

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**TP No. 114-A/2016 with TP No. 114/397-398/NCLT/AHM/2016 (New)  
C.A. No. 86/2016 with C.P. No. 86/397-398/CLB/MB/2015 (Old)**

Coram:

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.01.2017**

Name of the Company:

Arjandas B. Khatri

V/s.

Pure Pharma Ltd. & Ors.

Section of the Companies Act:

Section 397-398 of the Companies Act, 1956

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				


**ORDER**

None present for both parties.

Order in TP 114/2016 (Old CP 86/2015) pronounced in open court.

In view of the dismissal of TP 114/2016, the Application TP 114-A/2016 is closed.

Vide separate order attached.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

Dated this the 31<sup>st</sup> day of January, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AMEDABAD BENCH  
AHMEDABAD**

**CORAM: SRI BIKKI REVEENDRA BABU, MEMBER JUDICIAL**

**Date: 31st day of January, 2017**

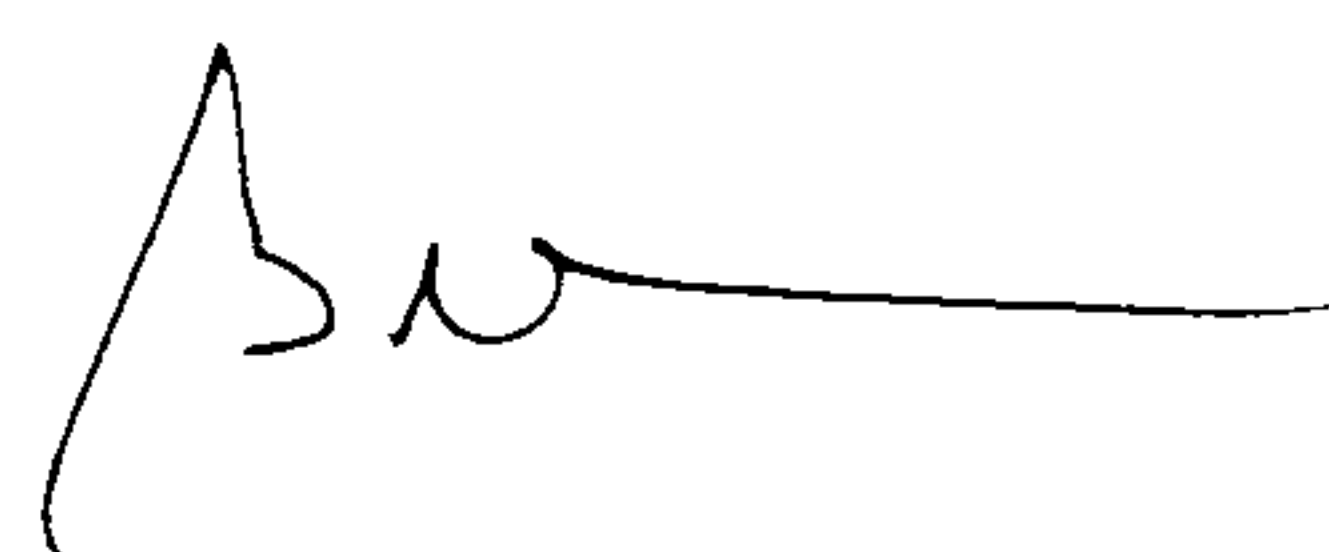
**TP No. 114/397-398/NCLT/AHM/2016**

**C.P. No. 86/397-398/CLB/MB/2015 (Old)**

1. Mr. Arjandas B. Khatri **Petitioner**  
S/o. Mr. Bhajandas Khatri  
36-B, Gopal Baug  
Indore-452 004 (M.P)

**Versus**

1. Pure Pharma Limited  
Regd. Off. 41-44, Industrial  
Estate, Polo ground  
Indore (M.P.) 452 015
2. Mr. Jairamdas Badlani  
S/o. Late Dr. Prabhudas Badlani  
9, Jamuna Colony, Lal Bagh Road  
Indore (M.P.) – 452 004
3. Mr. Mahesh Badlani  
S/o. Mr. Jairamdas Badlani  
8, Jamuna Colony,  
Lal Bagh Road  
Indore (M.P.) – 452 004
4. Mr. Ramesh Badlani  
S/o. Late Dr. Prabhudas Badlani  
9, Jamuna Colony, Lal Bagh Road



