

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
T.C.P. NO. 80/397-398/CLB/MAH/2015

**Coram:** B.S.V. Prakash Kumar, Member (Judicial) &  
V. Nallasenapathy, Member (Technical)

In the matter of **Sections 397, 398, 399, 402, 403 & 406** of the  
Companies Act, 1956.

1. Sanjay Parlikar  
2. Vishakha Parlikar ... Petitioners

and

1. M/s. Ajit Scanning & Diagnostic Centre Pvt. Ltd.  
2. Savita Parlikar  
3. Rajiv Parlikar ... Respondents

**Petitioners' Counsel:** Mr. Abhinav Chandrachud, Mr. Siddesh Bhole  
& Ms. Apurva Manvani, Advocates.

**Respondents' Counsel:** Mr. Mayur Khandeparkar, Mr. Rahul D  
Oak, Advocates.

**ORDER**

*(Heard on 07.12.2016)*

*(Pronounced on 08.12.2016)*

It is a Company Petition revolving around three players, mother and two sons, in relation to the affairs of R1 Company, namely M/s. Ajit Scanning and Diagnostic Centre Pvt. Ltd., which is wholly owned by the mother, two sons and their wives, wherein, mother having more than 98% shareholding. Wife being natural ally of husband, P2 (Shortly called "Vishakha") being the wife of P1 (Shortly called "Sanjay") and by holding some fraction of

shareholding in her name, they together filed this CP against Sanjay's mother (R2- Shortly called "Savita" or "mother") and his brother (R3- shortly called "Rajiv") u/s 397, 398, 399, 402, 403 & 406 of Companies Act, 1956 primarily on two grounds – one, R2 & R3 proposing to hold EGM on 31.10.2015 for ouster of Sanjay from the post of director, two, R2 & R3 non-cooperating with Sanjay for clearance of all statutory dues, which the petitioners claim oppressive against the petitioners and detrimental to the interest of the Company.

2. For the sake of brevity, this Bench, instead of separately paraphrasing the averments of the Petitioners and the Respondents, gives storyline of the dispute before narrowing down respective stands of the Parties, discussion of this Bench and ensuing directions in the backdrop of the given facts. Since old Companies Act 1956 sections alone are referred in this order, wherever sections are referred in the order, the same may be construed as sections of old Act 1956.

3. It is a Company started by their father deceased Shrikant Parlikar (shortly called "Shrikant") in the year 1993 taking Sanjay and his two other sons namely Mr. Satish Parlikar (shortly called as "Satish") and Mr. Ajit Parlikar (shortly called Ajit) as permanent directors on the Board in the year 1993 to running diagnostic centre business in one of the prospering suburbs of Mumbai i.e. Kalyan, obviously the Company also prospering well. In the meanwhile, their father Mr. Shrikant died intestate in the year 2010. By the time, the majority shareholding was lying in the name of their father late

Shrikant, the other two brothers Satish and Ajit, after the demise of their father, left the Company and their directorship as well by transferring their shareholding in the name of their mother. Because of some internal understanding and rearrangement in the family, father's shareholding has been transmitted to the mother resulting her to hold more than 98% shareholding of the Company. Here, it is also pertinent to mention that a family partition deed was executed on 22.03.2012 dealing with the entire assets of the family and their distribution among themselves agreeing in clause 2&3 of the deed that the mother (R2), Sanjay and Rajiv manage R1 Company excluding other brothers and the mother would ultimately transfer some percentage of shareholding (in clause 3, however it has been left blank as to how much shareholding out of her shareholding is contemplated to be transferred to Sanjay and Rajiv) to Sanjay and Rajiv. By virtue of their arrangement in between them, it appears that this Company has been left to be managed by Sanjay and Rajiv under the supervision of their mother. It is apparent on record that above 98% shareholding is presently held by the mother, perhaps, to continue this business jointly without any differences between the brothers. Somehow things went wrong in the last one/two years, thereby Sanjay and Rajiv started fighting, henceforth the company landed up in this litigation.

