

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

**TRANSFER COMPANY PETITION No. 29/397-398/CLB/MB/MAH/2015**

CORAM:

**SHRI M. K. SHRAWAT  
MEMBER (JUDICIAL)**

In the matter of Sections 397,398,399,400,401,402,403 and 406 of the Companies Act, 1956 ;

AND

In the matter of the wrongful and illegal oppressive acts and mismanagement of Respondent Nos. 2 and 3 in the management of Respondent No.1 Company;

AND

In the matter of NESA Radiation Solutions Private Limited, having their registered office at 2<sup>nd</sup> Floor, Plot No.31, Sector 19C, Vashi, Navi Mumbai - 400 705.

1. Mrs. Neha Kumar,  
Presently residing at : B-288,  
Building No. 24, Central Area,  
IIT Bombay, Powai, Mumbai-400 076.
2. Mrs. Neerja Kumar,  
Of Mumbai, Indian Inhabitant, residing at  
B-288, Building No. 24, Central Area, IIT  
Bombay, Powai, Mumbai – 400076.

... Petitioners.

Versus

1. NESA Radiation Solutions Pvt. Ltd.,  
A Company incorporated under the  
Companies Act, 1956, having its registered  
Office at 2<sup>nd</sup> Floor, Plot No. 31, Section 19C,  
Vashi, Navi Mumbai – 400 705.
2. Mr. Chirag Vadilal Savla,  
Of Mumbai, Indian Inhabitant,  
Having his address at 2<sup>nd</sup> Floor, Plot No. 31,  
Sector 19C, Vashi Navi Mumbai-400 705.
3. Mr. Pratik Ramesh Vora,  
India Habitant, 2<sup>nd</sup> Floor Plot No 31  
Sector 19 C , Vashi Navi Mumbai.....Respondents

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**PRESENT ON BEHALF OF THE PARTIES:**

Professor Girish Kumar for the Petitioners.

Ms. Neerja Kumar for the Respondents.

**ORDER**

**Pronounced on : 18.04.2017**

1. This Petition was filed before the then CLB on 1<sup>st</sup> April 2015 by the Petitioners viz. Mrs. Neha Kumar and Mrs. Neerija Kumar, stated to be daughter and mother respectively. Father viz. Professor Girish Kumar is the mentor and force behind formation of Company viz. NESA RADIATION SOLUTIONS PRIVATE LIMITED having its office at Vashi, Navi Mumbai. It is worth to mention that this Petition is represented in person by father Professor Girish Kumar. He has informed that the name of the Company is based upon the names of his son Sagar and daughter Neha. The Company was incorporated on 17<sup>th</sup> March, 2012. The Petitioner No.1 held 50% of the Shareholding i.e. 5000 Shares. The balance 50% Shares held by one Mr. Bhanwarilal Mishrimal Sanghvi. The object of the Company is to carry out the business of dealing in Products and System which can reduce Radiation Level at the Customers Premises arising due to installation of "Mobile Cell Tower". The object of the Company as mentioned in the Petition is reproduced for reference :-

*" To provide radiation shielding services and solutions for electromagnetic radiation spectrum. Also to manufacture, repair, purchase, sell import, export or otherwise deal in all kind of apparel, curtains, films, shields and such other products which are directly or indirectly used as a part of radiation shielding solutions and services to include radiation measurement and consultancy services and to manufacture, repair, purchase, sell import, export or otherwise deal in all kind of equipments and machineries which are directly or indirectly used in radiation measurement, consultancy and allied services"*

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1.1. In the year 2013, initially issued and paid up Capital of Rs.1,00,000/- was increased to Rs.2,00,000/- having Rs.10 per Equity Share. Thereafter, some arrangements in Shareholding Pattern were made. In the year February 2013 Mr. B.M. Sanghavi, holding 50% Shares have transferred the entire shareholding and bought over by Petitioner No. 1 & Petitioner No. 2. Shares to the extent of 4900 in number by P-1 and rest 100 Shares were bought by Petitioner No. 2. It is stated that, the Loan amount given by Mr. B.M. Sanghavi have also been returned with interest. Further, re-arrangement in the Shareholding Pattern had happened in and around of October 2013. The present Shareholding Pattern stated to be as under :-

- (i) Petitioner No.1 holds 7,900 shares equal to 39.5%;
- (ii) Petitioner No.2 holds 100 shares equal to 0.5%;
- (iii) Respondent No.2 holds 10,000 shares equal to 50%;
- (iv) Respondent No.3 holds 2,000 shares equal to 10%.

**A) CASE / ALLEGATIONS OF THE PETITIONER (s) :-**

1.2. The Representative of the Petitioner Learned Professor Girish Kumar informed that initially it was a Proprietary Concern of Ms. Neha Kumar, his daughter. To expand the business company was incorporated in the year 2012. Respondent No.- 2 was appointed as a Director of the Company in November, 2013. At the instance of R.-2, thereafter, R.-3 was also inducted in the Company as a Director. R.-3 was inducted being a Chartered Accountant, with the hope that his professional qualification would bring value and efficiency in the Company. At the outset, the allegation is that R.-2 and R.-3 have connived with each other and mismanaged the affairs of the Company.

1.3. There was another change of Shareholding Pattern in and around November, 2013. Petitioner No. 1 sold **2000 Shares** to Respondent No. 2, stated to be for a **consideration of Rs. 50/- Lakhs** against which Respondent No. 2 viz. Mr. Chirag V. Savla issued Two Cheques of Rs. 20/- Lakhs and Rs. 30/- Lakhs respectively. A condition was imposed that the said amount of Rs. 50/- Lakhs would be re-inducted in R.-1 Company as a Loan for expansion of the Company. After the transfer of 2000 Shares to Respondent No.- 2, the Shareholding of Petitioner No.1 was reduced to 39.5% from 49.5%, (as indicated in the above paragraph).

