

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 6/241-242/NCLT/AHM/2016

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.04.2017**

Name of the Company: Dr. Rajesh Laljibhai Vaishnav
V/s.
Nano Therapeutics Pvt. Ltd. & Ors.

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

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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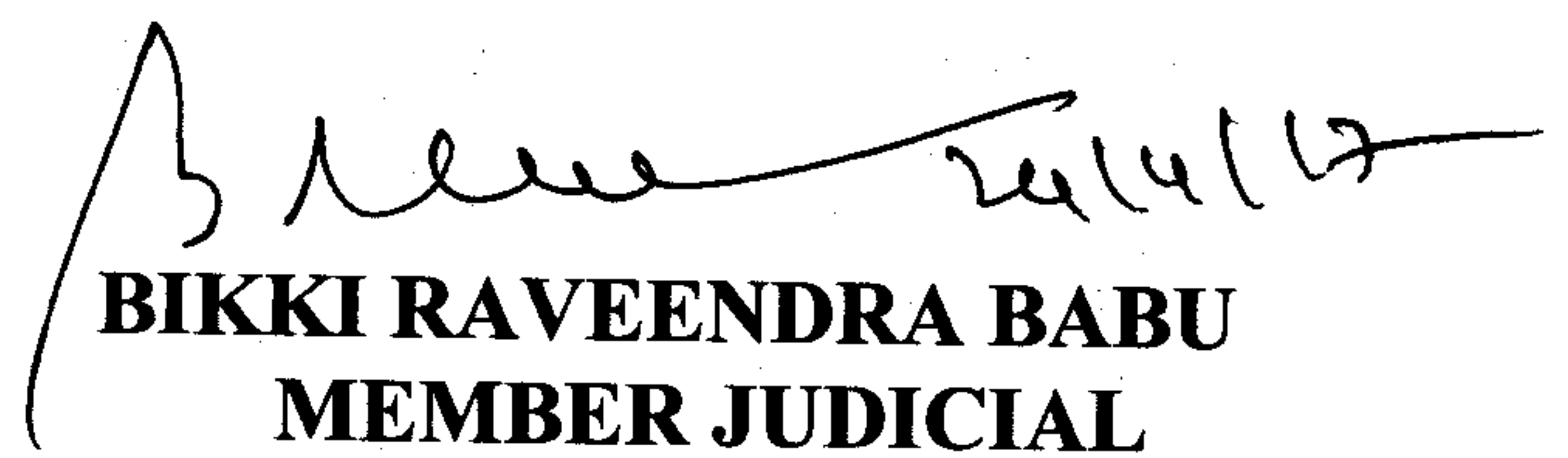
1.

2.

ORDER

None present for both sides.

Common order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 24th day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

CP No. 6/241-242/NCLT/AHM/2016

**IN THE MATTER OF
NANO THERAPETICS PRIVATE LIMITED**

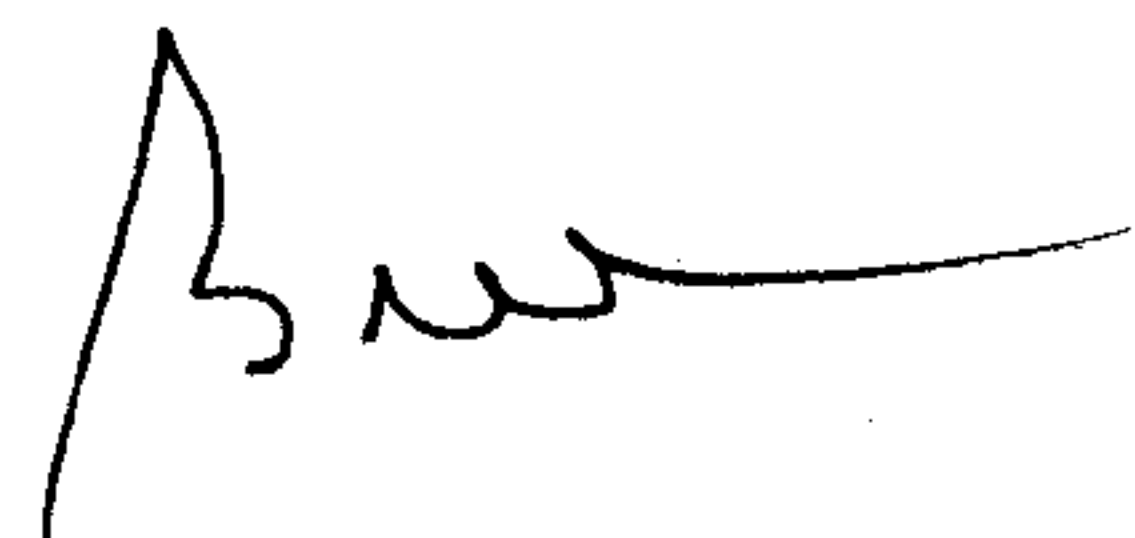
1. Dr. Rajesh Laljibhai Vaishnav
1203, Mars, Rajhans Campus
Opp. Rajhans Multiplex
Pal Hazira Road
Surat 395 009

Petitioner

Versus

1. Nano Therapeutics Pvt. Ltd.
Plot No. D-54/2,
Sachin Udyognagar Sahakari Mandli Ltd.
Sachin
Vill. Vanz
Tal. Choryasi,
Dist. Surat 394 230
2. Viral Vaishnav
A-1103, Akshar Plaza
Opp. Sarita Sankul
Below Sardar Bridge
Adajan,
Surat 395 009