4. Until before this Company Petition has been filed, there were only three directors in the Board, Sanjay, Vishakha and Rajiv, meaning thereby, the Petitioners were in the majority on the Board as on the date of filing. The Company has two Bank accounts, one in PNB Branch and another in SBI Branch solely operated by Sanjay. As

to PNB account, it was in joint operation of Sanjay and Rajiv. Sanjay and his family has been availing second floor of the building as their residence where the Company carrying its functions on the ground floor and the first floor. There are allegations and counter allegations against each other, Sanjay saying that the mother and Rajiv not co-operating to clear the statutory dues and bent upon to oust Sanjay as director of the Company despite he is a permanent director by virtue of Clause 21 of Articles of Association, by mother giving a requisition notice dated 6.10.2015 for holding EGM on 30<sup>th</sup> October, 2015 to appoint herself and Bavana (wife of Rajiv) as directors and to oust Sanjay from the directorship without even putting it to the notice of Board of Directors for considering the request of the requisitioner. And the mother and Rajiv have not been co-operating to make payments to statutory dues by refusing to sign the cheques.

5. The counter allegation of the mother and Rajiv is that they never refused to co-operate in making statutory payments and indeed it is Sanjay who regularly takes away cash from the counter without any accountability causing loss to the Company and not allowing the mother and Sanjay to withdraw money from the Banks. To justify the same, they submit that when they tried to withdraw Rs 6 lakhs cash from PNB for the medical treatment of the mother, this very Sanjay wrote a stop payment letter to the Manager of PNB saying that no money should be released unless cheque is signed by him for he and Rajiv alone are jointly entitled to withdraw the money but not the mother and Rajiv, the Respondents submit that even the Branch Manager himself asked Sanjay to withdraw such stop payment letter, but in vain, they say that they even approached

SBI where another account of the company solely managed by Sanjay, from there also they could not get anything. It is a fact that mother is a cancer patient taking radiation treatment. This Bench directly noticed this fact when the mother has appeared before this Bench, and this fact has not been denied by Sanjay who also happened to be present in the court hall. Basing on the said letter of Sanjay, PNB Manager has frozen the account of the Company disabling the mother to avail money for her medical treatment. In contrast to it, Sanjay had been cosily exercising Bank operations in SBI account of the Company for he is sole signing authority of the said account, until he was directed by the Honourable High Court, Bombay not to operate the account. The observations and reliefs granted by the courts as interim arrangements tend to reflect that Sanjay's past conduct has been set at naught in the orders – his sole signatory of banking operations stopped, a direction has been given to him and his brother to let mother take monies for her treatment, mother has been given casting vote, EGMs were permitted to be held, and the notice to the petitioners to the meetings, waived.

6. The case of the Petitioners is that the Respondents not co-operating with the Petitioners in clearing statutory dues on time and in order to cause prejudice to the Petitioners, Savita, as a shareholder, issued requisition notice on 6.10.2015 for holding EGM on 31<sup>st</sup> October, 2015 for appointment of herself and Bavana as directors and for removal of Sanjay as director without even sending requisition to the Board of directors. The mother gave requisition notice on the footing that for the Board of Directors failed to act upon the requisition letter dated 1.9.2015 given by her, therefore she

has given requisition notice for EGM on 6.10.2015. The petitioner counsel says that the requisitionist first has to give notice to the Board for holding EGM, if the Board fails to hold EGM on the request made by the requisitionist, then can give notice for holding EGM by giving 45 days' notice to the members of the Company, then in such meeting, if it is for the removal of a director, he has to be given fair hearing before approving resolution. The Petitioners' contention is that this requisitionist neither has given a notice to the Board requesting for holding EGM nor given 45 days' notice for holding EGM on requisition, therefore, the petitioners sought for a declaration that EGM proposal to be held invalid. The Petitioners further submit that no notice has come to them informing the Board to hold EGM on the requisition given by the requisitionist; Sanjay has not even received any notice from the requisitionist proposing to hold EGM on 31<sup>st</sup>October, 2015. The second contention of the Petitioners, as we said above, is that the mother and Rajiv had not co-operated for clearance of statutory dues by not signing the cheques forwarded to R3 which is detrimental to the interest of the Company and the business as well. By considering these two contentions as oppressive against the interest of the Petitioners they filed this Company Petition u/s 397 and 398 of the Companies Act, 1956.