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1.4 In the Petition it is alleged that, R.-2 had insisted to give him "Signing Authority" to issue Cheques which was given by Petitioner No.-1 in good faith. There was a promise by Respondent no.-2 to expand the business in Dubai Market. Next event was that the Marriage of Petitioner No.1 was scheduled in March 2014 and for that reason made a request to return the Loan Amount. However, despite of repeated request no amount was paid. It is informed that, **Petitioner No.1 got married on 7<sup>th</sup> March, 2014** and demanded the return of Loan Amount as promised by R.-2. The amount was not repaid. Petitioners were not happy with the conduct of the Respondents, hence demanded the Company to furnish following details :-

- (1) Details of the moneys transferred from Respondent No.1 Company to the associate companies of Respondent Nos. 2 & 3;
- (2) Purpose for which moneys were received from the associate companies of Respondent Nos.2 and 3;
- (3) Why 70 persons were recruited in the month of April and May 2014 and the purpose for which they were asked to leave the organisation immediately within 3 to 4 months. What was the reason for recruiting them, imparting training and sharing trade secrets;
- (4) The original share certificates belonging to the Petitioners and also the blank share certificates of Respondent No.1 Company and the common seal which were kept in the custody of Respondent No.1 Company.

1.5 The next allegation is that, Petitioner No.1 was entitled for a remuneration of Rs. 1.5 Lakhs but the Salary was not paid from February, 2014. The Petitioner in the Petition has calculated the outstanding Salary amounting to Rs. 19.50 Lakhs. The Petitioner has demanded consequential relief.

There were allegedly few instances of money transaction which according to the Petitioner have mismanaged by the Respondents, reproduced as under :-

*"On 14<sup>th</sup> February 2014, an amount of Rs.21,16,920/- was received by Respondent No. Company. The purpose of receipt of the aforesaid amount was not disclosed despite repeated requests;*

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- (a) *On 14<sup>th</sup> June 2014, another party gave an amount of Rs.21,00,000/- to Respondent No.1 Company. The purpose of receipt of the aforesaid amount was not disclosed despite repeated requests;*
- (b) *In August 2014, another party gave Rs.44,00,000/- to Respondent No.1 Company in two tranches, one payment of Rs.39,00,000/- and another payment of Rs. 5,00,000/-. The purpose of receipt of the aforesaid amount was not disclosed despite repeated requests;*
- (c) *Major portion of the amounts received aforesaid have been transferred by Respondent No.2 to the companies managed by him or where he is a shareholder. Such amount have been transferred between April 2014 and November 2014 and the same aggregates to around Rs.60,00,000/-*
- (d) *Even at present the amounts received by the Respondent No. 1 continues to be diverted by the Respondent No.2 to group companies owned or controlled by him.*

1.6. The next allegation is that the Petitioner No.1 after marriage got shifted to U.S.A., therefor, requested her brother Mr. Sagar Kumar an Executive Director, to examine the irregularity in the Financial Transactions. The Respondent No. 2 and 3 have not co-operated and assaulted Mr. Sagar Kumar, which resulted into registration of F.I.R. at A.P.M.C. Police Station. Respondent No. 2 was arrested but released on Bail by Metropolitan Magistrate on the same day.

1.7 The next allegation is that, the entire technology of controlling or reducing the Radiation of Mobile Cell Tower was developed by father ( Prof. Girish Kumar ) of Petitioner No.1 or husband of Petitioner No. 2. It was a unique and original work of Professor Kumar. The original work was required to be patented in the name of Respondent No.1 Company. **The allegation is that the Respondents have not completed the formalities and the Patent could not be granted.** The apprehension in the mind of the Petitioner was that the Respondent Nos. 2 and R- 3 might sale the Patent and other valuable rights. The Petitioner demanded the latest information but there was no feed back from the side of the Respondents.

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- 1.8 The next allegation is that Mr. Sagar Kumar had trained about 70 Engineers but without giving any reason those were removed from the Services by the Respondents. The action of Recruitment and Removal from Service had costed substantial amount to R.1 Company but it was wasted because of the Removal of those 70 Engineers. Further it was also an apprehension that the retrenchment would have resulted into passing out the Trade Secrets.
- 1.9 The next allegation is that the Original Share Certificates were under the custody of R-2 and R-3. Despite repeated request the said Respondents have not handed over those Share Certificates to the Petitioner. The apprehension is that the physical possession of the Shares in the hands of R.-2 and R.-3 might have been misused for the personal benefit by R.-2 and R.-3.
- 1.10 That the Petitioners have not been intimated the Board Meetings, though entitled as a major Shareholder, hence the Board Meeting and other Meetings, if any, in the absence of Notice, in last few years are required to be disqualified.
- 1.11 There is one more allegation, contested to be serious one, that the Petitioner was surprised to receive on 14.02.2015, through e-mail, a copy of the Resolution through which a permission was sought for approval of Shareholders for borrowing and enhancement of the limit upto Rs. 50/- Crores of R.1 Company. The objection is that before the said EOGM no Notice of convening the Meeting of the Board was received. The contention is that the said Resolution should be held as invalid. Otherwise the objection is that there was no requirement of further enhancement of borrowing limit under the circumstances when the Turn Over was only Rs. 2.5 Crores of the Company. It was a deliberate attempt to divert the funds of the R.1 Company towards certain other Business Concerns owned and operated by R.2 and R.3. The photocopy of the e-mail is annexed in the compilation of Petition.
- 1.12 Next, That the Petitioners were not granted access to the Records of the Company. The behaviour was harsh and oppressive. The affairs of the Company were mismanaged by respondent Nos. 2 and 3. The Petitioner has invoked the provisions of Section 397 and 398 of the Companies Act, 1956 and sought **relief** in the Petition as follows :-

