BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

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

Shri S. Vijayaraghavan
Hon'ble Member (T)

Company Petition No.156/2013

In the Matter of :
The Companies Act, 1956:

-And-
In the Matter of :
Sections 111A, 235, 284, 397,398,399,402, 403 and 406 of the said Act

And
In the matter of :
Akruti Trexim Private Limited, a company incorporated under the provisions of the Companies Act, 1956 carrying on its business at its registered office at Baidyanath Bhawan, 8E, Dacres Lane, 3rd floor, Kolkata – 700 001 within the jurisdiction of this Hon'ble Board;

-And-
In the matter of :
1. Pawan Kumar Shadija alias Pawan Shadija, son of Late Devan Das Shadija residing at 18, Samta Colony, Raipur- 492 001, Chhattishgarh

2. Sandhya Shadija, wife of Pawan Shadija, residing at 18, Samta Colony, Raipur- 492 001, Chhattishgarh;

3. Pawan Shadija & Sons, a Hindu Undivided Family (HUF) represented through its Karta Pawan Shadija at 18, Samta Colony, Raipur- 492 001, Chhattishgarh.

.... **Petitioners**

-Versus-

1. Akruti Trexim Private Limited, a company incorporated under the provisions of the Companies Act, 1956 carrying on its business at its registered office at Baidyanath Bhawan, 8E, Dacres Lane, 3rd floor, Kolkata – 700 001 within the jurisdiction of this Hon'ble Board

2. Suresh Shadija, son of Late Devan Das Shadija residing at 18, Samta Colony, Raipur- 492 001, Chhattishgarh;

3. Kusum Shadija, wife of Suresh Shadija, residing at 18, Samta Colony, Raipur- 492 001, Chhattishgarh;

4. Suresh Shadija & Sons, a Hindu Undivided Family (HUF) represented through its Karta at 18, Samta Colony, Raipur- 492 001, Chhattishgarh;

5. Payal Shadija, daughter of Suresh Shadija, residing at 18, Samta Colony, Raipur- 492 001, Chhattishgarh;

6. Sanjay Kumar, son of Late Awat Ram residing at H No. 26, Recreation Road, Choubey Colony Jainmandir, Raipur, Chhattishgarh- 492 001;

7. Kiran Kumar Aritakula, son of Aritakula Rao Mohan residing at Sai House, Veer Shivaji Ward, Khamtaraj, Near Matapandal, Sanyasi Para, R S Colony, Raipur, Chhattishgarh- 492 001;

.... Respondents

8. Gopi Chand Shadija, son of Late Deven Das Shadija, residing at 228, Samta Colony, Raipur- 492 001, Chhattishgarh;

9. Manish Shadija, son of Gopi Chand Shadija, residing at at 228, Samta Colony, Raipur- 492 001, Chhattishgarh;

10. Akash Kumar Shadija, son of Pawan Shadija, residing at 228, Samta Colony, Raipur- 492 001, Chhattishgarh;

11. Neeraj Kumar Shadija, son of Nandlal Shadija,
Residing at 228, Samta Colony, Raipur- 492 001,
Chhattishgarh;

.... **Proforma Respondents**

Parties on Record:
Mr. Gaurav Khaitan, Advocate] For Petitioner

Mr. N. Dasgupta, Advocate]
Mr. D.N.Dey, Advocate] For Respondents 1 to 7
Mr. J. Patnaik, Pr.C.S.]

Date of pronouncing the order : 19/4/17

ORDER

Per Sri Vijai Pratap Singh, Member(J)

This Company Petition has been filed under section 111A, 235, 284, 397,398,399,402, 403 and 406 of the Companies Act, 2013 challenging the various acts of oppression and mismanagement on the part of the respondent nos. 2 and 7 in the affairs of Akruti Trexim Private Limited, the respondent no.1 (hereinafter referred to as the "Company").

Brief facts of the case are that the Company was incorporated on 22nd March, 1994 under the Companies Act, 1956 and is engaged in the business of manufacturing and trading of diverse agro-chemical products. The registered office of the company is situated at Baidyanath Bhavan, 8E, Dacres Lane, Kolkata – 700 001 and the authorised share capital of the company is Rs.6,50,00,000/- divided into 65,00,000 nos. of equity shares of Rs.10/- each. The company is practically a family company of the Shadijas and in reality there was a partnership between the petitioner no.1 and the respondent no.2 functioning as a limited liability company. The exercise of all legal rights regarding management and affairs of the company including the shareholding of and in the company was done equally. The petitioner no.1 is one of the directors of the company and the petitioners' group holds 32,50,000 nos. of

equity shares of Rs.10/- each in the company. The respondent no.2 is the Managing Director of the company.

In or about 1997, the petitioner no.1 and the respondent no.2 along with their family members had acquired the said Company and by virtue of acquisition, it was agreed between the said two brothers that both the said brothers alongwith their respective family members would have equal participation in the said company and they would have equal shareholdings in the company 50% each. The petitioner no.1 in his name holds 20,95,215 nos. of equity shares of Rs.10/- each, which is about 32.23% and the petitioner no.2 is the wife of the petitioner no.1 and holds 9,94,585 equity shares of Rs.10/- each, which is about 15.3% and petitioner no.3 is an HUF represented by its Karta, the petitioner no.3, holding 1,60,200 nos. of equity shares of Rs.10, which is about 2.47% of the total issued, subscribed share capital in the company.