7. The reply to the Petitioners' case is that the requisitionist hand delivered notice to Sanjay and Vishakha for they happened to be residing in the premises of the Company itself. Thereafter, the requisitionist issued notice and it was received by P2, therefore, it could not now lie in the mouth of the Petitioners that notice has not

been received by them. Moreover, no EGM was held as stated in the requisition notice to canvas that Sanjay was removed as director of the Company without notice to him.

8. The Respondents' Counsel further submits that these Petitioners filed this CP ahead of holding EGM scheduled to be held on 31<sup>st</sup> October, 2015 thereafter, the Company Law Board passed Order after Order permitting the Company to hold EGMs limiting the approvals to the outcome of the Company Petition.

9. The Counsel further submits that the Hon'ble Company Law Board passed an Order on 30<sup>th</sup> October, 2015 holding that EGM scheduled to be held on 31<sup>st</sup> October, 2015 could proceed with passing resolution on Item No.1 of the Agenda, i.e. appointment of the mother as director, as to remaining two items i.e. proposal for removal of Sanjay as director and the proposal for appointment of Bavana as director of the Company were adjourned. It is further said that any resolution that is passed in the EGM would remain subject to the final outcome of this Petition. Another observation made in the Order is that the Petitioners would waive service of notice to the EGM to be held subsequently on Agenda Items 2 and 3 (for appointment of Bavana as director and for removal of Sanjay as director). CLB observed that Sanjay has given an undertaking to keep the statutory records at the registered office the Company and allow inspection of the same to all stakeholders like members and shareholders as per statutory provisions. Likewise, the audited accounts, if any, available with the Respondents shall be kept at the office and shall be open to inspection. A direction was also given

that cash collection and deposition of it shall be done by a party other than the Petitioners and the Respondents.

10. Again the Hon'ble Company Law Board, on 9<sup>th</sup> December, 2015, passed another Order allowing the Company to hold EGM on 19<sup>th</sup> December, 2015 with a direction that issuance of notice to the Petitioners stands waived in the light of the ratio decided by the Hon'ble Supreme Court in case of LIC v. Escorts Limited &Ors (AIR 1986 SC 1370). When the Petitioners filed an Appeal over the aforesaid Order, the Hon'ble High Court held on 18<sup>th</sup> December, 2015 that the expenses for running the Company and statutory expenses would be spent from PNB account with the joint signatures of Sanjay and Rajiv. That apart, the Hon'ble High Court recorded the undertaking of the Petitioners that they would not operate SBI account and would give copies of SBI statements of the Account from 1<sup>st</sup> August, 2015 onwards. The Order was passed on the consent given by Sanjay and Rajiv. In the order dated 18.12.2015, it was also recorded that both the parties agreed to hold EGM on 19.12.2015 as directed by CLB.

11. The Counsel further said that the Hon'ble High Court of Bombay finally disposed of 10F Appeal on the consensus arrived between the parties on 22<sup>nd</sup> April, 2016 reflecting that the parties agreeing to continue the Order passed by the Hon'ble High Court on 18<sup>th</sup> December, 2015 but the decisions will not be given effect till the final disposal of the CP, that the mother is appointed as Chairman of the Board of Directors with a casting vote, that medical expenses of Savita shall be provided from the monies of the Company with a



caveat that all interim arrangements made in the Appeal are open before CLB and before the Civil Court which is seized of the Civil Suit filed by Sanjay *inter alia* against the mother and Rajiv. This Order has also given liberty to the Petitioners to file CA for amending CP80/2015 within two weeks from the date of the Order dated 22.04.2016. The Counsel for the Respondents further submits that the Hon'ble High Court of Bombay passed another Order on 11<sup>th</sup> August 2016 modifying Clause (E) of the Order dated 22<sup>nd</sup> April, 2016 requesting National Company Law Tribunal (in the place of Company Law Board) to dispose of this CP within a period of six months with a direction to video record all Board Meetings at request made in CA (L) 31/2016 by the Respondents.

12. In the backdrop of these assertions and denials, both the Counsel on behalf of their respective parties vehemently argued their stands.