Respondents



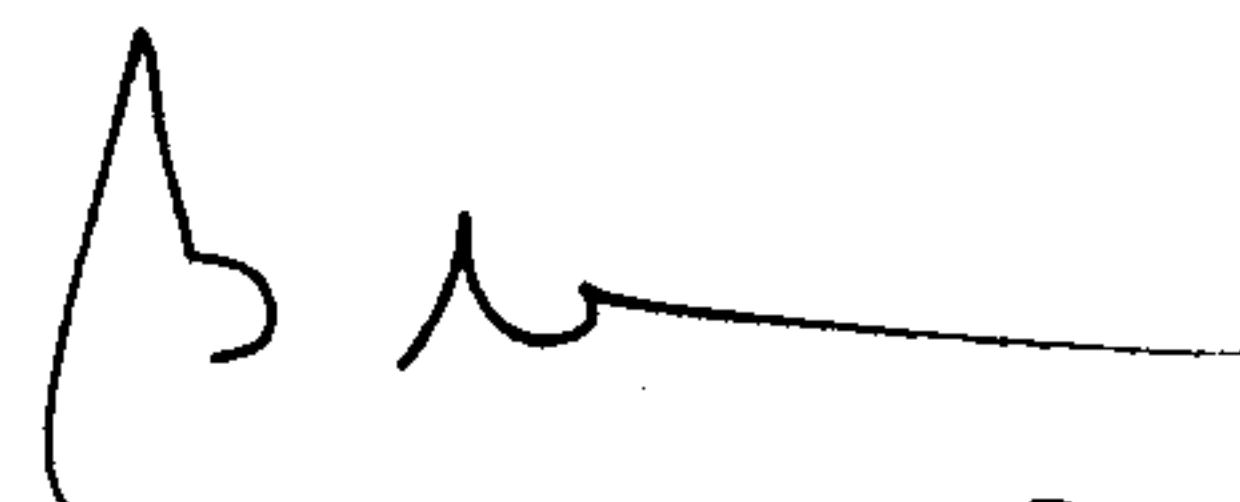
CP No. 15/241-242/NCLT/AHM/2016

1. Viral Vaishnav
A-1103, Akshar Plaza
Opp. Sarita Sankul
Below Sardar Bridge
Adajan,
Surat 395 009

Petitioner

Versus

1. Nano Therapeutics Pvt. Ltd.
Plot No. D-54/2,
Sachin Udyognagar Sahakari Mandli Ltd.
Sachin
Vill. Vanz
Tal. Choryasi,
Dist. Surat 394 230
2. Rajesh Laljibhai Vaishnav
1203, Mars, Rajhans Campus
Opp. Rajhans Multiplex,
Pal-Hazira Road, Surat
3. Jayantilal Limbabhai Nariya
36, Shraddhadeep Bungalows
Causeway Road
Singanpore Road
Surat 395 008
4. Samirkumar Kanjibhai Koladia
301-A, Swagat Apartment
Sahnik Park
B/h. Sneh Sankul Wadi
Anand Mahal Road
Adajan,
Surat 395 009
5. Parth Rajesh Vaishnav
B-102, Opera House
Nr. Agresan Bhavan
City Light Road
Surat 395 007



6. Rohitbhai B. Koladia
B-16 Siddharth Nagar Society
Simada-4
Surat 394 105
7. Manojkumar Movalia
39 Harishnagar Society
Varachha Road
Surat 395 006
8. Vinita Rajesh Vaishnav
B-102 Opera House
Nr. Agresan Bhavan
City Light Road
Surat 395 007

Respondents

Appearance:

In CP No. 6/241-242/NCLT/AHM/2016

1. Learned PCS Mr. Dhiren Dave present for petitioner.
2. Learned PCS Mr. Mansukh A Nakrani with learned PCS Mr. Hitesh D. Buch present for respondents

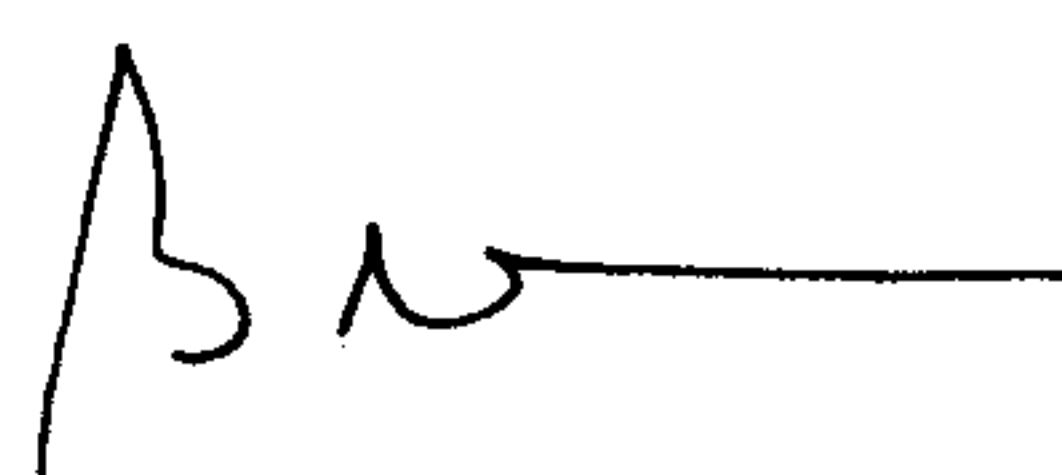
In CP No. 15/241-242/NCLT/AHM/2016

1. Learned PCS Mr. Hitesh D. Buch present for petitioner
2. Learned PCS Mr. Dhiren Dave present for respondent No. 2

COMMON FINAL ORDER

Dated 24-04-2017

1. These two petitions are filed under Section 241 and 242 of the Companies Act, 2013 alleging oppression and mismanagement in conducting the affairs of Nano Therapeutics Private Limited. which is a company registered under the Companies Act, 1956. Sole petitioner in CP 16 of 2016 is second respondent in CP 15 of 2016. Second respondent in CP 6 of 2016 is sole petitioner in CP 15 of 2016. In both the petitions, the first respondent is Nano Therapeutics Private Limited. Respondents 5 and 8 in CP 15 of 2016 are son and daughter