The respondent no.2 is the younger brother of the petitioner no.1 and is holding 14,49,250 nos. of equity shares of Rs.10/- each, which is about 22.30%, Respondent no.3 is the wife of Respondent no.2 and is holding 15,26,590 nos. of equity shares of Rs.10/- each, which is about 23.49% and Respondent no.4 is an HUF, represented by Karta, the respondent no.2 herein is holding 2,74,170 nos. of equity shares of Rs.10/- each, which is about 4.22% of the total issued, subscribed and paid up share capital of and in the company. The respondent nos.5,6 and 7 are representing themselves as Additional Directors of the company and the proforma respondent nos.8,9,10,11 belonged to the petitioner group. Though the proforma Respondent nos.8 and 9 were initially appointed as Additional Directors of the company as nominees of the petitioners, but the renewal of their appointments was resisted and hence was not subsequently confirmed in the Annual General Meeting of the Company.

The petitioners' group and the respondents' group acquired the company and came into the control thereof and their shareholding was 40% and 60% of the issued, subscribed and paid up share capital of the company respectively and there was an understanding between the two groups that there should be an equal participation of the two groups in the same proportions in respect of the control and management of the company and shareholding of the Company would be equal between the two groups i.e. 50% each. Accordingly, in or about June, 2010, a Memorandum of Understanding was duly executed by and between the petitioner no.1 and the respondent no.2. On 16th January, 2012, further allotment of shares took place and though the respondent no.2 has not paid for the same, still the petitioners' and respondents' groups became 50% shareholders in respect of the said Company.

The petitioners have submitted that it was agreed between the petitioner no.1 and the respondent no.2 that for smooth running of the business and management of the company, the petitioner no.1 would take charge and look after the manufacturing unit of the Company situated at Silatara Industrial Area, Raipur, Chhattisgarh, whereas, the Respondent no.2 would take charge and look after Head Office at 18, Samta Colony, Raipur and various administration and participation of the Company. Accordingly, the petitioner no.1 believed the Respondent no.2 and his group and kept all faith and trust upon them.

The petitioners have alleged that since November, 2012, the Respondent no.2 started giving directions relating to the working and affairs of the factory including dispatch of materials to the workers, Manager and other staff with a malafide intention of taking over the control thereof without intimating the petitioners. It has also been alleged by the petitioners that the respondents have deliberately and with malafide intention caused closure of the factory.

The petitioners have further stated that on or about 25th May, 2013, the petitioner nos. 1 and 2 and the Proforma Respondent nos.10 and 11 received a purported unsigned notice dated 20th May, 2013 intimating the steps taken for their removal from the Board of Directors of the Company under the provisions of section 284 of the Act. Immediately on receiving the unsigned notice, the petitioner nos.1 and 2 and the Proforma Respondent nos.10 and 11 raised their objection by letter dated 27th May, 2013.

The petitioners have again submitted that on coming to know of the wrongful and *mala fide* intention of the respondents as aforesaid, the petitioner nos.1 and 2 by their letters dated 27th and 31st May, 2013 instructed the IDBI Bank, Samta Colony branch to freeze the Company's bank account with the said bank by enclosing the Board Resolution dated 25th May, 2013. Accordingly, the said bank by its letter dated 6th June, 2013 confirmed the receipt of the same and further confirmed about the Company's freezing of the bank account.

The petitioner nos.1 and 2 and the Proforma respondent nos.10 and 11 by their letter dated 7th June, 2013 lodged a complaint before the Registrar of Companies intimating certain management dispute in the Company and their alleged removal from the Board of Directors of the Company by the respondents without any reason. They also requested the Registrar of Companies not to receive or approve any statutory forms to be filed by or on behalf of the respondents. The petitioners further alleged that the appointment of respondent nos.5 and 6 as Directors of the Company is in violation of Sections 260 and 263 of the Act in view of the fact that they were never informed of any meeting or any General Meeting or Special General Meeting for the purpose of appointment of the above respondents and no Board meeting or general meeting at no point of time was held in this regard. In view of the above circumstances regarding illegalities and the wrongful act by the respondents in removing the petitioner nos. 1 and 2 from the Board of Directors

of the Company, the petitioners by their letters dated 15th and 16th June, 2013 informed IDBI and State Bank of India not to allow the operation of the bank account of the Company at the instance of the respondents to prevent siphoning of the funds.

The petitioners again submitted that though in view of the understanding since 2010 regarding equal participation relating to management, running and affairs of the Company, the respondent no.2 and/or the respondents since 2010 started creating disturbance in the smooth running of the affairs of the Company. The respondent no.2, who was all along hostile to petitioner no.1 and/or his group, in collusion with respondent no.3 sought to remove the petitioner nos. 1 and 2 wrongfully and illegally and without any notice. The respondent nos. 2 and 3 in connivance and collusion with each other sought to submit a Form no.32 before the Registrar of Companies, West Bengal but they could not succeed, which was confessed by the respondent no.2 before the petitioner no.1 and submitted that such act would not occur any further.