13. Before going into discussion over the merits of this case, this Bench must state that these Petitioners filed an extensive Amendment Application (TCA 102/2016) of 40 pages for inclusion of the same in the main CP narrating pin-to-pin happened from the date of filing Company Petition till date on the footing that Hon'ble High Court of Bombay in the Order dated 22<sup>nd</sup> April, 2016 given liberty to them to file an Amendment Application. On seeing this bulky Application from the Petitioners' side and vehement opposition from the Respondents' side on the ground that the developments set out in amendment application are nothing but various happenings occasioned in the company basing on the orders

passed by courts, looking at the delay likely to take place in deciding this Amendment Application on merits, instead of giving directions for completion of the pleadings in this Application and hearing it on merits, this Bench with a view to dispose of main CP expeditiously as directed by Hon'ble High Court, dismissed this CA giving liberty to the Petitioners to file an Additional Affidavit within 15 days including events, which are considered to be oppressive and which are not on record so far, then liberty to the Respondents to file Reply to the Additional Affidavit so that the subsequent events could also be in for consideration while disposing main Company Petition. And time of this Bench in adjudication of this CA would also be saved. Somehow, the Petitioners have not filed any Additional Affidavit as directed by this Bench.

14. Since this Bench is of the opinion that disposal of CAs from time to time do cause inordinate delay in disposing main Company Petitions, sometimes main application will never come for hearing, if one application is disposed of, order will travel up to Honourable Apex Court, once that application has visited from original court to Apex Court, one of the parties land up with another application to redo the same exercise, of course with another application with apparently different cause of action. When the company is a running concern, one or other thing keeps happening and decisions keep coming, but every small thing happening will not amount to an act coming within the ambit of sections 397 & 398 of the Companies Act 1956. Therefore, to the extent possible without affecting substantive rights of the parties, Company Applications are tagged with main Petitions. Here, this Application being an Amendment Application,

it cannot be tagged alongwith the main Petition, therefore, to give a solution to the same, this Bench has asked the parties to file Additional Affidavits before us to consider the same along with main Company Petition, instead of giving time for completion of pleadings, deciding application, if application is allowed then giving time for carrying amendment and then time for filing reply to the amended application, in the meanwhile there is no guarantee that another application will not be filed.

15. This Bench must also put it out that the petitioner annexed a document on company's letter head as page number 169 to the main petition, which is as follows:

*Ajit Scanning &  
Diagnostic Centre*

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*Since 1.8.15 the daily cash generated of Ajit Scanning & Diagnostic Centre has been kept with me for safe keeping*

*I, Satish S Parlikar commit to return the same to Ajit Scanning & Diagnostic Centre only on the written communication from all the Stakeholders of Ajit Scanning.*

<i>Sd.</i>	<i>Present cash holding</i>	<i>Original with Satish</i>
<i>Satish S Parlikar</i>	<i>Rs 52 lacs</i>	<i>to obtain signature</i>
<i>22.8.15</i>	<i>14/9/15</i>	<i>of 94% 82%</i>

16. When this document has come for discussion, the Respondent counsel handed up original of the above document saying that this photocopy is in variance with the original, the "signature of Satish", the words "*present cash holding Rs 52 lacs* with date *14/9/15*" and

*"original with Satish to obtain signature of 94% 82%"* are not present in the original of this page, these words have been set up on this photocopy so as to make the Respondents believe that cash lying with Satish is only 52 lacs, the counsel says that about 80 lacs lying in the custody of Satish. The words in bold are not present in the original handed up by the Respondent Counsel.

17. On seeing such interpolated document (photocopy) admittedly being hand written by Sanjay and filed by Sanjay, this Bench put it to Sanjay, who was in the court hall, as to whether he would be in a position to bring the original of the photocopy, Sanjay initially said he would produce the original if two days time is given, when this Bench put to him he has to abide by the word given by him, he went out of the court for a couple of minutes, then came back and wised up saying that he lost the said document some days before therefore he could not produce it. When he was asked any police report has been given, he said no report has been given.

