulently took directorship in R1 Company. Under the relevant service rules laid down by the Government authority, obtaining this directorship was breach of such rules. Yet, P1 and P2 continued to remain as Directors of R1 Company and wilfully did not obtain DIR as they feared that up to date filing of record to ministry would affect his present service. P4 was arrested by Division Coppa Forest, Karnataka for sandalwood smuggling.

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(xxxv) Respondents submitted that the contents of para 49 are not true and correct as has been tried to be stated. Regarding restriction to the access of office premises is wrong and denied.

(xxxvi) Respondents submitted that as regards the contents of para 50, R2 holds a valid DIN 03368478. Respondents admit that the DIN details and directorship had not been submitted to RoC, Pune. Respondents had good and sufficient reason to do so. According to Companies Act, 1956, a Company needs to have minimum of two directors. R2 only is holding valid DIN. Petitioners ignored R2's requests for applying for DIN. DIN Applications of P2, P4 and R3 were rejected by Ministry of Corporate Affairs. In such a situation, R2 was unable to file requisite Form at MCA portal.

(xxxvii) Respondents submitted that the contents of para 52 are wrong and denied. In fact, the conduct of Petitioners is *mala fide*, harsh, wrongful as they contend to acquire and sell the assets of R1 Company to make easy money.

7. At the end Respondents prayed to dismiss the Petition with costs.
8. In the **Rejoinder**, Petitioners submitted that:-
  - (a) Page nos. 43 to 62 are missing in the Written Argument of R2.
  - (b) R2 arguing is not permissible. It is well settled that parties cannot go beyond what has been stated in their pleadings. R2 has been given maximum opportunity to file his Reply.

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- (c) R2 is not permitted to submit any more documents because the pleadings are complete and the matter is at the stage of final hearing.
- (d) R2 in his arguments shouted and stated that he is innocent and honest and honestly looked after the affairs of R1 Company. But, in fact, with his fox mind and crocodile tears he puts wrong defence in his pleadings which destroys his story and establishes Petitioners' version as true and reliable.
- (e) R2, in his pleadings, admitted that share transfer did not take place and R3 and R4 are still shareholders of R1 Company. In the argument advanced by R2, he stated that shares of R3 and R4 have been transferred to R2. Arguments of R2 cannot be accepted as the same are contrary to the pleadings.
- (f) The documents at page nos. 19 and 82 of the Written Argument clearly establish that shares of Balaso Sitaram Patil and Suhasini Kore were forfeited and transferred to P7 and P8. R2 has also not given bifurcation of share capital of Rs.3,90,000/- or share capital of Rs.5,00,000/-. Moreover, R2 has not made cogent submission relating to Annexure A34. Therefore, Petitioners submitted that the shareholding as claimed by them is proved.
- (g) R2 had made bald allegations that he was repeatedly calling for meeting and Petitioners were not responding. R2 has not produced any evidence in this regard. On the contrary, Petitioners have brought on record many evidences which established that it was indeed Petitioners who were repeatedly following up and demanding accounts from R2.

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- (h) R2 has admitted some additional acts of mismanagement such as selling of Pulveriser and Rickshaw owned by R1 Company. This fact is not covered in the pleadings of either parties.
- (i) **Mr. Onkar Deosthale, who was earlier representing R2, was discharged from the matter and become Amicus Curiae in the matter.** On the date of final hearing, after completion of arguments by both the sides, Amicus Curiae made many submissions against the Petitioners and favouring R2. Amicus Curiae, who does not have any experience in legal profession, made submissions contrary to the provisions of law. The position of Amicus Curiae is of great responsibility, but in the present case, Amicus Curiae absurdly misused his position.
- (j) Amicus Curiae submitted that the Petition should be dismissed on the ground that in the entire Petition contents of Section 397 is not stated **"that to wind-up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up."** Petitioners submitted that this submission of the Amicus Curiae is wrong and incorrect due to the reason that Section 397 of the Companies Act, 1956 (corresponding to Section 241 of the Companies Act, 2013) is incorrectly interpreted and contrary to the well established principles of pleadings.

*"397. Application to Company Law Board for relief in cases of oppression.*

(1) **Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any**

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*member or members (including any one or more of themselves) may apply to the Company Law Board for an order under this section provided such members have a right so to apply in virtue of section 399.*

**(2) If, on any application under sub-section (1), the Company Law Board is of opinion-**

*(a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and*

*(b) that to wind up a company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up; the Company Law Board may with a view to bringing to an end the matters complained of, make such order as it thinks fit."*

Petitioners submitted that when interpreting Section 397 in the light of underlined and bold words, such mentioning as stated by Amicus Curiae is not at all necessary. Petitioners further submitted that it is the first principle of law of pleading that "Plead facts and not law". On this principle also Petitioners are not bound to state what is mentioned in the Section. Petitioners are only required to state facts of the case of Complaint. This defeats the maxim "***Da mihi factum, dabo tibi ius***" meaning "**Give me the fact(s), I will give you the law**". Or "**Parties should present the facts of the case while the judge rules on the law**".