Indore (M.P.) – 452 004

5. Dr. Subhash Rijhwani  
S/o. Late Mr. Bodharam Rijhwani  
203, Royal Garden, 20/3 New Palasia  
Indore (M.P.) 452 004

6. Mr. Jethanand Ramnani  
12, Jaishree Syndicate Colony  
Indore (M.P.) 452 004

**Respondents**

**Appearance:**

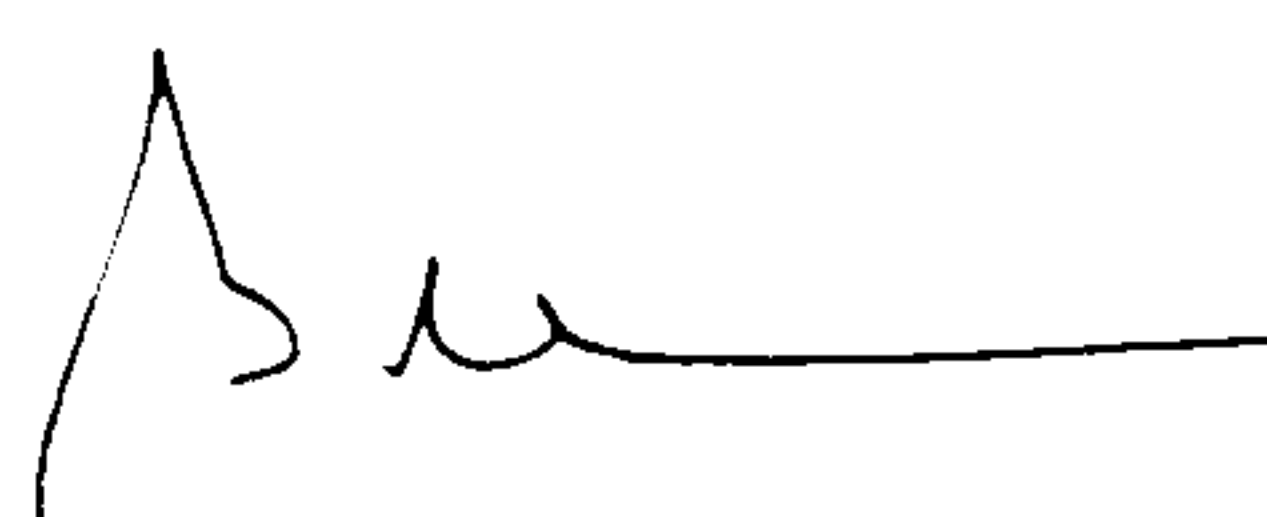
Ms. Reema Jain, PCS for Petitioner

Mr. Ashok Mehta, PCS for Respondent

**FINAL ORDER**

Dt.31-01-2017

1. This petition is filed u/s 397, 398, 399, 402 & 403 of the Companies Act, 1956.
2. The 1st respondent Company was incorporated in the year 1980. The petitioner has been on the Board of Directors since 1985. The petitioner agreed to provide his services in the capacity as Promoter Director of the 1st Respondent Company having trust and confidence on 2<sup>nd</sup> Respondent.
3. The undisputed authorised share capital of the 1<sup>st</sup> Respondent Company as on the date of filing of the petition was Rs. 4,50,00,000/- (Rupees four crores fifty lacs only) divided into 4,50,000 (four lacs fifty thousand) equity shares of Rs. 100/- (Rupees hundred) each. Undisputed issued, subscribed and paid up equity capital of the 1<sup>st</sup> respondent company is

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Rs. 2,50,00,000/- (Rupees two crores fifty lacs) divided into 2,50,000 (two lacs fifty thousand) equity shares of Rs. 100/- (Rupees hundred) each.