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- " (a) *supersede the Board of Directors of the Company and appoint an Administrator.*
- (b) *declare the Board meetings allegedly held in the year 2014 and 2015 are illegal, having been convened if at all in violation of law and that the resolutions purported passed thereat are illegal, null and void and of no legal effect for want of notice to the Petitioner No. 1.*
- (c) *declare that the Extraordinary General meeting allegedly held on 16<sup>th</sup> February 2015 at Respondent No.1 Company is illegal, having been convened if at all in violation of law and that the resolutions purported passed thereat are illegal, null and void and of no legal effect.*
- (d) *restraining Respondent Nos. 2 and 3 from acting in pursuance of any resolutions passed at the aforesaid meetings of the Board of Directors as well as at the Extraordinary General Meeting.*
- (e) *directing Respondent Nos. 2 and 3 to render a full and true account of all the moneys received on behalf of Respondent No. 1 Company from April 2013 till date and disbursement of the same including the moneys received and transferred to the companies and entities wherein Respondent Nos. 2 and 3 are the shareholders and/or directors.*
- (f) *direct a fresh audit of the Company for the financial year 2013-2014 and 2014-2015.*
- (g) *Direct Respondent No. 2 and Respondent No. 3 to hand over the Share Certificates belonging to the Petitioners and which is their custody."*

**B ) DEFENCE / REPLY OF THE RESPONDENTS : -**

2. In response to the allegations a Reply has been filed by the Respondents along with evidences. From the side of the Respondents Learned representative Ms. Neeraja Kumar appeared and made references of the relevant paragraphs of the pleadings in support of the defence.

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2.1 It is stated that Respondent No.-2 and Respondent No. -3 had acquired 50% stake in the Company by making an Investment in the Shares at a huge **Premium Rs. 990 per share. An Investment of Rs. 99,00,000/- was claimed to have been made by the Respondents.** The said Investment was meant to increase "Stock in Trade", however, the counter allegation of the Respondents is that Petitioner No.1 & P-2 were having the control over the Company at the time, hence transferred the said amount to **M/s. RF Equipment Private Limited, ( in short RFE )** an associate concern of the Petitioners. Without having permission of other Directors the amount was transferred **under the guise of purchase of technology from M/s RFE.** The counter allegation is that no technology was purchased nor any technology was patented by RFE. It is informed that RFE Company is controlled by P.1 and P.2 as Shareholder and Director. (A copy of Account is annexed). It is demonstrated that one payment of Rs. 25,00,000/- was made towards purchase of Technology of curtains, wall paper, window films etc. with CML for absorbing Radiation. Thereafter, another payment was made of Rs. 25,00,000/- for the same purpose and for the same technology. The objection is that, there was no need of second payment if allegedly the Technology had already been acquired after making first payment. In lieu of the payment, the Respondent Company and Respondent Directors were expecting an acquisition of technology but even after tall promises of Professor Girish Kumar, IIT Professor, no such dependable or certified technology was provided. At that time he promised that the Respondents shall get good financial returns out of the funds invested in the R.1 Company. It was also assured that the respondents shall get full technical support from Prof. Girish Kumar on regular basis, but not fulfilled.

2.2 The next counter allegation is that, in the month of **May and June 2013 Respondent No. 2 gave a sum of Rs. 75,00,000/- and Respondent No. 3 gave sum of Rs. 25,00,000/- as loan to R.1 Company.** An assurance was given by the Promoter Directors that on their investment 15% returns shall be earned. It was also promised that the funds invested by the Respondents would be returned along with interest within a period of one year. Till date no money was refunded.

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- 2.3 The next counter allegation of the Respondents is that an Order was received from M/s. Zenith Rubber Limited for Rs. 2.7 Crores and the said concern had also advanced a sum of Rs. 54,00,000/- against the said Order. Later on, it was found by the Respondents that **out of the said advance of Rs. 54,00,000/- a sum of Rs. 50,00,000/- was transferred by the Petitioners to M/s. RFE Company held by Petitioners Nos. 1 and P-2.** It is pointed out that, M/s. Zenith Rubber Limited had given the said advance so that registration of Patent Rights/Patent Technology be completed. Although the amount was received but no Technology -information and Patent had been provided to the Respondents, although reminded several times. Even Professor Kumar had not given any write-up on the patent-documents to be patented for the use of R.-1 Company. Due to non-registration of Patent M/s. Zenith Rubber Limited cancelled the Order of Rs. 2.70 Crores. Due to the said non-compliance the Respondents had no option but to demand the refund of the money from the Petitioners.

The Petitioners have expressed their inability to return Rs.50/- lacs , however, made an alternate suggestion to buy 10% stake for Rs. 50/- lacs. To save the reputation R-1 & R-2 purchased 10% share from P-1 for Rs. 50/- lacs. Accounts have revealed that first the funds were transferred by the R-1 to the account of P-1 and thereafter P-1 transferred the said amount to the Account of R-1 Company for repayment of advance received from Zenith Rubbers. The contention of the Respondents is that again they have paid money to the Petitioners and also saved the reputation of the Company.

- 2.4 One more Order of Rs. 10/- Crores was received from M/s. SAROM, in the business of manufacturing of Curtains. M/s. SAROM had also given an advance Rs. 21,00,000/- in the month of June, 2014 but M/s. RFE failed to provide the information about the registration of the Patent and the Transfer of Technology.