18. It is apparent to naked eye that this annexure is Xerox of the original handed up by the respondents, but those interpolations made to Xerox of the original are not there in the original. Dark shades present on the annexure makes it ex facie clear that Sanjay brazenly made an attempt to make this Bench believe that Satish signed over the said document and money in the safe custody of their brother is only Rs 52 lacs, not more than that. It, therefore, could not even be believed that this document by oversight has become part of the annexure, because there is a pleading over this document in the petition and rebuttal is also there in the reply. We

strongly believe that nothing more is required to say what it is and what this petitioner is. All this happened in the court hall one day before passing this order. This Bench has not proceeded any further over this issue, because calibration to a case u/s 397 & 398 is conduct, the person whose conduct itself is dubious and overreaching, such person does not deserve for a relief calling other's unfair to him.

19. On hearing submissions from either side, the points for discussion are as follows:

- (a) *Whether giving a notice for holding EGM for removal of Sanjay is oppressive or not.*
- (b) *Whether non-payment of statutory dues by the Company be treated as an act done by the Respondents causing oppression to the Petitioners or to the Company.*
- (c) *Whether a proposal for removal of P1 in a family Company in the given facts of the case be treated as an oppressive act or not.*

Point (a):- *Whether giving a notice for holding EGM for removal of Sanjay is oppressive or not.*

20. It is no doubt true that the mother gave a requisition notice to the Petitioners for removal of Sanjay as director, but whereas Sanjay and his wife even before such a meeting being held, approached the Company Law Board and obtained an adjournment to the said meeting without raising any objection for appointment of their

mother as director of the Company. As to other two agenda items of removal of Sanjay as director and appointment of Bavana as director, CLB has held that those agenda items shall be taken up later but no restraint order has been granted against the Respondents not to hold the EGM.

21. In the ensuing Order dated 9<sup>th</sup> April, 2015, CLB allowed the Company to hold EGM on 19<sup>th</sup> December, 2015 in respect to the impugned Agenda Items clarifying the Petitioners' right of notice stands waived citing the ratio laid down in *LIC v. Escorts Limited* because in *LIC case*, it has been held that Courts must remain slow in interfering with exercise of democratic rights and democracy of the majority shareholders in dealing with the affairs of the company for shareholders are ultimate in carrying the functions of the company, the directors are only a people elected to carry the wish of the shareholders, nothing less nothing more. Being not satiated with this order, when Sanjay filed 10F Appeal, the Hon'ble High Court of Bombay, on 18.12.2015, passed an order on consent allowing the company to hold EGM on 19.12.2015 as ordered by the Principal Bench, CLB on 9<sup>th</sup> December, 2015, but not to give effect to the same until 16.01.2016, i.e., one day after following date of hearing. In the same order, the petitioners undertook not to operate SBI Account and to give copies of Bank statements from 1.8.2015 onwards. In fact, the Hon'ble High Court, while disposing appeal on 22.4.2016, recorded the consent terms of the parties that the mother would continue as chairman of the Board of Directors with a casting vote by mentioning the list of events upon which the Board will not take a decision. Therefore, the argument of the Petitioners' Counsel saying

that EGM held on 19<sup>th</sup> December, 2015 and on 31<sup>st</sup> October, 2015 to be held invalid pales into insignificance because the Hon'ble CLB itself heard at length from both sides and passed Orders for holding EGMs on 31<sup>st</sup> October, 2015 and 19<sup>th</sup> December, 2015 though it has been said that all these decisions taken in the EGMs are subject to the outcome of Main Petition, For there being an opportunity to the Petitioners to raise their grievances not only in the EGMs held but also before the CLB, it cannot now be said that since the Respondents failed to give 45 days' notice to the Petitioners for holding the EGMs or not given notices to the Petitioners for holding both meetings to propose EGM will not have any merit. Since the orders are clear that the right of 45 days notice stood waived, Sanjay having attended to the EGMs, it has become clear that the meetings held on 31<sup>st</sup> October, 2015 and 19<sup>th</sup> December, 2015 cannot be held bad for want of compliance of procedure. Assuming Sanjay have failed to attend the meeting despite knowing meeting would be held at the direction of CLB given in the presence of Sanjay, it will be construed that opportunity is given to Sanjay, if he does not avail it and start assailing the meeting does not deserve consideration. Whether meetings held are right or wrong will be considered below.