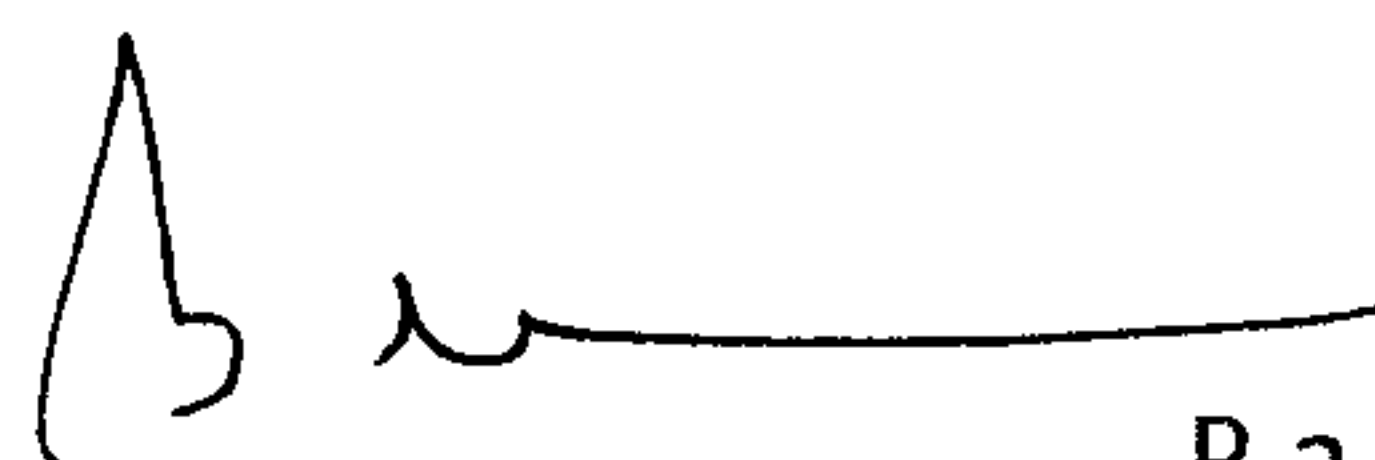


of respondent 2. Respondent 2 in CP 15 of 2016 is elder brother of petitioner in CP 15 of 2016.

2. The parties in this order are referred to as arrayed in CP 15 of 2016 for the sake of convenience and better understanding. Case of the petitioner as can be seen from the averments made in CP 15 of 2016 and reply filed in CP 6 of 2016 in brief is as follows :-
3. Respondent 2 was an employee in Sahajanand Medical Technologies, Surat till he was retrenched in the year 2005. During his employment, respondent 2 approached the petitioner with an idea to start the business of manufacturing and selling of stent under the partnership firm. Respondent 2 proposed to start partnership firm in the name of his wife (respondent 8) since respondent 2 being in employment of the said firm could not be partner in the other firm. Accordingly, partnership firm was established viz. Biosync Scientific (Biosync) on 21.07.2003 with capital and profit ratio as under: -

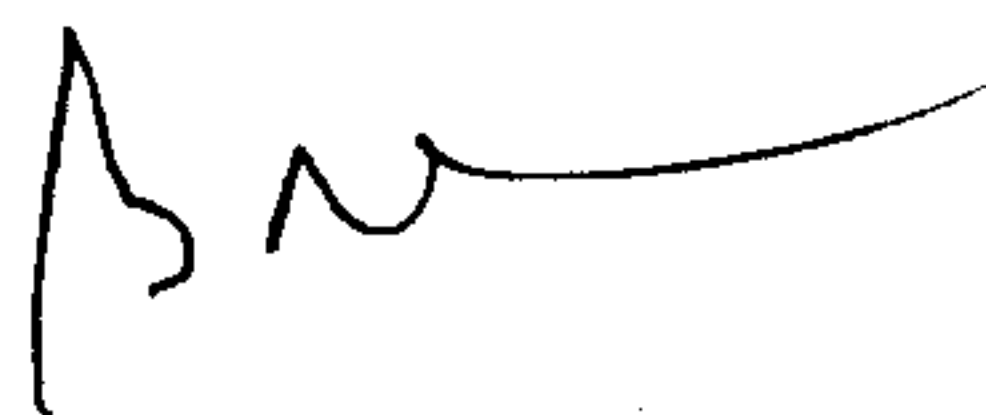
Sl. No.	Name	%
01	Viral L. Vaishnav (petitioner)	33
02	Mrs. Vinita R. Vaishnav (wife of R-2)	33
03	Pratap Survey (Friend of R-2)	33

4. During 2003 to 2005, 2nd respondent mismanaged affairs of Biosync Scientific and siphoned huge amounts to his account and by making use of the said funds increased share capital of his wife in Biosync Scientific. Respondent 3 also entered as 4th partner with 10% share in September, 2003 thereby share of petitioner was reduced to 10% in 2005 in Biosync Scientific. 2nd respondent after his retrenchment infused funds which he had siphoned from his employer into Biosync Scientific and took total control of Biosync Scientific in collusion with respondent 3. Thereafter, Biosync Scientific was converted into a private limited company with effect from 01.08.2006. Second respondent sold Biosync Scientific to a US based company viz. MIV Therapeutic Inc. (MIV) without informing the petitioner. Petitioner raised serious dispute against the action of second respondent. Due to intervention of mother of the petitioner second respondent agreed to compensate the loss into the company which he is going to start soon.