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As M/s SAROM had dealers all over India therefore products of company were to be supplied to those dealers, however, due to lack of Technology information and Patent rights it could not be accomplished. The promises given by Petitioner and Professor Kumar were not fulfilled. Because of this reason the name of the R.1 Company was spoiled and adversely effected the business. The said order of Rs. 10/- crore was cancelled by SAROM in November 2014 and the respondents had to return the advance of Rs.21/- lacs to SAROM. The serious allegation is that all this failure had happened due mismanagement of the Petitioners.

- 2.5 That the counter allegation is that the funds contributed by Respondent Nos. 2 and 3 totalling to Rs. 2.5 Crores for the growth of the company were mismanaged by the Petitioners. Part of the money was transferred in the name of purchase of technology, but it was a false promise.
- 2.6 The Petitioner No.1 had wrongly demanded for the salary because after her marriage she had not contributed anything towards the functioning of the Company. Petitioner No. 1 got married around March 2014 and after her marriage, she has not written a single e-mail for the benefit of the Company or even responding about the technical issues raised by the Respondent for the benefit of the Company. She had promised to give technical information with the help of her father, being a Promoter of the Company, but totally failed to provide technical information. She had been paid Salary during the period she worked for the Company. **A sum of Rs. 8,25,000/- was paid as a Salary from April 2012 to March 2013. Again she was paid a salary of Rs. 14,25,000/- from April 2013 to March 2014.** Thereafter, she stopped working and shifted to U.S.A. hence no salary was paid. On the other hand Respondents were working full time without withdrawal of single rupee as a salary. Rather for the growth of the Company the respondents have contributed certain expenses out of their own pocket, however never claimed e.g. Petrol expenses incurred for the business of the Company.

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- 2.7 The Respondents have denied the allegation of having in possession of the **Share Certificates**. The Respondents are having physical possession only of those Share Certificates allotted to them. Being Promoter of the Company, Petitioner No. 1 was having the Share Certificates in her possession. Even at the time when the fresh allotment of shares was made, the Petitioner had prepared the Share Certificates and handed over to the Petitioners. It is submitted that, if the Petitioner had lost the original certificates then on demand R.1 can issue duplicate Share Certificates.
- 2.8 The Petitioner No. 1 had claimed a return of Rs. 50,00,000/- which was alleged to be a Loan. But the fact was that, the R.1 Company was requiring funds urgently to return the advance received from M/s. Zenith Rubber Limited. The said amount of Rs. 50,00,000/- was utilized to return the amount to M/s. Zenith Rubber Limited. According to the Respondents nothing is due as on date because the said amount had already been transferred later on by P-1 in her account.
- 2.9 There is an allegation that the Respondents have not taken due care in maintenance and control of the Radiation Level in their Product. The Respondents have stated that the allegation is baseless without any evidence. The Engineers of R.1 Company were trained by Petitioner No.1 and Mr. Girish Kumar for measuring Radiation Level as well as to provide solution. The machine is provided by Professor Girish Kumar for measuring Radiation. The non-cooperation and false allegation have caused bad reputation which in fact have prejudiced the rights of Respondent Nos. 2 and 3 who have invested huge amount in the Company. Due to adverse reputation the biggest loss going to be suffered by Respondent Nos. 2 and 3 alone. They have invested the maximum amount hence, their loss is also maximum loss. The behaviour of Petitioner and her father had hampered the growth and expansion of the Company, pleaded by the Respondents.
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- 2.10 In the Reply, R-2 has informed that the Product was earlier purchased from **M/s RFE (Company of Petitioner No. 2)**. M/s RFE was procuring the products manufactured by concern **M/s. V.R. Furnishing (an entity owned by R-2)**. The said Product was supplied by RFE at the rate of Rs.900/ per meter to R-1 Company. Since RFE was sourcing its supply from M/s. V.R. Furnishing, it was decided that the Company shall directly procure the said product from M/s. V.R. Furnishing, specially when R-2 had become one of the stake holder of R-1 Company. In the interest of R-1 the said product was directly purchased from M/s V.R. Furnishing at the rate of Rs. 700/- per meter, lower than the previous rate. There was no mismanagement of funds because the payments received on sale of the said product were used to settle the outstanding bills of M/s. V.R. Furnishing.
- 2.11 To demonstrate the hard work of R.2 and R.3 it is informed that, a new product i.e. "Maternity Wear" was designed and marketed. The R.1 has received first Order of Rs. 50,00,000/- from a Buyer viz. House of Napius. Entire hard work was badly effected due to non-fulfilment of commitment by the Petitioners. They have agreed to get the "Patent Registration" of the product which was important to supply the product in the Market but even after taking Rs. 75,00,000/- for patenting and supply of Technology; the Petitioner and her father had not provided the required certification. Due to the lack of certification the Company had lost valuable orders. Even after taking full payment, M/s RFE had not supplied complete certification of "Curtain Technology", the technology of "Wall Paper" etc. The Technology of "Window Films" have also not been informed, further no step was taken for patenting of those technologies. In one of the Meeting with M/s. SAROM, Respondents have invited Professor Girish Kumar, where he has confirmed to provide the Patent Certificate. Since he had failed or deliberately not obtained, the result was that Order of Rs. 10/- Crores was lost as the Patent Certificate was not available. Even after promise Professor Girish Kumar had not trained the newly appointed Engineers.