22. It has been time and again reiterated by English Courts and our Constitutional Courts laid down whenever a case is filed u/s 397 and 398 it has to be dealt with looking at the equities of the case but not by any procedural compliance or non-compliance, this is the hallmark of these two sections. As to this ratio, in our country, Honourable Justice P Bhagwati on 18.2.1964 laid down foundation in

*Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Limited* {[1964] 34 Comp Cas 777 (Guj)} holding that a resolution may be passed by the board of directors which may in the passing contravene a provision of law, but it may be very much in the interest of the company and of the shareholders. Such a resolution may be attacked as invalid in a suit or other appropriate proceeding, but not being oppressive to the minority shareholders or prejudicial to the interests of the company, it cannot be challenged in a petition under section 397 or 398, therefore courts do not subscribe to the proposition that every action of the directors which is in contravention of a provision of law must necessarily be prejudicial to the interests of the company. On the top of it, Honourable Supreme Court has again reiterated in *Needle Industries (India) Ltd., & ... v. Needle Industries Newey (India)* [1981 SCC (3) 333 (FB)] that equities will prevail over legalities of the issue, henceforth this Bench has not found any merit in favour of the Petitioners, therefore, this point is decided against the Petitioners.

23. The petitioners counsel relied upon *Sangramsingh Gaekwad and Others v. Shanta Devi P. Gaekwad (dead) through LRs and Others* [(2005) 1 SCC 314] and *A H Ahmed Jaffer v. Ace Rubber and Allied Products Pvt. Ltd and Another* [(2004) 123 Comp Cas 743 (CLB)] to say that when the company is found to be family company and always managed by both the groups, the removal of the petitioner as director is oppressive and prejudicial to the interest of the company, he says since it is a family company run by two groups, then qua removal of the petitioner as director itself tends to



oppressive notwithstanding the fact whether that act is otherwise prejudicial to the said petitioner or not. One point we should not get lost sight of that directorial complaint will not become grievance of a shareholder u/s 397 & 398; it is a grievance of an individual, in this niche, an exception is carved out saying if it is a family company or a company conceived on partnership lines, then this grievance will become a ground to be considered under sections 397 & 398. But the general fulfilment to meet u/s 397 & 398 is that the act complained of shall be unfair to the aggrieved or the company and laced with malafide, and it shall be consequently led to winding up of the company, it always remains there, but when none of such fulfilment is evident, then removal of director even in a family company cannot be taken on standalone basis to pass orders under section 402, because in the case of removal of director in a family company also, it is incumbent upon the aggrieved to prove said act falls within the four corners of sections, either 397 or 398, if it is not so, the only recourse is suit. Here Sanjay himself is at fault and his conduct is doubtful in relation to the affairs of the company, on the other hand, the mother has 98% shareholding, therefore when Sanjay as director could not discharge his fiduciary obligations effectively in the company, he cannot seek a relief by owning this family concept.

24. The above two citations, as to Gaekwad supra, it has not been said whether qua removal of director in a family company amounts to grievance u/s 397 or 398, hence a general reference about quasi-partnership principle cannot be subscribed to this case.

25. As to other case of Ahmed Jaffer, this Bench is of the opinion that CLB decided looking at two groups with almost equal shareholding in between two cousins therefore the facts in the said case are different. And in this case, the petitioners' shareholding is not even 2%, hence the ratio applied in Jaffer case is not applicable to it in the back drop of above explanation given. To how much Sanjay entitled is a dispute pending before civil court.

26. The Respondents side counsel relied upon *Ravi Prakash Singh v. Venus Sagar Ltd and Others [(2007) 140 Comp Cas 823 (Delhi)]* to say when Articles of Association confer power upon the Board to remove directors, it can't be called defective. Though the case supra has been on removal of Director u/s. 284, since it is a suit for declaration and permanent injunction, not being a case filed u/s. 397 & 398 r/w 402, the ratio decided in the suit cannot be called as applicable to the present case.