5. In the year 2008, second respondent started new company viz. Nano Therapeutic Private Limited. (1st respondent company). It was decided that petitioner and second respondent should have equal shareholding in the first respondent company, but, second respondent with mala fide intention got entire shareholding of the first respondent company in the name of his wife (respondent 8) and his son (Respondent 5). Again, mother of the petitioner intervened in the matter and second respondent agreed to give 50% shareholding to the petitioner by allotting one lac equity shares to the petitioner and 90,000 shares to second respondent and his family members during August-September, 2011. Petitioner issued cheques bearing No. 5003 and 5004 for Rs. 5.00 lacs each drawn on Axis Bank and handed over to respondent No. 2 on 25.08.2011.
6. Later, petitioner came to know that second respondent, in collusion with respondent 3 and others managed to increase the authorised share capital of first respondent company from Rs. 1.00 lac to Rs. 2.00 crores at Extra Ordinary General meeting held on 25.08.2011 and allotted 4,80,000 equity shares as bonus shares out of which 2,88,000 shares to respondent 8 and 1,92,000 shares to respondent No. 5.
7. Second respondent did not disclose about the increase of share capital and issue of bonus shares at the time of receiving the cheques from the petitioner against share application money for issue and allotment of 1.00 lac shares to be comprising of 50% of the paid up share capital. Second respondent increased share capital without any necessity of augmentation of funds and against the statutory requirements. There is no need for second respondent to increase share capital and it has been done in unjust and unfair manner to cause prejudice to the interest of the petitioner. Increase in share capital was done in paper Extra Ordinary General Meeting said to have been held on 25.08.2011 and it was done in collusion with the second respondent and respondents 3 to 8. Because of the raise in the share capital and allotment of bonus shares, percentage of the petitioner in the paid up share capital became to 5% only, instead of 15%.

8. It was agreed by second respondent that petitioner shall be employed as Project Manager with monthly remuneration of Rs. 75,000/- from August, 2011.
9. Second respondent withdrew Rs. 45.00 lacs from the bank account of first respondent company and the same was informed by 3rd respondent by way of SMS. Third respondent also informed the petitioner that payment of salary to the petitioner has been stopped. Petitioner was terminated from the employment in the first respondent company from 01.04.2016. Petitioner, having no other go, addressed letter to 2nd respondent and first respondent company to furnish statutory information about the shareholdings in the first respondent company and other information. Respondents refused to furnish any information to the petitioner as against the provisions of Companies Act. Respondents also not issued share certificates to the petitioner in respect of 1.00 lac equity shares. It is stated by petitioner that compliance certificates for the financial years 2011-12, 2012-13 and 2013-14 were issued by Company Secretary without verifying records and registers of the first respondent company. Petitioner further stated that minutes of the Annual General Meetings and Extra Ordinary General Meetings furnished to him along with letter dated 08.08.2016 are totally manipulated and are against the provisions of Companies Act. Petitioner has also pointed out that in the minutes of the Annual General Meetings held on 29.09.2009 and 03.06.2010 name of Mr. Satyavijay Ganesh Parab, the then director and shareholder, has been mentioned as Chairman, but the minutes came to be signed by Parth R. Vaishnav as Chairman who actually was neither a Director nor a member of the first respondent company on the day of such meeting. Petitioner has also pointed out that, in the Annual General Meeting dated 03.06.2010, resolution has been passed appointing Samir Koladia, Vinita Vaishnav and Parth Vaishnav as Directors of the company liable to retire by rotation whereas in the copy of said resolution filed with MCA it is shown as appointed as Directors of the company not to retire by rotation. Petitioner also pointed out regarding difference of time and date of Annual General Meeting for the year ended on 31.03.2022 dated 16.08.2011, 25.08.2011 and EOGM held on 02.12.2013. Copy of EOGM dated



02.12.2013 furnished to the petitioner by respondent No. 2 shows name of Rajesh Vaishnav as shareholder whereas copy of EOGM filed before MCA shows Rajesh Vaishnav as Chairman.

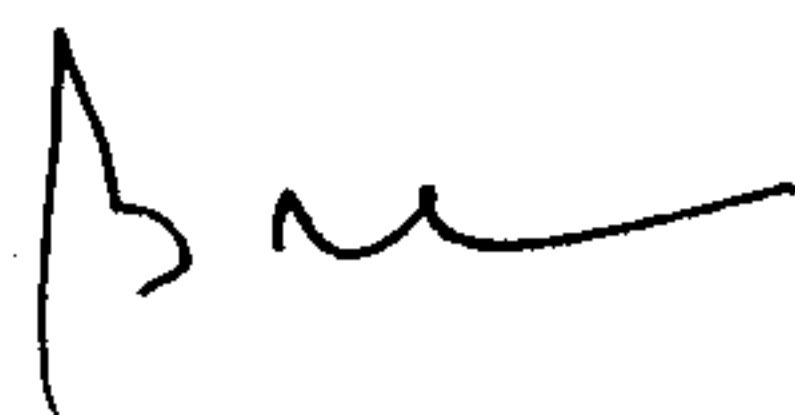
10. According to the petitioner, respondents did not prepare and maintain any statutory records as required by the Companies Act and only after receipt of his letter, second respondent started preparing the records and furnished copies of the same to petitioner along with letter dated 08.08.2016. Further, second respondent managed to alter and adopt entire set of new Articles of Association keeping the petitioner in dark and to capture the entire equity in his name and second respondent. Petitioner alleged that after adoption of new Articles of Association, without any notice to petitioner, second respondent managed transfer of 1.00 lac equity shares comprising of 5%, from Abhishek Masalawala in his name in the EOGM convened and held illegally. According to the petitioner, he is also entitled to pre-emptive rights to purchase shares of Abhishek Masalawala but second respondent did not allow him to exercise his legitimate rights.
11. Petitioner requested to cancel new set of Articles of Association of the first respondent company adopted at the so called EEOGM convened and held on 03.12.2015. According to the petitioner he visited registered office the first respondent company on 12.09.2016 for inspection of statutory records but second respondent did not allow him to see the statutory records. Second respondent obtained signature of the petitioner on the acknowledgement without mentioning the documents that made available. Compliance certificate dated 08.08.2011 issued for financial year ended on 31.03.2012 clearly show that share certificates and allotment of securities were not made available for verification. It is also stated that the compliance certificate dated 08.08.2011 also discloses that the company has deposits from persons other than its members, Directors or their relatives.
12. Petitioner alleged convening of Annual General Meeting on 28.09.2016 even before time fixed for the meeting. With a view to attend the meeting, petitioner reached at the venue before time, but