The petitioners have further averred that the respondent nos. 2 to 6 in collusion and connivance with each other are misappropriating and siphoning of funds of the company through and from the said bank account. Recently, on enquiry, the petitioners have come to know that the respondent nos.2 and 3 opened a new bank account in the name of the Company with the Axis Bank, Samta Colony branch, Raipur bearing a/c. no.913020028747333 and all the transactions of the Company are being made through the said bank account. The respondent nos.2 and 3 in collusion with each other and/or the respondents have already ousted the petitioner nos.1 and 2 and their nominees from the Board of Directors of the Company and have thus usurped the control of the Company. It has been reiterated by the petitioners that the sole and actual motive of the respondent nos.2 and 3 and/or the respondents is to reduce the petitioners to minority and by ousting them to gain control of the company. The appointment of respondent nos.5 and 6 as Directors in the

Company by the respondents are also illegal, wrongful and malafide and such appointment is harsh and burdensome for the petitioners and the shareholders of the Company.

The petitioners have reiterated that the purported illegal and wrongful removal of petitioner nos. 1 and 2 and the Respondent nos. 8 to 11 from the Board of the Company are bad, illegal, null and void and of no effect. The petitioners herein have apprehended that by this wrongful control with regard to the management and affairs of the Company and its assets, the respondents and/or each of them will take further steps to alter the shareholding and the composition of the Board of Directors of the Company to suit their wrongful gain and to prevent the petitioners from participating in the management and affairs of the company are likely to be conducted in a manner prejudicial to the petitioners, Company and public interest. Therefore, the petitioners have prayed for appropriate orders for injunction to prevent multiplicity of judicial proceeding.

The petitioners have therefore prayed for direction by this Tribunal for (i) framing a scheme for the management and administration of the said Company, (ii) superseding of the Board of Directors of the Company by appointing an Administrator and/or Special Officer to take charge over the management and affairs of the company, (iii) direction declaring removal of the petitioner nos. 1 and 2 and also the nominees of the petitioners, i.e. the respondent nos.8 to 11 from the Board of Directors as illegal, null, void and of no effect, (iv) all other illegal and wrongful acts of the Respondents regarding the removal of the Petitioner nos. 1 and 2 and also the Respondent nos.8 to 11 from the Board of Directors and also the appointment of respondent nos. 5 and 6 as Directors in the Board of Company be declared as void and illegal

In reply, the respondent nos. 1 to 7 have stated that the petitioners have obtained an *ex parte* order of *status quo* by misleading the Tribunal and have

suppressed the actual facts and painted a different picture as per their whims and fancy. The Respondents have averred that various acts of oppression and mismanagement were indulged by the petitioner nos.1 and 2 during their tenure as Directors which was the main reason for their removal.

The respondent nos. 1 to 7 have stated that the petitioner no.1 made appointment of respondent nos. 8 to 11, his henchmen at the back of the respondent nos. 2 and 3 to take control of the Board of Directors of the Company by holding the board meetings without having the authority to do so and without giving prior notice to the respondents with ulterior motive. The petitioner no.1 has also filed a Form no.2 for the allotment of 9,195 equity shares in the name of petitioner no.1 and respondent no.2 on January 16, 2012 surreptitiously, without authority of the Board of Directors keeping the respondents into total darkness for which the respondent no.2 never paid any amount. The said board meetings were held and shares were allotted with the sole intention to make the respondent nos.2,3 and 4 from majority to minority. The Respondents submitted that though the petitioner no.1 has paid a sum of Rs.46,250/- for the allotment of shares unilaterally and independently without authority of the Board of Directors of the company, therefore, the said amount is lying in the account of the Company as a share application money.

The petitioner was a Director and he was never authorised to convene a board meeting at Kolkata without intimating all the Directors of the company and all the directors of the company were settled at Raipur, Chhattisgarh, hence the meetings should have been held at Raipur itself and not in Kolkata. Moreover, the respondent no.2 is the Managing Director and he has got the power to convene meetings. The Respondents further submitted that the only source of income of the replying respondents is the earnings from the business of the company and to save the company from deadlock, the respondent no.2 gifted substantial no. of shares to the petitioner no.1.

The respondent nos. 1 to 7 have stated that as per the MOU, the responsibility of the petitioner no.1 was to look after the proper functioning of the factory of the company but he resorted to all sorts of heinous acts to hinder the functioning of the factory creating artificial crisis in the manufacture, production, sale and financial aspect of the company.

The above Respondents further reiterated that in violation of the MOU the petitioner no.1 appointed directors to (1) usurp the management of the company, (2) increase his shareholding, (3) restrict the financial transaction of the company by making it mandatory that (4) all cheques should be jointly signed by the petitioner no.1 and the respondent no.2 and all this was done unilaterally, independently and without delegation of such authority to him by the Board of Directors of the Company.