Point. (b):- *Whether non-payment of statutory dues by the Company be treated as an act done by the Respondents causing oppression to the Petitioners or to the Company?*

27. It is not the case of the Petitioners that they were not in the majority when this Company Petition has been filed; it is also not the case of the Petitioners that the account with SBI has been solely maintained by the Petitioners themselves. Even if it is assumed that the Respondents did not co-operate for paying statutory dues of the Company, the Petitioners being in majority on the Board; there being

two directors from their side and there being an account that being fully operated by the Petitioners, we wonder what hindrance had been there to these Petitioners to clear the statutory dues on their own because two directors are enough to hold Board Meeting to pass Resolutions, to sign Balance Sheets. Therefore, at any stretch of imagination, these Petitioners could not throw this blame upon the Respondents. Moreover, there has not been even a single instance directly mentioning to Rajiv that cheques have been signed by Sanjay for clearance of statutory dues and asking Rajiv to sign upon the cheques or not even any instance saying that Rajiv refused to sign upon the cheques tendered by P1, except third party statements which do not carry any weight unless tested. Therefore, we are of the view that there is no point in elaborating this point any further to say that Petitioners have set up this allegation against the Respondents to dress up this Company Petition to impress upon this Bench. How does this court subscribe to the point that the Respondents' conduct is prejudicial to the interests of the Company or the Petitioners? Of course, the Respondents placed voluminous material, employees writing letters to R2 and R3 that P1 directly taking out cash from the cash counter on his own, but whereas for third party's statement cannot be taken as evidence unless it is proved before Court of Law, such material cannot therefore have any legs to say that Sanjay siphoned the monies of the Company by taking cash from the cash counter. Hence, the same is not taken into consideration. It is also pertinent to point out that when R2 and R3 went to PNB to withdraw money from PNB account for medical treatment of R2, P1 wrote a letter to the authorities of PNB not to allow them to withdraw money from the account. It is a fact that this

Company is bread and butter to R2, R3 and to P1 as well. In the Order passed by the Hon'ble High Court of Bombay, the Hon'ble High Court itself passed an Order directing the Company to meet the medical expenses of R2 i.e. mother. By reading these two observations, an inference could be drawn that R2 is an ailing mother requires money from time to time to meet the medical expenses.

28. For the reasons stated above, the Petitioners failed to prove that Respondents caused hindrance for clearing the statutory dues. Therefore, this issue is decided against the Petitioners.

29. Now the two points taken up by the Petitioners in the Company Petition are decided against them. In the backdrop of these decisions, let us examine the third point as to *whether a proposal for removal of P1 in a family Company in the given facts of the case be treated as an oppressive act or not.*

30. This point has already been dealt with in the first point itself, for the sake of completeness; it has been separately dealt with.

31. P1 is one of the sons of late Shrikant Parlikar, it is a fact that this Company has been set up and brought to prosperity by the husband of R2 and father of P1 and R3. As on date, the fact of the matter is 98% of the shareholding is lying with R2. The Petitioners have only less than 2% shareholding with them. These Petitioners already initiated a Civil Proceeding before Civil Court seeking specific performance over a Partition Deed executed on 22<sup>nd</sup> March

2012 on the ground he is entitled for transfer of half of the shareholding held by her mother out of the shareholding of their father transmitted to his mother (R2). Since the Petitioners themselves raised this issue before Civil Court, this Bench cannot lay its hands over the said issue on two grounds, one – Civil Court is in seisin of this issue, two – it is between individuals, not derivative action questioning the conduct of the Respondents on the company's behalf. Normally, quasi partnership principle is applied in the cases where investment is equally made by all the parties continuing as shareholders of the Company. This principle is invoked in the cases where two / three families come together or friends come together to incorporate a Company with a pre-existing understanding to participate and share the profits commensurate with the investments they put into the Company. The same principle is applied in family companies as well. But, to invoke this principle in family companies and partnership Companies, the shareholder or director making a claim has to prove that the conduct of persons in the management is oppressive against the interest of the person complained. It has been said that orders passed u/s 402 shall be without prejudice to the generality of the powers u/s 397 & 398 of the Companies Act 1956, therefore unless and until the act complained of is proved that it is prejudicial to the interest of the members and such act otherwise would lead to winding up of the company, which would unfairly prejudice the persons complained of, an act complained of shall not be said as conduct under sections 397 & 398 of the companies Act 1956. The power under section 402 will flow upon the Tribunal only after it is proved as case u/s 397 & 398. If it is not family company or a company in partnership lines, the grievance of removal of