4. The 1<sup>st</sup> Respondent company was incorporated for undertaking the business of manufacturing of pharmaceutical formulation. The main objects of the Respondent company as per its Memorandum of Association are:

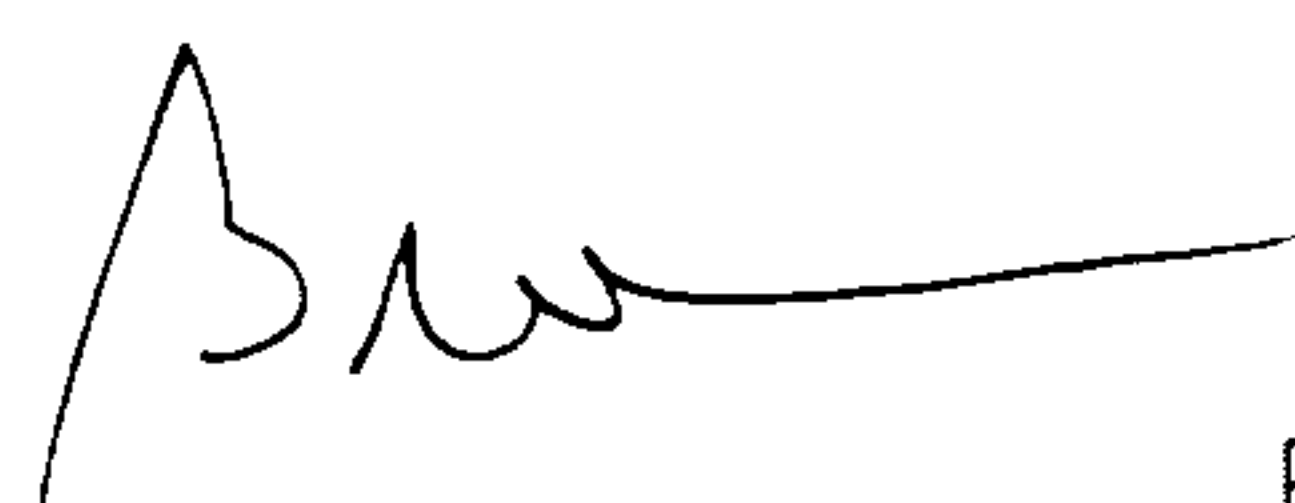
- (i) To carry on the business of manufacture and sale of drugs, pharmaceuticals and medicines and to deal as buyers, sellers and dealers in all kinds of drugs, pharmaceuticals, medical preparations, cosmetics, chemicals and packing materials.
- (ii) To carry on the business of distributors, selling agents, manufacturers, representatives, commission agents, canvassers and general brokers for the aforesaid goods and to acquire formulas and full information as to the process of manufacture and deal in pharmaceuticals and medical preparations of all kinds and descriptions and to enter into agreements and contracts upon such terms and conditions as the company may deem fit and to carry on the same into effect.
- (iii) To carry on the business of manufacturers and producers and dealers in and importers and exporters of fats, fertilizers, dips, sprays, disinfectants, manures, vermifuges, fungicides, insecticides pesticides and remedies of all kinds for agricultural fruit growing or other purposes or as remedies for men or animals and whether from vegetables or animal matters or by any chemical process.
- (iii) (A) (Inserted vide DGM resolution dated 18/11/2004.)

To carry on in India or elsewhere the business as merchant exporter, wholesaler, retailer, stockiest, distributors, consignors, adhatias, liasoners, agents, suppliers, intermediaries, middleman and to import, export, buy, sell, trade and otherwise to deal in all types of shares, securities, goods, articles, things, commodities & merchandise.

5. Respondent No. 2 to 6 are on the Board of Directors of the 1<sup>st</sup> Respondent company as on the date of filing of the petition and they are responsible for the affairs of the 1<sup>st</sup> Respondent Company.