Petitioners further submitted that Amicus Curiae has stated that DIN 2 compliance was not made by the Petitioners. R2 was unaware of DIN of the Petitioners. This submission of Amicus Curiae is not correct as Petitioners as well as R2 have never stated that Petitioners have not complied with DIN 2. Such submissions are not in the pleadings. It is clear that Amicus Curiae is trying to defend R2. In fact, Petitioners have proved that defence of R2 with regard to DIN falsifies whole of his version and R2 knew that some of the Petitioners

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have DIN. Petitioners stated that Amicus Curiae opined that Annexure A34 filed by the Petitioners is unreliable and that Mr. S.V. Mali, Chartered Accountant has no power to issue such certificate as it relates to shareholding at the end of the year 2005 whereas certificate is given in the year 2014. Mr. S.V. Mali, Chartered Accountant is statutory auditor of R1 Company since its incorporation. Petitioners submitted that it is Amicus Curiae and not R2 who has stated that it is the collective responsibility of the Board of Directors and only they are liable to the current situation of R1 Company. Amicus Curiae stated that Managing Director is not liable. The pleadings and documents on record shows the admitted fact that R2 was the whole and sole person who was looking after the affairs of R1 Company. Petitioners submitted that Amicus Curiae has made wrong submissions stating that financial statements of R1 Company were made and parties are hiding them.

9. **ARGUMENTS OF PETITIONER :-** From the side of the Petitioner Learned Counsel Mr. Chirag R. Sonecha appeared and placed reliance on the written arguments and the evidences annexed with the Main Petition. The main arguments were that the Respondent No.2 has taken over the control of the Company and the Petitioners were even not allowed to enter into the premises. He has also stated that the admitted factual position was that the Respondent No.2 along with his wife started living in the factory premises of the Company. According to him, out of the 11 members of the Company 8 members have grievances against the Respondent No.2 hence joined hands in filing this Petition. Rest of the members being not actively participating remained a passive observer but never supported the Respondent No.2 Mr. Ashok N. Todkar. He has also stated that most of the Petitioners are the

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relatives of Respondent No.2 but due to his behaviour, compelled to file this Petition. Whenever the Meetings were held, as stated in the Petition, the Respondent No.2 remained absent or if attended the Meeting, never cooperated. The Petitioners demanded the production of Books of Accounts and the relative documents but the Respondent No.2 made excuses after excuses, however, never surrendered those documents. It is very strange that a counter allegation was made by the Respondent that the Petitioners have not furnished the Accounts which were never in possession of the Petitioners. Since incorporation the Chairman of the Company is Respondent No.2. He was also allowed a remuneration of ₹35,000/-. But he has misutilized the funds and increased his shareholding illegally without adopting correct procedure of law. Learned Counsel has argued at length narrating the facts and events, as already discussed above, and finally drawn our attention on the relief claimed particularly a Prayer of an Independent Director/Administrator and an Order for "**winding-up**" of the Company.

10. **AMICUS CURIAE :-** During the Hearing on one occasion Learned Representative of Respondent No.2 on 13<sup>th</sup> June, 2017 informed the Court that due to non-cooperation from Respondent No.2 he may be discharged from representing this matter. After short discussion, Learned Representative Mr. Omkar Deosthale was relieved by granting the discharge. Side-by-side R2, who was present in person was given an opportunity to appoint an authorised Representative. In addition to the said directions one more observation has been made that although Mr. Omkar Deosthale is discharged as a legal representative of Respondent No.2 but he had represented the matter by attending the Hearings on number of occasions in last few years, therefore, his presence and assistance would render help to the Bench in finalization of the case, if appointed as "*amicus curiae*". He has

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agreed for the said proposal and remained present thereafter on few occasions. According to him, on one hand, the Petitioners were not very much involved in the day-to-day functioning of the business, as a consequence, the Petitioner and his family members have lost the control over the Company and the advantage was taken by the Respondent No.2 in controlling the affairs of the Company. He has also informed that the business activity of the Company remained suspended from last 5 years and some of the Machinery have also been disposed of. He has drawn our attention on certain discrepancies of both the sides, however, supported Respondent No.2. He has also informed that on last few occasions, the Hon'ble Bench had given opportunity to both the sides to amicably settle the issue but all efforts remained unproductive. He has submitted that he himself has tried to resolve the issues among the parties but neither the Petitioner nor the Respondent has listened to his advice.