They further submitted that as per the order of the then Board, respondents were directed to forward and/or furnish the petitioners cheques drawing on IDBI Bank, Samta Colony branch, Raipur with the vouchers or bills or supporting documents for approval and signature of both the respondent no.2 and the petitioner no.1 jointly and the petitioners were also directed to approve and sign the said cheques that were required for purpose of payment of salary, wages and statutory payments and also to the vendors and other agencies but the petitioner no.1 denied and refused to sign such cheques after raising frivolous allegations as against the respondent no.2. Time to time various e-mails were exchanged between the petitioner no.1 and the respondent no.2 requesting the petitioner no.1 to sign the said cheques and send them back to the respondent no.2 but all were in vain and the reasons cited for not signing the cheques are not at all cogent and are devoid of any merits.

The Respondent nos. 1 to 7 have specifically submitted that the petitioner no.1 at no point of time had honoured the MOU dated 10th June,

2010. As per the MOU, the respondent nos. 2 and 3 were eligible to draw 25% extra remuneration from the company with effect from 1st April, 2010 but the same did not happen at any point of time.

It has also been submitted by the respondents that due to indecent behaviour of the petitioner no.1, the workers of the Company resigned and at the instance of the respondent no.2, some of them joined later on. Due to freezing the bank accounts of the said company maintained with the IDBI bank, Raipur, there was paucity of funds and on account of paucity of funds, the respondents are not in a position to execute export orders for supplying of materials of pesticides and herbicides.

The respondents, in reply to the para-wise submissions made by the petitioners in the petition, have denied and disputed each and every submission made by the petitioners, which are contrary thereto and/or inconsistent therewith.

The Respondents have further submitted that Respondent nos. 5 and 6 are directors of the company and the respondent no.7 was appointed as an Additional Director for a limited term on the Board of the Company but he has later on vacated his office of director of the company. The Respondents have submitted that the company was never a family company. It is a company in the nature of partnership by and between the two brothers, i.e. respondent no.2 and petitioner no.1. None of the other family members are either having any shareholding or any interest, who is having their separate business and occupation. The Respondent no.2 has submitted that he has put in maximum of his resources to acquire the company and he was the major shareholder of the company holding around 60% of the total issued, subscribed and paid up capital of the Company. It is submitted that to maintain peace and for smooth running of the company, the respondent no.2 agreed to gift the shares to petitioner no.1.

The petitioner no.1 persistently refused to act or obey on his covenants as mentioned in the MOU and hence jeopardized the working of the factory and company. Hence, the respondent no.2 had to renew the license for the year 2013 after paying lump sum penalty for such late renewal as the petitioner no.1 who had made the application for renewal of license till 31st December, 2012 and due to his refusal, the respondent had to make the application.

The respondent no.2 has submitted that it had become emergent and necessary for the benefit of the company to remove the petitioners as because the petitioner no.1 along with his group members had time to time tried to resist the smooth function of the company and still now they are trying to resist the smooth running of the management and affairs of the company. He further submitted that before removal of the petitioners under section 284 of the Companies Act, 1956, all the formalities have been followed by the respondents. The respondent no.2 further stated that the purported explanations which were provided by the removed directors were duly considered by the Board of Directors or the said company and such causes as shown by the removed directors were not cogent and enough to be any reason for their reinstatement in the said company. The respondent no.2 has denied and disputed that neither the petitioners nor the proforma respondents nos. 4 and 11 were present at the Head Office at Raipur at any point of time on 14th June, 2013. The respondent no.2 further submitted that respondent company in compliance of the provisions of the Companies Act have duly filed form 32 with the ROC but the MCA portal pursuant to the letter of the petitioners and the proforma respondents failed to accept such form. The respondent no.2 submitted that EOGM dated 14th June, 2013 was rightly held in accordance with the express provisions of the Companies Act, 1956.

The Respondents have alleged that the instant petition filed by the petitioners is wholly malafide, mischievous, concocted, illegal and a misleading

application and the same along with all other applications connected with this Petition are liable to be dismissed. The Respondents have also denied and disputed that no proceedings had been filed by the petitioners on the self same cause of action before any other forum or any other Court as alleged or at all. The Respondents have also denied and disputed the submission of the petitioners that the respondents can be restrained from exercising their voting rights and there is any urgency or any grounds which can excite the Tribunal from passing any interim order and any loss or prejudice can be caused to the petitioners if the interim orders are not passed or that the said interim orders, if passed, will not affect the respondents as alleged or at all.

In Rejoinder affidavit, the petitioners have stated that the respondents have not preferred any appeal against the order of the Hon'ble Board dated 23rd July, 2013 obtained by the petitioners neither have they challenged the same in any form, rather the respondents are deliberately and wilfully violating the said order, viz., the respondents are still making all kinds of payments, including the non-statutory dues of the company.

The Respondents in violation of the said order, returned the money to the petitioner no.1 which is against the violation of the order of status quo regarding the shareholding of the company. The movable property of the company, namely a motor car was disposed by the respondents after the order of the Company Law Board dated 23rd July, 2013.

The petitioners have emphatically denied each and every allegation made in various sub-paragraphs under reply of the said Reply affidavit made by the Respondents. The petitioners have reiterated and relied on every submission made in the main Petition.

On the basis of the pleadings of the parties following question arises for the decision of the case:

1. Whether the acts of removal of the Petitioners from the Board of Directors of the Company pursuant to the Board resolution on 14th June, 2013, and the subsequent appointment of R5 and R6 to the Board of Directors as additional directors of the Company and thereafter as whole time directors of the Company on 24th Oct, 2011 and 29th September, 2012 respectively, are illegal and amount to oppression against the Petitioners?