the second respondent did allow petitioner to go to the cabin of second respondent and petitioner was made to sit in the reception waiting area of the office for 2-5 minutes. Meanwhile, petitioner came to know that the meeting is going on inside the cabin of second respondent and, therefore, petitioner tried to enter into the cabin. In the cabin, respondents 2 and 3 and two unknown persons were present. As soon as petitioner entered the cabin of respondent 2, he produced attendance sheet and took signature of the petitioner on the attendance sheet. Respondent 3 and other two persons stood up and went to other place with all records in respect of Annual General Meeting. Thereafter, respondent 2 informed petitioner that, the meeting is over. Thereafter, respondent 2 told respondent 3 on phone that the "mission is complete". According to the petitioner, Annual General Meeting held on 28.09.2016 is not valid. Petitioner further stated that, respondent 2 is having direct or indirect control of Board of Directors of first respondent company since 2009. Present management of the first respondent company is indulging into various acts of omissions which has created a deadlock in the management of the first respondent company. The present management is disposing of both movable and immovable assets of the first respondent company. Further, second respondent is also planning to sell the entire running business of first respondent company to others.

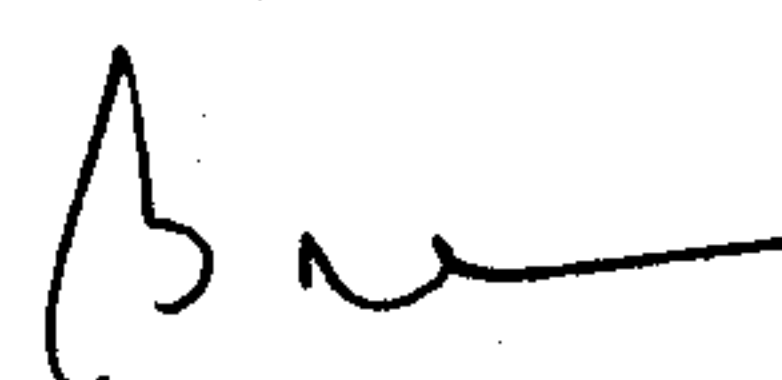
13. Petitioner has prayed for the following reliefs: -

- (a) Direct second respondent to withdraw letter of termination of the petitioner and to reinstate him w.e.f. 01.04.2016 as Project Manager.
- (b) Direct first respondent company to cancel transfer of 1.00 lac shares from Mr. Abhishek Masalawala to second respondent.
- (c) To cancel proceedings/resolutions passed at Extra Ordinary General Meeting and Board meeting held on 25.08.2011 and cancel the allotment of 4.80 lacs equity shares allotted as bonus shares.

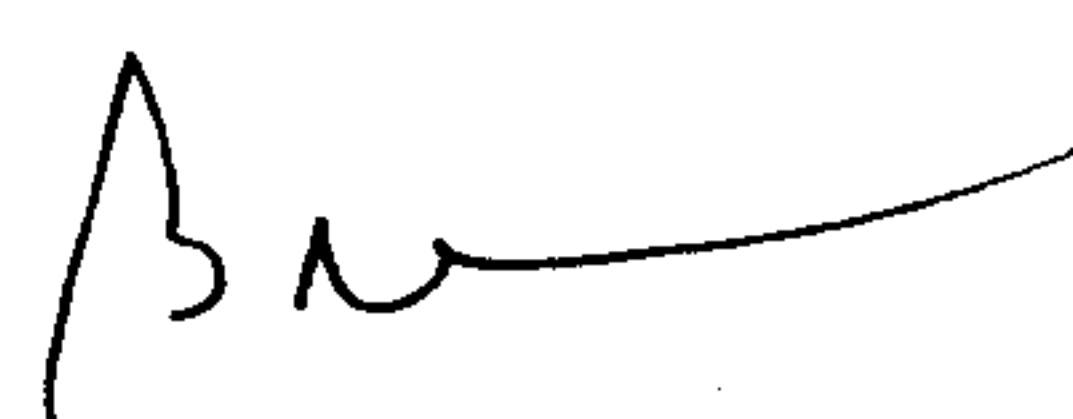


- (d) Direct Registrar of Companies to cancel Form 2 filed in respect of allotment of bonus shares.
- (e) Direct second respondent to transfer such number of shares to the petitioner so that the petitioner's shareholding is 50% in the first respondent company.
- (f) Direct respondent 2 to appoint petitioner as a Director of the first respondent company.
14. It is the case of respondent 1, 2, 3, 5 and 8 as can be seen from the averments in CP 6 of 2016 and reply in CP 15 of 2016, in brief is as follows: -
15. Second respondent is promoter director of the first respondent company. Second respondent along with family members holds 90% shares of the first respondent company since incorporation. Paid up share capital of the first respondent company is 2.00 crores divided into 20.00 lacs equity shares of Rs. 10/- each. Second respondent is holding 9.90 lacs equity shares of Rs. 10/- each i.e. 49.5% of the shareholding of the first respondent company. Shareholding pattern of the first respondent company, according to second respondent is as follows: -