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- 2.12 About the allegation of non-supply of Financial Statement to the Petitioners the Reply is that the Petitioner No. 1 was the signatory for the Financial Statements from 01.04.2012 to 31.3.2013. Thereafter, for the year 01.04.2013 to 31.03.2014 the Financial Statements could not be admitted since the fees of the Auditor could not be paid. Because of the marriage Petitioner No. 1 had migrated to U.S.A. Hence could not be served the Notice of EGM. In the Reply it is stated that, on completion of the Audit the information shall be filed with the ROC and can be obtained by the Petitioners.
- 2.13 The Respondents have stated in the Reply that, there was a Business Need to obtain the Borrowings so as to expand the Business. It was a Commercial decision hence the objection that there was no need for huge borrowing is without any basis. There was no intention to create undue financial burden on the assets of R.1. No fund was diverted and there is no evidence against the Respondents.

**(C) REJOINDER BY PETITIONER (S) :-**

3. A Rejoinder by the Petitioners is on record submitted by Professor Girish Kumar, an Authorized Representative. It is accepted in the Rejoinder that in December 2012 it was mutually agreed that Respondent No. 2 would take 20% Equity in R.1 Company for a valuation of Rupees Two Crores. It was also decided that, an additional 10% Equity in M/s. NESA be allotted to Respondent No. 3 (Chartered Accountant). The decision was taken by the Respondents hence they cannot question their own decision of joining hands in the R.1 Company. The quantum of valuation had also been accepted and agreed-upon by the R-2 & R-3, therefore it is wrong on their part to raise objection at this stage.
- 3.1 About M/s. RFE, it is informed that the products, such as DETEX-189 (Radiation Detector), Shielding Films were manufactured and supplied by M/s. RFE to M/s. NESA ( R-1 Company ). Since the business was growing therefore, R-2 came with a proposal to **purchase Technology from M/s. RFE at an agreed amount of Rs. 1.25 Crores.** In the Rejoinder it is agreed that, during

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December, 2012 and January 2013 R.1 Company paid Rs. 20,00,000/- and Rs. 30,00,000/-. It has also been accepted that the payment was a part payment for the Transfer of Technology. It is further affirmed that in February, 2013 R-2 opted for additional 20% Equity in R.1 Company and promised to bring more funds. It is denied by the PETITIONER that additional loan at the huge rate of interest was approved by them. In the Rejoinder it is stated that if the Respondents had any problem of payment of Rs. 1.25 Crores for purchase of Technology then why they have taken additional 10% Equity in M/s. NESA in February, 2013. One more question has been raised in the Rejoinder that why did the Respondents have made the balance payment towards purchase of the Technology in later months ?

- 3.2 In the Rejoinder it is alleged that, on one hand R.2 and R.3 had brought in money of Rs. 75,00,000/- and Rs. 25,00,000/- in May 2013 and June 2013, but it was only on paper shown as a Loan because immediately transferred the entire money to M/s. V.R. Furnishing, a Company run by R.2. In the Rejoinder a summary of the transaction carried out, as alleged by the Petitioner, is narrated. Only relevant portion is reproduced below :-

*" On 10.05.2013, Pratik Vora, Respondent No. 3 gave Loan of Rs. 10 Lakhs to NESA.*

*On 10.05.2013, Chirag Savla, Respondent No. 2 gave Loan of Rs. 25 Lakhs to NESA.*

*On 13.05.2013, 35 Lakhs were paid to VR Furnishing, Respondent No. 2's associated company.*

*On 13.05.2013, Pratik Vora, Respondent No. 3 gave two Loans of Rs. 9 Lakhs and Rs. 6 Lakhs (totalling Rs. 15 Lakhs) to NESA.*

*On 21.05.2013, 15 Lakhs were paid to VR Furnishing, Respondent No. 2's associated company.*

*On 25.06.2013, Chirag Savla, Respondent No. 2 gave Loan of Rs. 30 Lakhs to NESA.*

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*On 25.06.2013, 30 Lakhs was paid to VR Furnishing, Respondent No. 2's associated company.*

*On 27.06.2013, Chirag Savla, Respondent No. 2 gave Loan of Rs. 20 Lakhs to NESA.*

*On 2.7.2013, 20 Lakhs was paid to VR Furnishing, Respondent No. 2's associated company.*

*Thus between 10.05.2013 to 2.7.2013, a loan liability of Rs. 100 Lakhs was created for NESA though not even on rupee stayed in NESA and the entire amount was transferred to VR Furnishing, Respondent No. 2's associated company.*

*Respondent No. 2 may say that this money was given to VR Furnishing for purchasing the material but in reality, Respondent No.2 was paid Rs. 20 Lakhs by VR Furnishing on 25.06.2013 and Respondent No. 2's brother (Pratik Savla was paid Rs. 30 Lakhs by VR furnishing on 2.7.2013.*

*Please see Annexure-C.*

*On 17.9.2013, Rs. 6,47,450 was paid to Respondent No. 2 as part loan payback and*

*On 18.9.2013, Rs. 2,21,750/- was paid to Respondent No. 3 and his wife as part loan payback.*

*Thus in reality, a loan liability of Rs. 100 Lakhs was created on paper, whereas entire amount was transferred to VR Furnishing, Respondent No. 2's associated company and on top of that a sum total of Rs. 6,47,450 + Rs. 2,21,750 = Rs. 8,69,200 was given to Respondent Nos. 2 and 3 and their associated people."*

- 3.3 In respect of transaction with M/s. Zenith Rubber the explanation of the Petitioner is as under :-

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" 9,10 and 11: Zenith Rubber had contacted Prof. Girish Kumar for his innovative shielding solutions and products. Since NESAs was involved in sales and marketing of these products, Prof. Girish Kumar referred NESAs to Zenith Rubber. Prof. Kumar helped Zenith Rubber to develop an innovative rubber shielding product using the material supplied by NESAs. This product could have been used on the roof top of the building where cell towers are installed to protect the residents from excessive radiation seeping through the top floor and also make the houses water leak proof. Zenith Rubber was huge business opportunity and hence gave order of Rs.2.70 crores and an advance of Rs.54 Lakhs to NESAs on 30-7-2013. It is falsely claimed that Petitioner No.1 gave a cheque of Rs.50 Lakhs to RFE for no reason. The cheque was signed by both the Respondents and Petitioner No.1. If there was no reason, why did Respondent No.2 gave Rs.50 Lakhs to RFE? In any company, a cheque is issued only against certain reasons."