In the present petition, the shareholding of the Petitioner's group and Respondent's group ever since the acquisition of the Company was 40% and 60% of the total issued, subscribed and paid up share capital, respectively. However, pursuant to an understanding between the parties, it was settled that there would be an equal participation of both the parties in the management of the Company. Therefore, in order to bring the shareholding of the Company equal between the two parties, around June, 2010, a Memorandum of Understanding was executed between the parties, by virtue of which a Deed of Gift was executed on 30th March, 2011, the Company gifted 1,85,000 equity shares, amounting to 2.846% of the total issued, subscribed and paid up capital of the Company, in favour of Petitioner No. 1. Similarly by another Deed of Gift dated 25th June, 2011, the Company further gifted 3,68,500 equity shares, amounting to 5.669% shareholding of the issued, paid up and subscribed share capital of the Company in favour of Petitioner No. 1. Therefore an aggregate of 8.515% shareholding of equity shares were gifted to Petitioner No. 1, which in turn increased the shareholding of the Petitioners to 49.999% in the Company and that of the Respondents to 50.001% in the Company.

The Petitioners however contended that consequently by virtue of further allotment of shares on 16th January, 2012, for which the Respondents didn't pay for, the shareholding became 50% each for both the parties.

The Petitioner No. 1 further contended that in November, 2012, the Respondent No. 2 started interfering in his designated work to take control of the same, and thereafter due to the protests by the Petitioner around December, 2012, R2 did not renew the licenses relating to agriculture, health and safety, and factory. The Petitioners have further contended that around 25th May, 2013 they received an unsigned notice dated 20th May, 2013 relating to the ousting of the Petitioners from the Board of Directors under Section 284 of Companies Act, 1956, to which they protested by letters dated 27th May, 2013. Thereafter the respondents on 28th May, 2013 sent letters containing board resolution passed at a purported EOGM regarding the removal of the Petitioners from the Board of Directors, and asked the Petitioners to submit their representation on or before 3rd June, 2013.

The Petitioners submitted that pursuant to the removal, they had instructed IDBI Bank to freeze the Company's bank account maintained at the Bank. Furthermore, the Petitioners had filed a complaint with the RoC relating to the present dispute against the Respondents, whereby the Respondents sought to remove the Petitioners from directorship of the Company without citing any reasons. The Petitioners further contend that the meetings called for by the Respondents on 14th June, 2013 and 4th June, 2013 were never held, however a certain Form No. 32 was filed by the Respondents with the Registrar of Companies, reflecting the removal of the Petitioners from the Board of Directors of the Company pursuant to a board resolution passed at an EOGM held on 14th June, 2013 at Kolkata which was the registered office of the Company. Furthermore, the Petitioners contended that consequent to their removal, by letters dated 15th and 6th of June, 2013 they had informed IDBI and State Bank of India to not allow the operations of the bank account at the instance of the Respondents, apprehending mismanagement of funds by the Respondents. The Petitioners further submitted that pursuant to the letter dated 25th June, 2013, the Petitioners were denied all access to the registered

office and other offices and the factory of the Company, alongwith all the books and the records of the Company, which the Petitioners were hitherto eligible to access. By virtue of such denial the Petitioners contend that the affairs of the Company has come to deadlock. The Petitioners also contended that they had appointed R8 and R9 as additional directors on or about 23rd May, 2011 in compliance with Section 260 of Companies Act, 1956, and whose appointments were not confirmed by the Respondents for no reason in the 13th September, 2011 AGM of the Company whereby they ceased to be the additional directors of the Company thereafter. The Respondents thereafter appointed R5, R6 and R7 as additional directors in the Board of the Company as Respondent's nominees on 24th October, 2011, of which no notice was allegedly given to the Petitioners, and the same was reflected on Form 32 that was filed thereafter. At a later point of time by an AGM dated 29th September, 2012, R5 and R6 were appointed as directors of the Company and R7 was vacated, the notice of such a meeting was never given to the Petitioners. The Petitioners further contend that no AGMs were held by the Company for the past three financial years. The Petitioners also contend that the Respondents despite being in the management of the Company and R2 being appointed as the Managing Director of the Company has not filed any statutory records, forms or documents with the Registrar of Companies and have also not complied with statutory formalities in that regard. The Petitioner have also contended that R2 and R3 have allegedly opened a new bank account in the name of the Company with the Axis Bank wherein all payments receivable collected on behalf of the Company are being deposited.

In the present petition, several acts of oppression have been alleged against both the parties by each other. However, it needs to be seen if all the alleged acts that have been complained of, were in compliance of Companies Act, 1956.