No.	Name of shareholder	Relationship with petitioner	Shares	% of holding
01	Rajesh L. Vaishnav	2 nd respondent	990000	49.50
02	Vinita Rajesh Vaishnav	Wife of 2 nd respondent (Respondent 8)	474000	23.70
03	Parth Rajesh Vaishnav	Son of 2 nd respondent (Respondent 5)	336000	18.80
04	Jayantilal L. Nariya	Brother in law of respondent 2 (Respondent 3)	100000	5.00
05	Viral Vaishnav	Brother of respondent 2 (Petitioner)	100000	5.00
	Total		2000000	



16. Second respondent alleged that, petitioner who is his own brother, who is holding 5% shares only in the first respondent company has acted in a manner prejudicial and oppressive to the members of the company. It is alleged by second respondent that petitioner is trying to paralyse the company's business by spreading false rumours in the market where the company is doing business.
17. Second respondent is a technocrat. Second respondent established first respondent company with own business acumen and hard work. Petitioner is real brother of second respondent. Petitioner was not doing any kind of work. Petitioner is not having proper education. Second respondent being elder brother of petitioner, out of love and affection and with a view to give some employment for maintenance of the petitioner, allotted 5% of shares to the petitioner in the first respondent company. Second respondent also gave an agency to petitioner for sale of the products of the first respondent company called Max Biocare so that the petitioner can get some extra income. But acts of the petitioner became intolerable. Therefore, second respondent removed the petitioner from the employment. Petitioner did not return the goods of the company and did not even pay money for the goods. As soon as the petitioner was sacked from employment of the first respondent company, petitioner started spreading rumours about the company. Petitioner issued notice to six distributors of the respondent company. Petitioner started blackmailing and threatening. Petitioner made correspondence with first respondent company in respect of his rights as a shareholder. Petitioner took inspection of statutory records of the first respondent company. Petitioner wrote letters dated 19.05.2016, 14.06.2016, 27.07.2016 and 06.09.2016 asking information of the company and those letters were duly complied with by the first respondent company by furnishing information. Petitioner, every time, while taking inspection, used to visit second respondent. On 12.09.2016 petitioner took inspection and on 13.09.2016 petitioner sent an email. Second respondent is ready to purchase shares of the petitioner at book value.



18. Basing on the pleadings of both the parties and rival contentions, the following points emerge for determination: -

- (a) Whether petitioner is eligible to file CP 15 of 2016?
- (b) Whether second respondent in CP 15 of 2016 is eligible to file petition CP 6 of 2016?
- (c) Whether petitioner committed acts of oppression and mismanagement as alleged by second respondent?
- (d) Whether second respondent committed acts of oppression and mismanagement as alleged by petitioner?
- (e) To what relief?

19. Whether petitioner is eligible to file CP 15 of 2016?

CP 15 of 2016 is filed by Viral L. Vaishnav who is holding 5% of the paid up share capital of the first respondent company. According to petitioner, there are only five members in the first respondent company as on the date of filing of the petition and, therefore, he is eligible to file this petition. Even according to the second respondent, there are only five shareholders in the first respondent company. Therefore, petitioner being one among five shareholders in the first respondent company is eligible to file CP 15 of 2016

20. Whether second respondent in CP 15 of 2016 is eligible to file petition CP 6 of 2016?

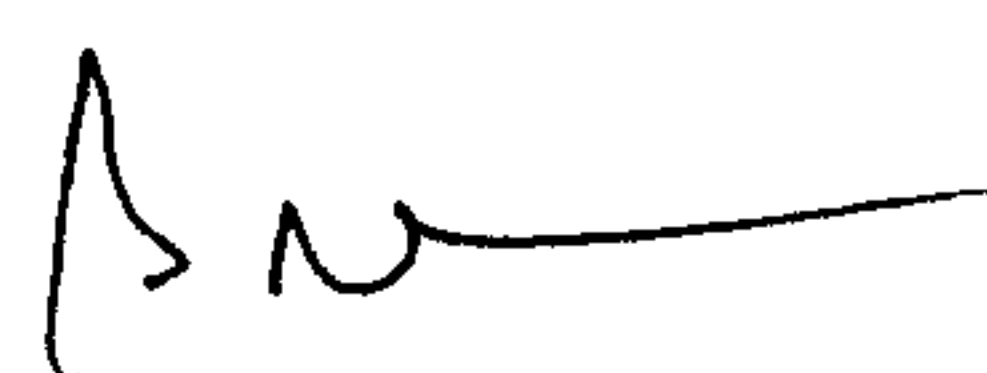
Second respondent in CP 6 of 2016 is claiming reliefs under section 397 and 398 of the Companies Act, 1956. Admittedly, shareholding of the second respondent in the first respondent company is 9.90 lacs shares which comes to 49.50% of the shareholding of the first respondent company. Moreover, second respondent is one among

the five members of the first respondent company. Therefore, second respondent is also eligible to file CP 6 of 2016.

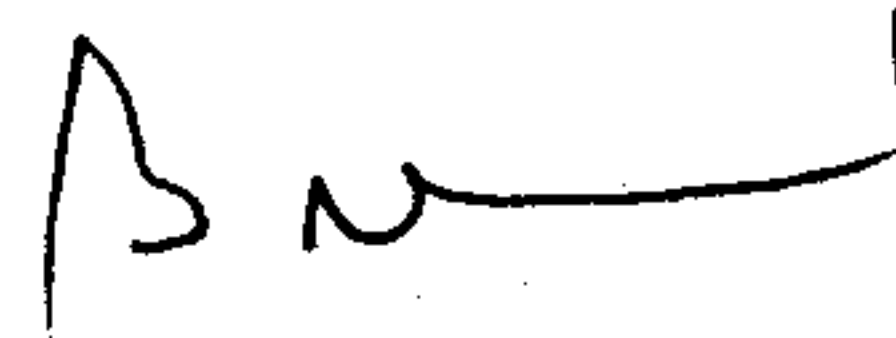
21. Whether petitioner committed acts of oppression and mismanagement as alleged by second respondent? Whether second respondent committed acts of oppression and mismanagement as alleged by petitioner?