11. **ARGUMENT OF THE RESPONDENT :-** Mr. Ashok N. Todkar (Respondent No.2) has chosen to represent his case personally. He has also placed a small submission in Hindi for consideration of the Bench. By narrating the background of the case he has informed that he is one of the promoter of the Company which was incorporated in the year 1995. Since inception he and his wife worked very hard to establish the Company. According to him the workshop shed on the land of the Company was constructed under his supervision. Further, he has narrated that out of the money received from his Father he had purchased the land for the Company. In the year 1997 trial production was started after putting hard labour by him and his wife. The Company was incorporated for production of 'Agriculture-based Products' such as Pickles etc. A Term Loan was also availed from the Bank by his efforts. He and his wife worked day and night

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to establish the production and during that period none of the Petitioner has extended any help. According to him on number of occasions he has contributed his own Funds to run the business of the Company. He has made an allegation that instead of helping him, the Petitioners have threatened and also taken away the raw material for their personal use. He has submitted on a piece of paper the total amount of contribution made according to him in the capital of the Company. He has vehemently objected the winding up of the Company due to reason that the intention of the Petitioners is to sale the Asset i.e Land of the Company. The Petitioners are not interested in running the business. The "winding up" of the Company shall have adverse effect on the workers of the Company. Therefore, he had concluded that the Company should not be allowed to be closed by "winding up" Order but the Petitioners be directed to cooperate with him in running the business of the Company.

12. **JUDGEMENT :-** We have heard all the parties at length by granting opportunity on number of occasions. Facts of the case and the events took place in last few years have also been discussed in the foregoing paragraphs. At the outset, one of our observation is that the records of the Company such as Accounts, Registers, Minute Books, etc. have not been maintained or if maintained, not as per the norms. As a consequence, we have faced difficulty in giving our final finding on facts. A final finding on facts can only be pronounced if the facts are duly corroborated by cogent evidence. In the absence cogent evident it is difficult for a Judicial Authority to pronounce a correct finding on facts. Keeping this difficulty in mind we have proceeded to address the issues raised before us.

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12.1 Undisputedly, the Company happened to be a closely held Company run by Friends and Relatives. The Company was incorporated in the year 1995 with the object to manufacture Pickles and other related Agro-based foods products. Initial contribution by the Members is not in dispute, however, thereafter number of allegations and counter-allegations are in respect of either transfer of Shares or increase in Share Capital. From either side instances have been cited to demonstrate that without convening legitimate Meeting the Shareholding was altered. The allegations from both the sides are that the Meetings were fudged and there was no valid transfer of shares. The Petitioners have strongly objected the manner in which the shares of the Company were disturbed by the Respondents. Likewise, the Respondent has also raised serious objection in respect of the conduct of the Petitioners in disturbing the shareholding pattern. In the foregoing paragraphs the relevant dates of the Meetings and the nature of the allegation as also the contributions made by the connected parties have already been discussed in detail. To avoid repetition those dates and related facts are not required to be discussed again. Nevertheless, lack of corroboration persists.

12.2 Facts of the case have revealed that the rival parties have raised allegation and counter-allegation about the mismanagement of the Company. Rather there is a quarrel that who in fact was in control of the Management of the Company. On one hand the Petitioners have alleged that they have never been allowed to have access to bank operation and accounts and on the other hand the Respondent had alleged that the Petitioners being more in number have thrown him out of the management. Likewise, the Petitioner as well as Respondent both are putting responsibility on each other connected with the preparation of the Annual Accounts by pointing finger on

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each other. Result of the dispute was that after initial few years i.e. up to 2003-04 the Accounts of the Company were prepared and audited, but thereafter no efforts have been made to compile the Accounts. It is apparent from the records available in this case that the Company had defaulted in submission of the Accounts before the Tax Authorities as well as to RoC.

**Allegations are more verbose than substantive.** The Petitioners have made an allegation that on 15.08.2007, a Meeting was held and two months' time was granted to R-2 to furnish the Annual Accounts, but there was no compliance from the side of the Respondent No.2. On the other hand, the statement of Respondent No.2 is that the Company being in bad financial position had not engaged any Professional and the Petitioners have not taken care to get the Accounts finalised. According to the Respondent, all the information pertaining to the Accounts were very much in the knowledge of the Petitioners and they were responsible to finalise the Accounts and to submit before the Authorities. So pleaded that for the said defaults the Petitioners should be penalised. These are few examples where bald accusations have been made unfortunately lacking documentary proof.