The Petitioners have contended that there was an illegal and wrongful removal of P1, P2, R10 and R11 from the Board of Directors of the Company under Section 284 and 274 of the Companies Act, 1956, done by the Respondents. It is pertinent to note here the Memorandum of Understanding that was entered into by the Petitioners and the Respondents in June, 2010. According to the terms of the Memorandum of Understanding the intention was to have equal shareholding between both the parties including their respective family members. Moreover, in pursuance of the aforementioned it had been recorded that:

> "2. ...*This could be equalized over in phased manner by increasing proportionate decrease in three years.*"

In addition to the aforementioned it was also recorded:

> *"3. That in spite of equal holdings of both the parties, neither party shall have right to remove or illegally dismiss Directors for at least three years, unless one gives a written consent in writing duly witnessed by a Notary. Neither of the party shall change shareholding pattern of 50:50, by increasing share capital or by any other mode. The shares cannot be sold or transferred to other than both the parties.*
>
> *10. That the share capital of the Company shall remain the same and it shall not be increased unless decided by both the parties in writing. The shareholdings shall remain the same i.e. 50% each for each group of both the parties.*
>
> *13. Although not intended by any of the party, but in case there is intent for separation in future, option will be given by one party to other party for a price of share, which will be his selling price or purchasing price for other. The option will be equal for both the parties to accept or reject."*

The Memorandum of Understanding herein had been entered into around June, 2010.

According to the Petitioners around the 25th May, 2013, P1 and P2 and R10 and R11 received a purported notice dated 20th May, 2013, which has been annexed as Annexure P-12 on page 369, 372, 375, and 378 of the Petition, which were unsigned notices indicating the removal of P1, P2 and R10, R11 from the Board of Directors under Section 284 of Companies Act, 1956. The same was done pursuant to the unsigned notice allegedly issued by Kusum Shadija on 18th May, 2013, as has been reflected on page 371 of the Petition. Thereafter the Petitioners contended that after they objected by letters on 27th May, 2013, whereby they questioned the authenticity of the unsigned letter and the special notice annexed thereto and sought for a duly signed and proper notice as per Section 190 of the Companies Act, 1956, from R2, which are indicated from page 381 to 384 of the Petition. In addition to it, P1, P2, R10 and R11 wrote letters to R3 questioning the same, as has been indicated from page 386 to 389 of the Petition.

The Petitioners have then contended that the Respondents sent a letter dated 25th May, 2013, which were signed and issued in the name of the Company by R2 and containing a notice issued from R3 for a resolution to be proposed at the next Extraordinary General Meeting of the Company under Section 284 of the Companies Act, 1956 for removal of P1, P2, R10 and R11, and seeking representations from the aforementioned pursuant to such a notice by the 3rd June, 2013, as has been indicated as Annexure P14 at pages 392 to 403 of the Petition.

Pursuant to the aforementioned P1, P2, R10 and R11 submitted their representations on 31st May, 2013 before the Company as has been annexed as P15 at pages 404 to 407 of the Petition. In the said representations the

Petitioners have contended that P1, P2, R10 and R11 had among other things, written that:

> *"Our company is basically a group company consisting of two groups…and shareholding is also divided equally i.e. 50%-50% amongst the two groups and therefore there could be no matter of removing any director from the Board of the Company."*

Pursuant to the aforementioned events, the Petitioners sent a letter to IDBI Bank Ltd., where the account of the Company was being maintained, dated 27th May, 2013, issuing instruction to temporarily stop all transactions except deposits in the Bank account of the Company, done pursuant to a Board resolution signed by the Petitioners on 25th May, 2013, which is indicated on Page 410 of the Petition.

The Petitioners then contended that on 3rd June, 2013, they received a notice over email informing them of a Board meeting of the company to be held on 4th June, 2013 at Raipur, Chattisgarh to consider the issues of removal of P1, P2, R10 and R11under Section 284 of the Companies Act, 1956, as has been indicated as Annexure P17 at page 412 of the Petition. Pursuant to the aforementioned notice, the Petitioners contended that in compliance with the notice, they were present at the head office of the Company for the meeting, however the meeting was never held there.

As indicated by the Petitioners on Annexure P18 at page 413 to 415 of the Petition, the Petitioners along with R10 and R11, had lodged a complaint before the Registrar of Companies, West Bengal through a letter dated 7th June, 2013, informing it of the dispute in the Company and requested it not to receive or accept any statutory forms or documents, namely Form 32 if filed by the Company relating to the illegal and wrongful removal of the Petitioners, R10 and R11 from the Company.

The Petitioners thereafter contended that on 8th June, 2013 they received a notice dated 6th June, 2013 signed by R2 on behalf of the Company informing of an EOGM to be held on 14th June, 2013 at the Raipur office to confirm the removal of the Petitioners from the Board of Directors of the company under Section 284 of the Companies Act, 1956 as has been indicated in Annexure P19 at Pages 416 to 419 of the Petition. The Petitioners thereafter contended that no meeting was held on the 14th June, 2013 at the Raipur Office, however on the same day, Form 32 (as indicated with an extract of the resolution in Annexure P20 at pages 420 to 425 of the Petition.) showing removal of the P1 and P2 was uploaded on the MCA portal.

Pursuant to the uploading of Form 32, the Petitioners thereafter by letters dated 15th June, 2013 and 16th June, 2013 informed such illegalities to the IDBI Bank and State Bank of India and requested them to not allow any operation of the Bank Accounts maintained with them, as has been indicated in Annexure P21 at Pages 426 to 429 of the Petition.