It is admitted fact that, petitioner and 2nd respondent are brothers. It is admitted fact that, petitioner was admitted as member of first respondent company on 01.09.2011, although petitioner gave cheques dated 25.08.2011 to the second respondent towards consideration of the shares. Simply because the petitioner gave cheques dated 25.08.2011, he cannot claim to be a member of the first respondent company on and from 25.08.2011. Petitioner can be treated as member of the first respondent company only from 01.09.2011.

22. The first challenge made by the petitioner is that, 2.88 lacs shares were allotted to respondent 8 and 1.92 lacs shares were allotted to respondent 5 making total of 4.80 lacs shares of the first respondent company on 25.08.2011 by way of bonus shares that too after petitioner gave cheques dated 25.08.2011 for total Rs. 10.00 lacs. As already said, increase in the authorised share capital and allotment of bonus shares to respondents 5 and 8 took place in the Extra Ordinary General Meeting held on 16.08.2011 and 25.08.2011. Resolution of the EOGM of the first respondent company held on 25.08.2011 shows that it was resolved to allot bonus shares to the members of the first respondent company in the proportion of 48 new equity shares for every one fully paid up equity share as on the date of the meeting. Therefore, as on 25.08.2011, petitioner is not a member of the first respondent company and, therefore, he has no right to question about increase in the share capital or allotment of bonus shares to respondents 5 and 8. Therefore, this Tribunal cannot pass any order cancelling the EOGM and Board Meeting held on 25.08.2011 and cancel allotment of 4.80 lacs equity shares allotted as bonus shares.

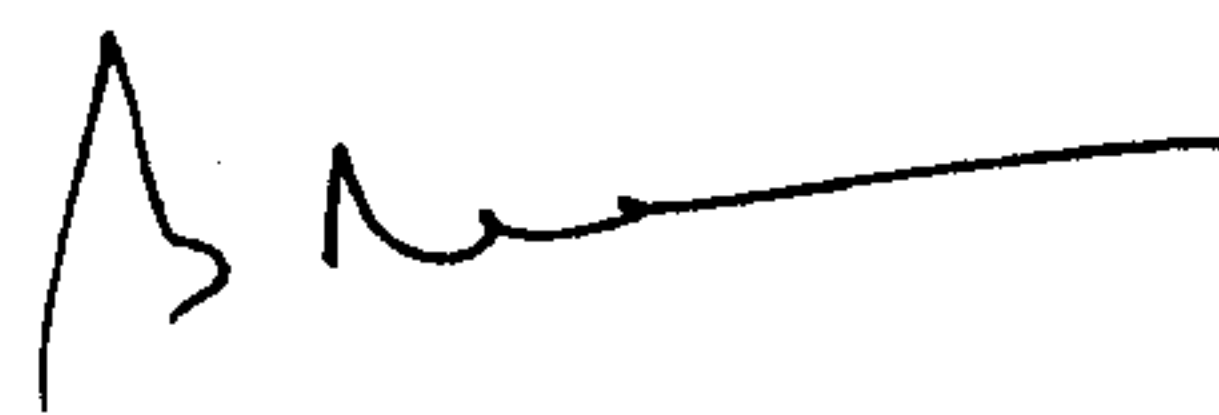


23. Another aspect raised by petitioner is that, his services as Project Manager was illegally terminated with effect from 01.04.2016. Fact remain that, petitioner was employed as Project Manager in the first respondent company. The fact remain that, petitioner was paid handsome salary for the services rendered by him in the first respondent company. According to second respondent, acts and conducts of the petitioner became prejudicial to the interest of the company and oppressive to all the members and to the interest of the company. According to the second respondent, petitioner was also given agency to deal with the products of first respondent company in the market in the name of a firm "MAX BIO CARE", but because of oppressive and intolerable acts of the petitioner, first respondent company ultimately terminated the petitioner from employment and also cancelled rights of distribution of first respondent company's products. A perusal of annexure "C" of CP 6 of 2016 – termination of employment letter show that petitioner was incompetent and irregular in attending the duties. It is also stated in the letter that petitioner was not attending his duties for last one month without any information or notice to the management. Termination letter also indicate that petitioner will be paid one month's salary irrespective of his absenteeism. Perusal of annexure "D" of CP 6 of 2016 show that, petitioner as distributor of the products of the first respondent company is due for payment of Rs. 4.60 lacs to the first respondent company and he has not paid those dues to the company. Thereafter, services of the petitioner was terminated from the first respondent company. Whether the reasons given for termination of the petitioner was substantiated and whether those reasons are sufficient to terminate the petitioner from the employment of the first respondent company or not is not within the jurisdiction of this Tribunal to decide. Once the company has taken a decision to terminate services of the petitioner, it is not justiciable before this Tribunal unless it is an act of oppression or mismanagement. Petitioner is seeking order of his reinstatement. Unless and until it is established that services of the petitioner were terminated with a view to oppress the rights of the petitioner as a member such relief cannot be granted. In the case on hand, petitioner is also a member of the first respondent company and also employee of the first respondent company. Whatever action



taken by the company against the petitioner in respect of his employment cannot be attributed to his ^{position} ~~capacity~~ as a member of the company and, therefore, they are two distinguishable positions which the petitioner was holding as employee and as member of the first respondent company. Therefore, this is not the forum for the petitioner to seek direction for reinstatement.