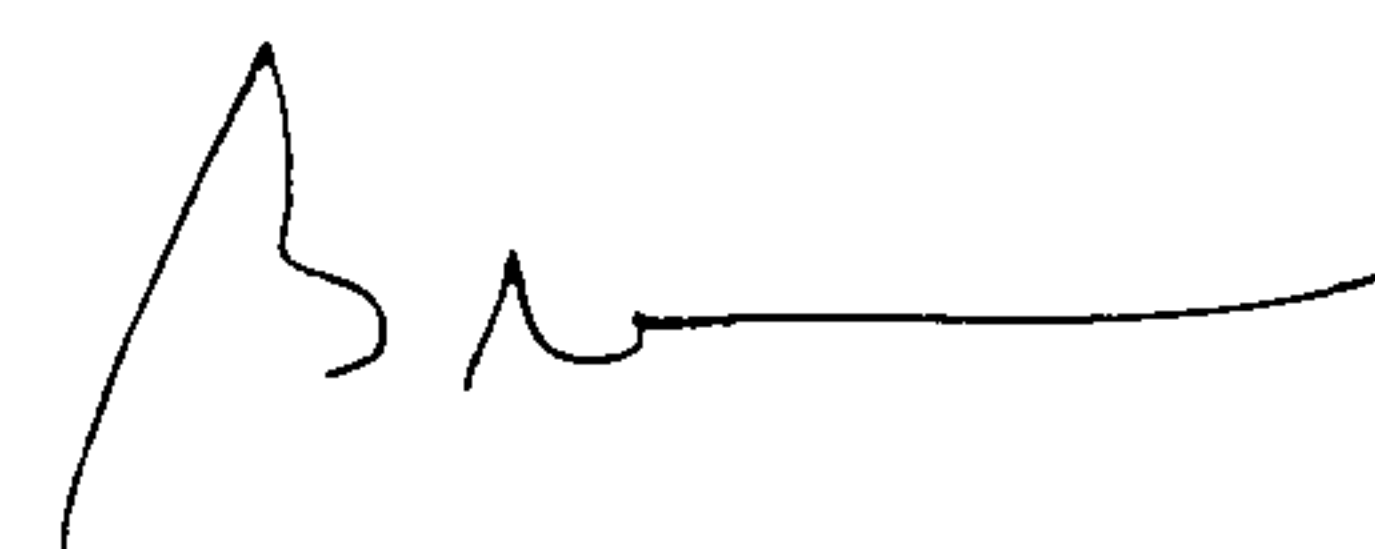
**CASE OF THE PETITIONER: -**

6. The petitioner along with his family members (1) Mr. Varun A. Khatri (2) Mrs. Shakuntala Khatri and (3) Mr. Rohit Khatri owns a total of 27,500 (Twenty-seven thousand five hundred) fully paid up equity shares of Rs. 100/- each, aggregating to 11% of the equity shares of the Company as on date of filing of the present petition.
7. In August 2006, the petitioner in exercise of his legal rights, started inquiring about the affairs of the company with the petitioners. On 30<sup>th</sup> September, 2008 the petitioner was illegally removed from the Directorship of the company without consent or knowledge of the petitioner.
8. On 30.04.2009 the petitioner requested for certain important information relating to the affairs of the company on apprehension that the respondents are siphoning off the money from the 1<sup>st</sup> Respondent Company. The petitioner also requested for the minutes of the meetings for the last three years and paid requisite fee, but the respondents did not provide any documents or information to the petitioner.