The Petitioners contended that the Respondents had sent a letter to them dated 25th June, 2013 citing reasons for the removal of the Petitioner whereby they alleged wrongful conduct on the part of the Petitioner, although no proof regarding the same was ever submitted by the Respondents, and through the same letter the Respondents had denied access of the Petitioners to the offices, property, books and records of the Company, as has been indicated in Annexure P23 at Pages 436 to 437 of the Petition. Moreover, R10 and R11 were purportedly removed from the Board of Directors by the Respondents pursuant to a board meeting held on 6th June, 2013, without citing any reasons. The Petitioners have also contended that on 7th June, 2013 P1 received a communication over email from Ventek Chemicals Ltd., who was a client of the Company, where it has been shown that R2 has advised the client not to place any orders or remit any money to the accounts of the Company, as P1 had been removed from directorship of the Company as has

been indicated at Page 502 of the Petition. The malafide intention of the Respondents in removing the Petitioners from directorship is reflected herein, as the removal of the Petitioners was formally done on 14th June, 2013. Also, the Respondents had allegedly not renewed agricultural license, Health and Safety License and Factory License who had retained the licenses with himself as an act of retaliation by the Petitioners on or about December, 2012. The Respondents had also allegedly tried to usurp the control and management over the factory without giving any prior information to the Petitioners or without obtaining Petitioner's prior consent. Additionally the Petitioners alleged that around the 10th February, 2013, all the labourers at the factory were removed by the Respondent with *mala fide* intent.

At the very outset, the Respondents seem to have violated the Memorandum of Understanding as had been entered into around June, 2010 by both the Petitioner's group and Respondents' group. According to the Memorandum of Understanding Clause 3 lays down:

> ..."*3. That inspite of equal holdings of both the parties, neither party shall have right to remove or illegally dismiss Directors for at least three years, unless one gives a written consent in writing duly witnessed by a Notary.*

The notice that the Respondents had sent to the Petitioners regarding their removal was within the three years span from the inception of the Memorandum of Understanding. Moreover, no reasons were cited either by the R2 who sent a letter on behalf of the Company or by R3 who had sent the notice for the removal of the Petitioners. Another aspect that needs to be taken note of is regarding the notice, which was sent on 8th June, 2013 and was dated 6th June, 2013 relating to the extraordinary general meeting to be held on 14th June, 2013, which was not in compliance of the Companies Act, 1956. Also, the denial of the Petitioners from accessing the properties of the company and its books and records, amounts to oppression when the

Petitioner were the holders of 50% of the share capital of the Company. Finally the removal of R10 and R11 which was purportedly done pursuant to the Board meeting resolution held on the 6th June, 2013 is of no consequence as there was no meeting that was held on 6th June, 2013. Therefore, the aforementioned acts of the Respondents clearly indicate towards the oppressive acts meted out to the Petitioners by the Respondents.

The removal of the director, herein removed from the Board, was a member as well and such a removal without any reasons amounts to oppression.

In the case of Vinod Kumar Mittal *vs* Kaveri Lime Industries Ltd. [2000] 23 SCL 176 (CLB), it was observed that in a family centred company even though it is a company in the guise of a partnership, wherein participation of family members or partners is provided in Articles of Association or established to have been agreed to by members/partners, removal of a member/a partner from the management can be considered to be an act of oppression in spite of the fact that the same is a directorial complaint, which as such cannot be entertained for relief under Section 397/398.

Not calling a general meeting and keeping shareholders in the dark amounts to oppression. In the case of Hindustan Cooperative Insurance Society Ltd., In re [1961] 31 Comp. Cas. 193 (Cal.), it was observed that the shareholders were left completely in the dark, because no annual general meeting was called, with no information regarding the manner in which the affairs of the Company were being conducted. It was held that these acts of the Respondent who had the majority backing amounted to oppression by them of minority shareholders and also oppression in the conduct of the affairs of the company and these were to the detriment of both the company and its members.

In the case of Prabhu Dayal Chitlangia vs. Trinity Combine Associates (P.) Ltd. [2000] 23 SCL 132 (CLB), it was observed that in a family centred company and Board consisting of family members, when Board meeting is held in an irregular manner and decisions of far reaching significance taken without the presence of all the directors and specially the managing director, the acts of such decision taking constitute grave oppression. It was further observed that the appointment of five non-family members as additional directors was considered to be an act to upset the family control over the company at the cost of good faith, fair play and the interests of family members and of the company.

Cessation of R8 and R9 as additional directors from the Board of Directors of the Company took place pursuant to a board resolution whereby the Respondents had deliberately not confirmed their appointment in the Annual General Meeting of the Company held on 13th September, 2011. The Petitioners contended that on 23rd May, 2011 R8 and R9 had been appointed as additional directors in the Board of Directors of the Company as nominees of the Petitioners as per Section 260 of the Companies Act, 1956, by furnishing proper notice and with the consent of R2 and his group, as has been indicated as Annexure P25 at Pages 441 to 446 of the Petition. This act of the Respondents amounts to oppression, who alleged not having been informed of the appointments of R8 and R9 to the Board of Directors of the Company in the first place but had failed to oppose the same until the present petition was filed.