24. Another aspect raised by the petitioner is that, second respondent has got transferred 1.00 lac shares of Abhishek Masalawala in his name in the EOGM held on 03.12.2015.
25. It is the case of the petitioner that, he came to know about the EOGM held on 03.12.2015 from MCA portal only and the resolution of the said EOGM has not been furnished to him and he has not been given any notice of the said EOGM. Second respondent has filed attendance sheet of the EOGM dated 03.12.2015 vide annexure "B" to the reply in CP 15 of 2016. A perusal of annexure "B" show that petitioner also attended EOGM dated 03.12.2015. Therefore, the allegations of the petitioner that EOGM dated 03.12.2015 was held without giving him any notice and without his knowledge shares of Abhishek Masalawala was transferred to respondent 2 does not merit acceptance. Amendment of the Articles of Association also took place in the EOGM held on 03.12.2015. A perusal of annexure 14 to CP 15 of 2016 show that, form No. MGT-14 was filed with Registrar of Companies. The notice of meeting was despatched on 05.11.2015 and resolution was passed on 03.12.2015. In the said meeting it was resolved to alter Memorandum of Association of the company and explanatory statement to the said EOGM for adopting a new set of Memorandum of Association and Articles of Association needs consent of shareholders by way of special resolution has become necessity. Amendment to the Articles of Association took place in the EOGM dated 03.12.2015 and it was attended by the petitioner and, therefore, it cannot be said that amendment to the articles were illegal.



26. One more issue raised by the petitioner is that a sum of Rs. 45.00 lacs of the first respondent company was siphoned from the bank of first respondent company. In this connection, respondents have denied siphoning of funds as alleged by the petitioner. In this connection it is pertinent to mention here that, petitioner has not placed any material on record to substantiate the allegation that the respondents have siphoned Rs. 45.00 lacs from the first respondent company. Petitioner has referred to certain text messages in para 65 of his petition, but, no such text messages are made available. Moreover, it is pertinent to mention here that, on 01.04.2016, petitioner was terminated from his employment. On 06.09.2016 petitioner sent a letter to the Directors of the first respondent company for inspection and copy of the statutory records. In that letter petitioner has also referred to another letter dated 19.05.2016 of which copy is not made available. In the letter dated 06.09.2016 addressed to the first respondent company by the petitioner, it is mentioned that respondents are going to sell away assets of the first respondent company and they are siphoning huge funds of the company. It is not stated in the said letter that how much amount was siphoned and the manner in which it was siphoned. In fact, in the petition also, manner and mode of siphoning funds of the first respondent company has not been added. Therefore, there is no material to substantiate the allegations made by the petitioner that the respondents have siphoned amounts of the first respondent company to the detriment of the petitioner.

27. It is contended by the learned counsel for the petitioner that, statutory information has not been given to the petitioner and petitioner was denied access to records and registers of the first respondent company. As can be seen from the correspondence between the petitioner and first respondent company placed on record by the petitioner himself as well as by the second respondent, more than once the petitioner wrote letters to the first respondent company and they were promptly replied by the first respondent company. In fact, petitioner also sought inspection of registers and it was allowed. Of course, petitioner alleged that he was not allowed the inspection when he entered the premises of the first respondent company. But it is




the case of the second respondent that petitioner instead of inspecting statutory records, made hue and cry and made scenes in the first respondent company. Therefore, there is no substance in the allegations made by the petitioner that he was denied statutory information required to be given to him.

28. Petitioner also alleged that there are several variations between the copies of minutes supplied to him and resolutions filed with the Registrar of Companies. In fact, the petitioner has narrated such discrepancies in his petition and those discrepancies are between the copies furnished to the petitioner and documents filed with Registrar of Companies and they are not so material in nature they would make this Tribunal to come to a conclusion that the resolutions are manipulated.
29. Now, coming to the acts of oppression and mismanagement alleged by the second respondent against the petitioner. Those allegations appear to be more in the nature of public nuisance or criminal acts and harassment which cannot be treated as oppression and mismanagement.
30. Quarrels between two brothers who happens to be members of the first respondent company cannot be by any stretch of imagination be concluded as the acts of oppression and mismanagement under section 241 and 242 of the Companies Act, 2013.
31. In view of the above discussion, in both the petitions, there are no acts of oppression or mismanagement. However, there appears to be a dispute between the petitioner and second respondent. There appears to be some difficulty in the functioning of the first respondent company because of the conduct and attitude of the petitioner in CP 15 of 2016. Fact remain that the petitioner also invested amount in the first respondent company. It is to be noted that petitioner was also removed from the employment of the first respondent company. Taking into consideration the overall facts and circumstances, it may not be possible for the petitioner in CP 15 of 2016 to continue as a

member of the first respondent company. Therefore, petitioner in CP 15/16 if he is willing, he can sell his shares to other shareholders in the first respondent company for a fair value as on the date of filing of the petition CP 6/16 determined by mutual agreement or by an independent valuer appointed by the Tribunal. Respondents 2,3,5 & 8 shall purchase the shares of petitioner in CP 15/16 for a fair value fixed by mutual understanding or by an independent valuer appointed by the Tribunal. Therefore, petitioner and second respondent are directed to come to an understanding about the fair value of the shares of the first respondent company as on the date of filing of CP 6 of 2016 within two months from the date of this order. In case the petitioner and second respondent are not able to come to an understanding in respect of the fair value of the shares of the first respondent company, and in case if petitioner in CP 15/16 is willing to sell his shares he may file a petition before this Tribunal for appointment of independent valuer to fix fair value of the shares as on date of filing of CP 6/2016 and to fix mode and manner in which transfer of shares shall take place.

32. Petitions CP 6 of 2016 and CP 15 of 2016 are disposed of accordingly. There is no order to costs.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this 24th day of April, 2017.