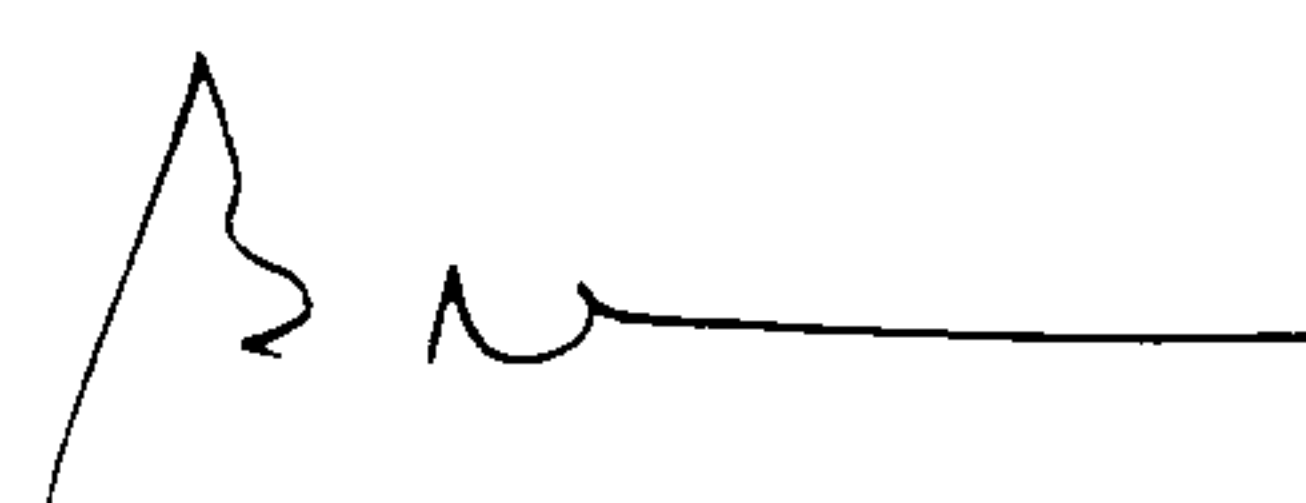




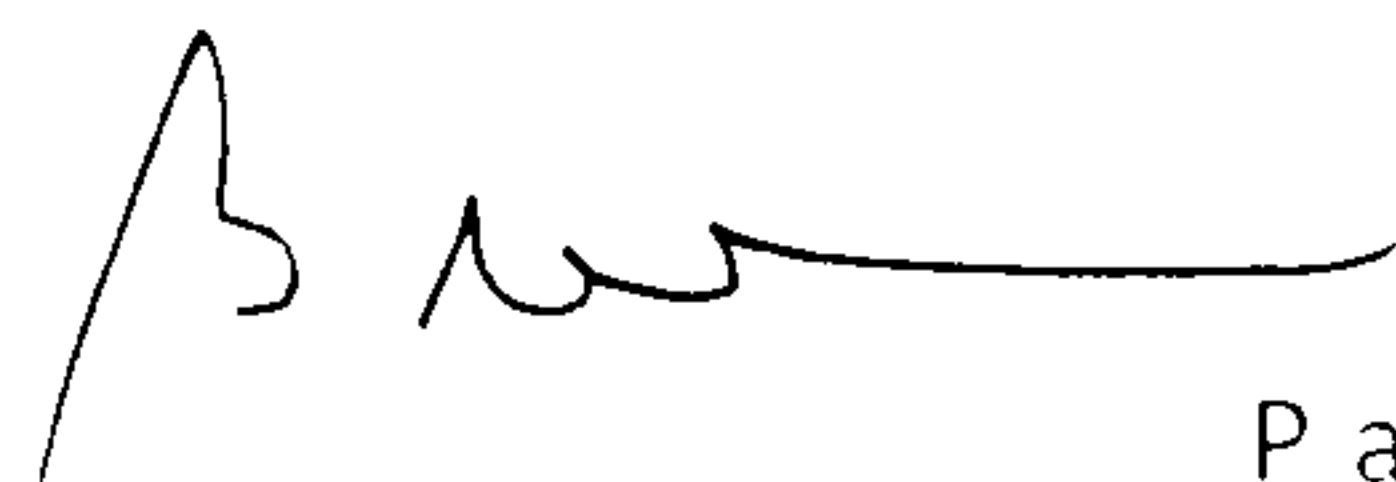
9. The petitioner, vide letter dated 12.05.2009 reiterated the same demand. The petitioner by his letter dated 08.05.2009, addressed to the shareholders of the company requested them to meet and discuss the mismanagement and other non-compliances being carried out in the company by the Respondents No. 2 & 3.
10. On 08.05.2009 the Petitioner reached the factory premises but he was not allowed to enter the factory premises and was stopped in the factory gate itself.
11. The Respondents in response to the petitioner's letter chose to reply by sending an undated, unsigned letter with useless information printed on it in an envelope weighing 12 grams booked by Registered post on 16.05.2009.
12. The petitioner on receiving the same immediately responded back by e-mail dated 18.05.2009 pointing out that the envelope received by him contained undated and unsigned plain paper with useless information printed on it and requested the respondents to send correct letter again. The respondents in response to the e-mail and letter of the petitioner dated 18.05.2009 gave reply vide letter dated 23.05.2009 giving reference to their earlier letter dated 16.05.2009 but the petitioner could find only blank paper attached with the letter but no attachment with covering letter. The petitioner having not received any response from the Respondents for the request made vide his earlier letters dated 30.04.2009 and 12.05.2009, wrote another e-mail dated 21.05.2009 requesting the respondents to provide information sought. The petitioner vide mail dated 11.07.2011 once again requested to furnish copies of the minutes of the board meetings and resolutions passed during the last five years i.e. 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11.