- 3.4 The Respondents have visualized the great potential hence offered to purchase 10% Equity of Petitioner No. 1 for a sum of Rs. 50,00,000/- at a Valuation of Rs. 10/- Crores. The said amount of Rs. 50,00,000/- was paid on one hand but immediately on the other hand taken back to the account of M/s. NESAs as a Loan. False promises were made by Respondents and verbally promised to give interest at the rate of 18%. As far as the account of M/s. Zenith Rubber was concerned the same was settled by returning Rs. 54,00,000/-.
- 3.5 The business in the market was carried out by the Respondents by using the name of Professor Kumar. Even M/s. SAROM has agreed to do business with M/s. NESAs because of the presence of Professor Kumar. The R.1 Company had no Patent Certificate and lied with the Investors. The Investors have demanded the Patent Certificate. Due to false statement the prestige of Professor Kumar was effected. The Orders were cancelled because of false commitments on the part of the Respondents. They are responsible for their misconduct and mismanagement, alleged in the Rejoinder. Few other instances have also been narrated in the Rejoinder to allege that there was mismanagement and oppression on the part of the Respondents.

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**( D ) ARGUMENTS IN DEFENCE :-**

4. Learned Representative of the Respondent Ms. Neerja Kumar has placed strong reliance on the contents of the Sur-rejoinder filed by the Respondents. Her main emphasis is that the Respondents have invested huge money in the Company but on the other hand the Petitioners have not contributed equally. Vide Table 3 of Page 4 of the Sur-rejoinder the Learned A.R. has demonstrated that the Share Holding Pattern as on 22<sup>nd</sup> of February, 2013 was that Mr. Chirag B. Savla (R-2) was having 8000 Shares equivalent to 40% of the holding for which he had invested Rs. 79,20,000/-. Although the face value was only Rs. 80,000/-. Likewise, Mr. Pratik R. Vora (R-3) had purchased 2000 Shares on premium by investing Rs. 19,80,000/-, however, the face value was only Rs. 20,000/-. According to the argument heavy premium was charged by the Petitioners.
- 4.1 Likewise the curtains and detex purchased from RFE India Private Limited (Sister Concern of P-2) has charged extra price comparing the market price. The Directors have mutually agreed that, the purchase of Curtain Fabric would be made directly from M/s V.R. Furnishing instead of routing through RFE. As a result, instead of paying Rs. 900/- per meter for Curtains, used to purchase from RFE, it was purchased from M/s. V.R. Furnishing at the rate of Rs. 700/- per meter. She has pleaded that the Petitioners have always tried to extract money from the Respondents.
- 4.2 The counter allegation is that the Petitioners have taken huge money on account of heavy premium on Shares with an explanation that Rs. 75,00,000/- is for providing Technology in connection with Radiation Shielding Curtains/Films/Wall Papers with CML. The technology was identical and no separate amount should have been charged for each such technology. On receiving the money, the Petitioners have transferred the amount to their Sister Concern viz. RFE India Private Limited.
- 4.3 Petitioners have misrepresented the facts. A further amount of Rs.50,00,000/- was demanded on the ground of purchase of some more technology from RFE. To acquire the technical competence the said amount was paid out of the advance of Rs. 54,00,000/- received from M/s. Zenith Rubber Limited. The Petitioners have

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not fulfilled their commitments. The Petitioners were under obligation to provide a Patent Certificate. In the absence of Patent Certificate, one of the client M/s Zenith Rubber had cancelled the Order and demanded refund of Rs. 54,00,000/-. It is an undisputed fact that to overcome the problem of repayment, it was decided that R-2 shall purchase further 2000 Shares of Petitioner No. 1 at a price of Rs. 50,00,000/-. Again Ms. Neha Kumar (Petitioner No. 1) has sold 2000 Shares at a huge premium to Petitioner No. 1 for which a consideration of Rs. 50,00,000/- was paid. The Respondents were not having technical knowledge, hence dependent on the assurances of the Petitioner and her father. Professor Girish Kumar had never provided the technical information although promised. According to Learned A.R. it was a breach of promise.

- 4.4 The Ledger Account of the Respondents in the books of the R-1 Company has reflected that, an amount of Rs. 77,26,642/- was outstanding pertaining to Respondent No.2 and Rs. 25,97,900/- was outstanding of R-3. The argument is that even after investing about an amount of Rs. 2.5 Crores by R-2 & R-3, the technology information and Patent Rights have not been transferred. Ld. Representative has pleaded that it was a breach of contract.
- 4.5 It is pleaded that P-1 is not entitled for the salary for the period after her marriage. She had migrated to U.S.A. and thereafter there was no business advantage received by the Company. Although she had promised to extend the business in USA but even not attempted. It is pointed out that salary was paid to her brother Mr. Sagar of Rs. 75,000/- per month for two months for providing training to the staff.
- 4.6 It is further pleaded that there was no use of funds for personal purpose. Audited accounts have been presented before various Authorities and no such allegation has ever been made.