directorship has to be thrown out as not falling within the ambit of section 397 & 398. As said above, the directorial complaint will not come within the ambit of oppression and mismanagement because directorship in a Company is an employment. If the partner's or family member's conduct itself is oppressive against the other shareholders and not for the wellbeing of the Company, such person cannot take shelter or continue as director of the Company to continually causing problems to the Company. Here the reality is, son filed Company Petition against his mother and brother, when P1 was in the control of the management until R2 has been appointed as director with the liberty given by the Courts. It is a fact that the petitioners were majority on the Board by the time this CP was filed, interesting part is, there is a paradigm shift in the management with the interference of the courts, the helpless mother has been strengthened by giving a casting vote in the Board Meeting, the courts allowed the mother and brother of P1 to hold EGMs, of course limiting them not to give effect to removal of P1 as director and appointment of brother's wife as director, all this change taken place by the interference of CLB and Honourable High Court. Therefore, the relief u/s 397 and 398 being extraordinary relief, such reliefs cannot be granted just by saying the Company is a family Company, therefore, the Petitioners cannot seek P1's continuation as a director as of right for it is a family Company.

32. Just by assuming it as family company, we cannot leave the salient features of corporate jurisprudence at that. Before applying principles of either quasi partnership principles or family concept, it has to be first seen as to how the business has come into existence, as

to what contribution the shareholder purportedly aggrieved of put in the company. Here in this case though Sanjay has been continuing as permanent director, the right of removal of any director of the company as per articles is still with the shareholders of the company, and it is not the case of anybody that special efforts of any of these brothers prospered the company. It is evident that the efforts of the deceased Srikanth (father) are mainstay in the growth of the company. Perhaps for that reason alone, the entire shareholding of the husband transmitted to his wife (R2). It is not even the case of anybody that there is an exponential raise in the company after the demise of their father, even the case of the petitioners itself is that two three branches work has been closed. When did they close? They were closed when these two petitioners and R3 continuing as directors of the company. That time, the petitioners were majority in the Board. By reading the petition, reply and material thereof, it appears all are living on the prosperity given to them by their father. If they go by this bickering, the substratum of the company would go down; it will be like killing a goose that lays golden eggs. It is evident P1 kept a bank account to himself, not allowed his own mother; wife of the progenitor of this family business to take money for her treatment, the disputes went to such an extent that daily incoming cash had to be kept in the custody of the other brother. In this scenario, to protect this company, it has to continue in one hand, therefore the mother being 98% shareholder and R3 having remained looking after her and since she has confidence in him, this company for time being shall continue under the management of the mother and R3.

33. However, despite the case of the petitioners not being proved, this Company alone being major source of income of the family members including Sanjay as director, of course his wife (P2) working as Ophthalmologist, this Bench, for the well being of all the members of the family and for smooth running of the company, hereby directs R1 Company to allow P1 to continue as director of the Company only to claim salary equivalent to the salary Rajiv taking, but not to interfere with the affairs of the Company, including day to day affairs of the company as long as R2 has remained alive. If the mother who is holding above 98% shareholding, changes her mind to make P1 as active as R3, she is at liberty to do so. Therefore, first petitioner, hereafter, shall not operate any of the bank operations of the company; accordingly, his cheque signing authority in both the accounts is hereby revoked. As to casting vote given to the mother in the order dated 22.4.2015 in the Board Meetings, it will continue and without her sign, no cheque shall be passed. The Company shall provide financial statements on fortnightly basis to P1 so as to keep him informed about the business happening in the Company. However, R1 Company shall give notice and allow P1 to attend Board Meetings as and when they are called. For the company already passed a resolution for appointment of R3's wife Bavana as director, the same could be hereafter given effect to. The reason for considering Bavana's appointment is, one – the company already approved the resolution making her as director; two – for P1 and his wife being directors, to balance the same, it is just and equitable to have two directors from R3 side as well. Since R2 is natural mother to P1 and R3 as well, her continuation in the Board as director cannot be looked as weighing to the side of one son or the other.



34. In view of the above directions, the interim Orders if any pending contrary to the above Order, hereby stand vacated.

35. CP 80/2016 is hereby disposed of. No Order as to costs.

sd/-

**B. S.V. PRAKASHKUMAR**  
Member (Judicial)

sd/-

**V. NALLASENAPATHY**  
Member (Technical)

Dated: 8<sup>th</sup> December, 2016