**Preliminary onus of placing rudimentary, cogent and documentary evidence has not been discharged.**

12.3 This Company had **suspended its business activity** since past few years. The Company had stopped manufacturing of Agro-based food products. It is informed that except the Land, the Company has no other Immovable Asset. The Balance Sheet of the Company is not reflecting good financial results. At present, in the absence of any manufacturing activity, no labour or employee is engaged by the Company. In this situation when the rival sides are not ready to settle the dispute amicably and also not ready to run the business jointly by extending cooperation to each other, we are

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deeply concerned about the outcome of this dispute. The parties were involved in threatening each other and also engaged in making complaints against each other.

12.4 In addition to the grave situation discussed in the above para we have also noted that none of the Party had offered exit option. The Petitioners are adamant for 'wind-up', however, on the other hand the Respondent being living within the premises of the Company wants to remain in possession. Hence pleaded that *status quo* be maintained. Granting *status quo* is not going to help the Parties, rather not a permanent solution of the dispute. In this situation when the running of the Company seems to be impossible and the stakeholders are the Members of the Company, stated to be relatives, an answer can be searched from the provisions of the Companies Act. Under Companies Act, 1956, Chapter VI prescribes "Prevention of Oppression and Mismanagement". To implement the provisions of this Chapter, the Statute has granted powers as per Sub-Chapter A, Titled as "Power of Tribunal". The relevant section in regard to such type of controversy is section 397 of Companies Act, 1956 where any Member of a Company having complaint about the affairs of the Company can file an Application for relief. As per Sub-section 1 of section 397 if the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to Members may apply to the Tribunal for an Order. Sub-section (2)(b) of Section 397 prescribes that if on an Application the Tribunal is of the opinion that to wind up a Company would be just and equitable on the facts of the case, that the Company should be wound up, the Tribunal may with a view to bringing to an end the matters complained of, may pass such Order as it thinks fit.

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12.5 In our humble opinion this provision is made part of the Statute with great caution but with the main purpose that if there is a dead-lock in running the business and the shareholders are not agreeable on any other solution, the "winding-up" is ultimately a workable solution. To be precise, a need for an Order of "Winding-up" can arise when there is a dead-lock on account of the animosity among the shareholders (more or less holding equal shares) and there is no hope of either efficient or smooth running of the business, presently non-operational and majority of stakeholders has no willingness to run the business. Further to add, where there is a lack of probity, fair dealing and lack of righteousness, then *prima facie* "winding-up" of the Company is a right solution. Further, if *prima facie* it has been revealed that the Directors are delinquent and there is no scope of their change in behaviour, the right recourse, as approved in number of case laws is to Order for "winding-up".

The allegations and counter-allegations referring mismanagement, misappropriation and misconduct on the parts of the Directors coupled with non-maintenance of Accounts and lack of evidence, **an Order directing "winding-up" is a suitable decision.** In this case a Prayer is made for "winding-up" of the Company. The circumstances of this case have thus fully validated an Order for "winding-up" which is on the principles of 'just and equitable' grounds. It is also "Just and Equitable" because the manufacturing activity of the Company is in a "dormant state" since long, hence "winding-up" is a viable solution. Possibility of 'Settlement' has also been exhausted.

**To sum up,** the over-all factual matrices have established that the stakeholders have not contributed sufficient amount in the Capital of the Company hence business was stopped. They are not ready to introduce capital in future also. Barring shareholders there are no other stakeholders. The revival of the Company as an alternate, to direct one of the Party to have control over the Company or any other such proposition, is not a

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permanent solution, rather, it may increase the rivalry among the Parties. Somewhat, it is expected that both the Sides must restrain themselves in not interfering with the functioning of the person now to be appointed as an Officer of the Court.

12.6 We hereby assign the Ld. Official Liquidator to supervise the process in association with an Insolvency Professional registered with the IBBI, New Delhi to be the Officer of this Bench to finalise the "winding-up" by liquidating the Assets of the Company. One of the professional of Pune City found registered is Mr. Kiran Kunte, Registration No. IBBI/IPA-001/IP-P00074/2017-18/10159, email id kirankunte@rediffmail.com. He is advised to take help of the Auditor to get the Accounts completed up to 31<sup>st</sup> March, 2017. He is also expected to call for a Valuation Report of the Land in question belonging to the Company to ascertain the "Fair Market Value" to liquidate the same by calling suitable bidders. The consideration so received shall be disbursed among the shareholders as per their respective percentage of shareholding in proportion to their respective ascertainable investments. The position of holding of shares is to be based upon the scrutiny of the Accounts yet to be tendered by the respective side.

13. This Petition is disposed of accordingly. To be treated as partially allowed. To be consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN**  
**Member (Judicial)**

Dated: 22<sup>nd</sup> December, 2017  
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Sd/-

**M.K. SHRAWAT**  
**Member (Judicial)**