**( E ) FINDINGS : -**

- 5) Heard arguments, counter- arguments , rejoinder etc. of both the sides at length in the light of the pleadings as well as the evidences on record. Every Corporate litigation, in one way or the other, has an economic angel causing dispute. In this

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case as well, therefore, we have to examine the 'capital involvement' viz. a viz. the 'technology involvement'. Hence proceeding herein below keeping this view point in mind. In this case one factual position is undisputed that one of the group i.e. the Petitioners are in possession of the knowledge, therefore agreed upon to contribute the Technology stated to be developed by Prog. Girish Kumar (father of P-1) and on the other hand the group of the Respondents were having liquid funds, therefore agreed upon to contribute the funds necessary to run the business. Resultantly, facts have revealed that as far as contribution of funds/capital is concerned the same was not in equal proportion. Contribution of the Respondents is admittedly higher than the Petitioners. So the question is that whether the contribution of the Technology by the Petitioner's group was also in the same proportion or not? It is also a fact that the Petitioners have brought in the know-how of Radiation Control emanating from the mobile towers as a part of their contribution to start-up company. On the other side, the Respondents have brought in the capital required to start the business. Petitioners being in possession of the know-how wanted a business partner to contribute the funds hence joined hands with the Respondents and the result is that the Company was constituted.

- 5.2 ) Thus the admitted factual position was that Professor Girish Kumar, stated to be having special knowledge in the field of control of Mobile Tower Radiation, has prompted P-1 & P-2 to incorporate a Company to run the business of selling the products, such as window screens etc., through which the hazard of the radiation can be avoided. Promoter Directors were in search of a Partner(s) who can invest funds in the Company and the Respondents have shown interest, as a result entered into the Company by purchasing the Equity. So this was the preliminary structure upon which the Company was established. Thus the natural justice demands to examine the matrix of this case by keeping in mind this basic ingredient that whether both the sides have fulfilled their part of commitment and if not, who happened to be at fault. **It is to be clarified at this juncture itself that the purpose of creation of this judicial forum is not to punish but to resolve the dispute in the best interest of the company.**

- 5.3) *Inter-alia*, this is also a trite law that for invocation of doctrine of equitable justice it is paramount that **"he who seeks equity must do equity"**.

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- 5.4 The Petitioner has raised a grievance that an amount of Rupees Fifty Lakhs was although received on sale of Shares by the Petitioner No. 1 but the Petitioner was asked to re-induct the amount in the R-1 Company. In this connection the reply of the Respondent is that the Books of Accounts of the Company are complete and correct, hence there is no question of non-disclosure of the said amounts in the Books of Account. However, on the other hand, the Petitioner had failed to give the requisite information in respect of the Technology for which a substantial amount was paid to M/s. RFE. On one hand the Company is under an obligation to repay the said amount of Rupees Fifty Lakhs to P-1, but on the other hand the P-1 is under an obligation to give the Technology Information for which a substantial amount of Rupees Seventy-five Lakhs paid to M/s. RFE. The Respondents have therefore given an undertaking that in the event of final settlement the amount in question shall be settled simultaneously. There is no dispute that a substantial amount of Rupees Seventy-five Lakhs and Rupees Fifty Lakhs was paid to M/s. RFE at the behest of the Company but no Technology as promised was handed over to be used by the Company.

According to me as a result it is not a simple one sided loan to the Company but the said deposit of Rupees Fifty Lakhs in the books of the Company was subject to completion of an obligation on the part of the Petitioner Nos. 1 and 2. I therefore, hold on due appreciation of facts that the allegation of non- refund of the said money is improper and one sided.

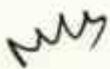
- 5.5 There is an allegation that the Respondents have unilaterally taken the decision to take over the Authority as "Signing Authority" for which the Petitioner has not been given any notice nor she had signed any authority in favour of Respondent No. 2. The Respondents have not demanded to become sole "Signing Authority". It had happened because on 7<sup>th</sup> March, 2014 the Petitioner No. 1 got married and thereafter shifted to U.S.A. It was a mutual decision to assign the Powers/ Authority to the Respondents to sign the cheques in the absence of the Petitioner

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so that the business transaction of the Company should not get suffered. According to me, under these circumstances the Respondents are not required to be blamed. On the face of records an arrangement was made for which the Petitioner was not objected at that point of time, therefore, it is not worth to allege that the management of the Company had adopted an oppressive attitude towards P-1 or P-2.

- 5.6 The Petitioner has another grievance of non-payment of Salary to her. The admitted factual position is that she had been paid salary during the period for which she had served in the Company. No salary was paid for the period of her absence. The legally due salary had already been paid. As per the facts and the evidences the Petitioner No.1 was paid the salary for the period for which she was in India and worked for the Company. Naturally in a situation when P-1 was not working wholly for the Company then she is not entitled for the salary. Facts have further revealed that the brother of P-1 Shri Sagar Kumar was paid the salary for the period he worked for the benefit of the Company. I therefore hold that only that expenditure, for e.g. Salary payment, is admissible which is wholly and exclusively for the benefit of the Company otherwise not to be directed to be incurred. As a result this relief is not permissible.
- 5.7 One of the next allegation is that the Petitioner was deprived of his legal dues. In response the Respondents have stated that under the Agreement a substantial amount was paid to M/s. RFE in lieu of supplying the Technology for restraining the effect of the Radiation of Mobile Towers. Even after payment of Rupees Seventy-five Lakhs, M/s. RFE had not provided any technological information in respect of several products to the Respondents. The Petitioners have not fulfilled their part of commitment to supply the technology hence in my opinion, based upon records, the failure is on the part of the Petitioners. On the other hand the Respondents have fulfilled their part of commitment of contributing a substantial amount of Rupees Seventy-five Lakhs to obtain the Technology. In respect of this allegation, I am of the view that, the grievance of the Respondents is more genuine than the grievance of the Petitioners. As a result, I do not find any force in this allegation. Adequate relief as demanded is not merited.