Illegal appointment of R5, R6 and R7, who were the nominees of R2, as additional directors of the company, has been contested by the Petitioner in the present Petition. The Petitioners contend that R5, R6 and R7 had been appointed by the Respondents pursuant to the board resolution dated 24th October, 2011 whereby Form 32 were filed, and no prior notice for the same meeting was served upon P1 and P2 who were the directors of the Company at the relevant point of time. However, the Petitioner contends that no meeting

was held on 24th October, 2011, and the Form 32 filed by which R5 and R6 were inducted in the Board of Directors from the post of additional director of the Company makes it further evident that in the Annual General meeting of the Company held on 29th September, 2012 R5 and R6 were appointed as additional directors of the Company as nominees of R2 and the office of R7 was vacated as an additional director as has been indicated on Annexure P28 at pages 463 to 469 of the Petition. The Petitioners purportedly were never notified about the AGM held on 29th September, 2012 either. Such an act of Respondents indicates oppression against the Petitioners.

The Petitioners have further contended that the Respondents have not paid for the further shares that were allotted to them pursuant to a board resolution in order to bring parity in the shareholding of both Petitioner and Respondent as per the Memorandum of Understanding entered into by them around June, 2010. As per the board resolution dated 16th January, 2012, 4625 equity shares of the Company was allotted in the name of P1 and 4570 equity shares were allotted to R2 pursuant to which P1 had paid a sum of Rs. 46250/- but R2 never paid for the shares allotted to him. The board resolution dated 16th January, 2012 annexed on Page 481 of the Petition, and Form 2 on Page 477 of the Petition clearly shows that it has been ratified by both the Respondents and the Petitioner. Therefore, the contention of the Respondents that the further allotment of shares done by the Petitioners was unknown to them and was carried out by the Petitioner and his henchmen in the Board of Directors is invalid and misleading. In the light of the aforementioned, this act of Respondents is oppressive.

Finally, the Petitioners have contended that the Respondents are guilty of defalcation and misappropriation of funds whereby the Respondents are siphoning off the funds of the Company by maintaining a separate bank account with Axis Bank outside the knowledge of the Petitioner. The Petitioners contended that R2 to R6 were dealing through the said Axis Bank account and

all payments receivable by the company were collected on behalf of the company and deposited in the said bank account without any authority. The Petitioners were denied access to the same even after they had made requests for the details of this bank account. This act of the Respondents indicates towards an oppressive behaviour against the Petitioners and against other stakeholders of the Company as well as it compromises the main source of funds for the functioning of the Company.

In the present case, the Petitioners and the Respondents are equal partners of 50% shareholding each in the Company and since it is clear that there is a deadlock which has adversely affected the functioning of the Company as a viable enterprise rendering the functioning of the company inoperative, keeping in view the interest of both the parties and the Company, the Memorandum of Understanding is herein necessary to be enforced wherein the Petitioners and the Respondents will have the option to exit the Company.

In the case of M.S.D.C. Radharamanan vs. M.S.D. Chandrasekara Raja and Another, 2008 (2) SC 901, it was recorded that there could be *a method of valuation whereby at the first instance, one of the parties to the dispute shall purchase the shares of the petitioners, within six months from the date of finalisation of such valuation and on his failure to do so, the other party shall purchase the shares of the other within six months thereafter. In the event both the alternatives failed the purchase of shares of either of the parties to the dispute could be transferred to third parties depending upon the exigency, to ensure the smooth running of the company.*

Therefore, it is necessary in the present circumstances to direct both the parties that they strictly adhere to the Memorandum of Understanding entered into between them. Pursuant to the Memorandum of Understanding either of the parties will now have an option to exit the Company by selling their shares

in the Company to the other at a determined price as per Clause 13 of the Memorandum of Understanding which lays down that:

> *13. Although not intended by any of the party, but in case there is intent for separation in future, option will be given by one party to other party for a price of share, which will be his selling price or purchasing price for other. The option will be equal for both the parties to accept or reject."*

ORDER

Petition is allowed and the illegal and wrongful removal of P1, P2, R10 and R11 from the Board of Directors of the Company under Section 284 and 274 of the Companies Act, 1956, done by the Respondents is hereby directed to be reversed. The Illegal appointment of the R5, R6 as additional directors of the company is directed to be reversed. Respondent No. 2 is hereby directed to pay for the further shares allotted pursuant to the board resolution of 16th January, 2012. It is also being directed that the Respondents be given access to the Petitioners to the properties of the Company along with the books, records and all bank accounts of the Company and they be reinstated as directors in the Company.

Preliminary decree is being passed in the matter the present petition for valuation of main business by an independent valuer. Both the groups of shareholders are being directed to give the name of an independent valuer through consensus within seven days from the date of order, failing which both the groups will have the option to give names of three independent valuers within one week thereafter, so that the Tribunal may issue order to the valuer for valuation of the aforesaid company and report for valuation may be called within three months and expenditure of independent valuer will be borne by both the Petitioners and Respondents in equal proportion.

Based on the current valuation by the registered valuer, either the Petitioners or Respondents may then sell their shares to the other that it holds in the Company and subsequently exit the Company. Parties are to bear their own costs.

Sd/-

(S. Vijayaraghavan)
Member(T)

Sd/-

(Vijai Pratap Singh)
Member (J)

Signed on this 19 the day of April, 2017