- 5.8 An allegation is that Mr. Sagar Kumar, brother of Petitioner had rendered services to train the Engineers of the Company. Although he has given the training but he was not paid. Records of the case have revealed that, he was paid the remuneration and this fact has also been affirmed through the accounts of Mr. Sagar Kumar. The Petitioners have not controverted the said accounts, therefore, this allegation on the face of it, do not survive.
- 5.9 As far as the question of "Original Share Certificates" is concerned, the same were stated to be not in possession of the Respondents. They have categorically denied that the Original Share Certificates were ever in their possession. Undisputedly the Company was promoted by the Petitioners and due to that reason the probability is that the original Share Certificates ought to have been in the possession of the Petitioners. In any case the R-1 Company has stated in Reply that if the Original Certificates have been lost by the Petitioners then on due representation a Duplicate Share Certificate can be issued. A direction is hereby given to R-1 Company to take necessary steps to redress this grievance within a month's time of this order.
- 5.10 The Petitioner has objected the raising of Loan of Rupees Fifty Crores. Answer to this allegation is that mere proposal had not caused any prejudice to the Petitioners. On account of the objection the proposal was not carried out. By not pursuing with the Bank for grant of loan, the grievance already stood redressed.
- 5.11 The allegation is siphoning of the funds by the Respondents to M/s. VRF, a company managed by the Respondents. The position as per the accounts is that the R-1 Company used to purchase the products from M/s. RFE (Company of the Petitioners) at higher price. When the Respondents have joined the Company it was decided to directly purchase the product from M/s VRF (an entity owned by the Respondents) at a lower price. The decision was in the interest of the Company, hence wrong to allege that the affairs of the Company were mismanaged by the Respondents. A financial decision apparently favourable to the Company can not be said to be a *malafide* decision so as to brand as a mismanagement of the affairs of the Company.





- 5.12 The allegations are that the Order with M/s. Zenith and M/s. SAROM have been cancelled due to the negligence of the Respondents. But on the other hand the Respondents have tried to demonstrate that the Petitioner and Professor Girish Kumar have failed to give the technology information as well as failed to obtain Patent Certificate, which was a condition precedent to purchase the product from the Company. Those parties have demanded the Patent Certificate and due to non-availability of the certificate cancelled the order. The Respondents have squarely put the blame on the Petitioners for the loss of business. In my view the demand of equitable justification in broad notion is akin to natural justice. A seeker of equitable relief must first establish the *bonafide* of his conduct. Following this principle the allegation appears to ill founded.
- 5.13 There are certain other allegations and counter-allegations from either side but in brief the Respondents are claiming that inspite of their contribution and investment to the extent of Rupees 2.5 Crores, out of which, substantial amount was taken away by the Petitioners, the business of the Company could not be started properly in the absence of the Technology Information and Patent Certificate. The Respondents are vehemently blaming the Petitioners for the financial losses suffered by the Company.
6. To resolve the controversy and also to strike a right balance among the rival parties, in my opinion, doctrine of natural justice demands to direct both the parties to respectively accomplish their part of commitment. For that reason I hereinbelow direct the rival groups to perform their respective duties so that the dispute should get resolved and the business of the Company should also not suffered. Verdict is therefore as under :-
- a) That the Relief sought in the Petition from (i) to (ix) revolve around the functioning of the Company and the meetings held in the past. First of all the relief as asked for do not match with the arguments made by the Petitioner and secondly by the passage of

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time they have become redundant. Those claims at present do not resolve the dispute as emerged from the pleadings and the arguments raised. Certain events took place after the filing of the Petition are relevant, if taken into account, not only to resolve the rivalry but shall help the revival of the business of the Company. I do not consider it pertinent to give my finding on those relief but side by side announce that this decision as a whole is going to impart true justice to both the side which shall as well be in the best interest of the survival of the Company.

b) That after the marriage and migration to USA of Petitioner No.1 the management of the Company is in the hands of the Respondents as is evident from the evidences on record. An exit plan of the Petitioners has also been indicated during the course of hearing. I therefore hold that it shall be in the interest of the Company that the Petitioners transfer their respective share holdings in favour of the Respondents or their assignees by completing all legal formalities at the current valuation to be ascertained by an independent Chartered Accountant out of the list of empanelled C.A. issued by Board, to be appointed by the Respondent Company on payment of a reasonable prescribed fees.

c) That the Respondent Company is under debt of Petitioner No.1 for an amount of Rs. 50 Lakhs. At the time of transfer of shares by the Petitioners, as directed supra, the said liability shall be repaid with interest, if already agreed upon. P-1 shall not be entitled for salary/ remuneration for the period she had migrated to U.S.A.

d) That Prof. Girish Kumar is under obligation to provide complete information of the Technology necessary to run this specialised business for which an amount of Rs. 75 lakhs had already been paid. Within 30 days of this order he shall suo-moto contact the Respondent(s) and hand over the requisite information of Radiation reduction/prevention Technology. In lieu, in addition to whatever has been paid so far, the Respondent(s) shall pay 2% ( two percent ) of the total turnover of the Company for next 5 financial years i.e 2017-18 to 2021-22 to Prof. Girish Kumar.

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- e) That the Petitioners and Prof Girish Kumar shall fully cooperate, including arrangement of requisite all clearances , in getting the certificate of Patent from the concerned authority. Respondents with the help of the Petitioners shall vigorously pursue the certification process.
- 7) That this Petition is hereby partly allowed on the terms and conditions pronounced hereinabove. Parties shall bear their own cost respectively. Petition being disposed of finally hence to be consigned to records.

**Date:- 18/04/2017.**

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