13. The petitioner again sent e-mail dated 18.07.2011 requesting the respondents No. 2 to provide information and requested for convening Annual General Meeting in accordance with the provisions of The Companies Act, 1956. However, the respondents neither replied nor provided any information.
14. The petitioner, having been aggrieved by the behaviour of the respondents sent another e-mail on 28.07.2011 inquiring about the status of the outstanding export debtors as reflected in the balance sheet as on 31.03.2011.
15. The petitioner also sent copy of the e-mail to the Chartered Accountant and the Company Secretary of the Company informing them about the irregularities being carried out in the Company. The petitioner by his e-mail dated 08.08.2011 reiterated the request made by him in his earlier letter, but there was no reply from the respondents.
16. On 18.08.2011 the petitioner sent another e-mail addressed to the Board of Directors of first respondent company calling upon them to provide the information sought by the petitioner, expressing his readiness to deposit any additional fee over and above Rs. 5,000/- already deposited, but the respondents did not give any reply. The petitioner again by e-mail dated 18.09.2011 requested the respondents to issue notice of Annual General Meeting along with copy of balance sheet.
17. On 27.09.2011 the petitioner sent another e-mail to the Chairman of the 1<sup>st</sup> respondent company reiterating its request for the intimation regarding convening of Annual General Meeting for the year 2010-11. There was no reply to this e-mail from the respondent.

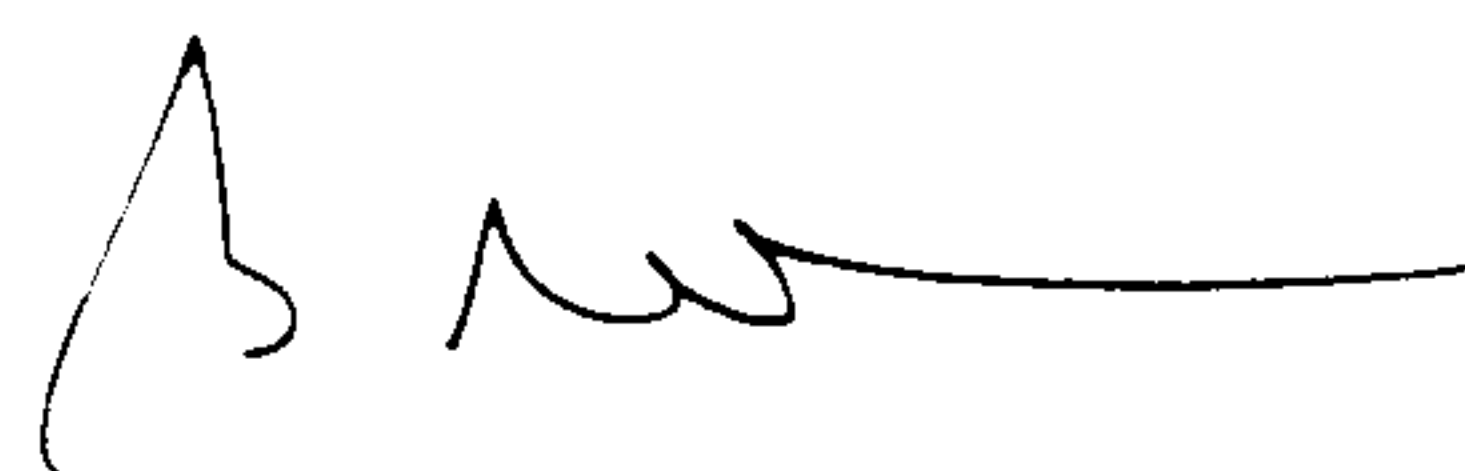


18. Ultimately, the petitioner got issued a legal notice dated 22.06.2012 pointing out various illegalities in the affairs of the company and cautioning the respondents to be strict in complying with the laws.
19. The respondents gave a reply notice dated 04.08.2012 with vague and general reply denying the allegations, but the respondents did not state anything about compliance made by them.
20. In the meanwhile, the respondents with a view to dispose of the assets of the respondent company and to siphon off the funds for their personal advantages, sold out plot No. 43 belonging to the first respondent company without following necessary compliance as prescribed under law.
21. The petitioner wrote letter dated 30.06.2015 to State Bank of India about unauthorised disposal of plot No. 43 and illegal practice followed by the respondents to siphon off the funds of the respondent company.
22. The petitioner wrote another letter dated 02.07.2015 to State Bank of India reiterating its request for stopping the respondents from disposing off the assets of the first respondent and to keep a constant check on banking activities.
23. The petitioner got published a general notice in the daily newspaper Patrika and Agniban on 10.07.2015 and 14.07.2015 respectively in order to make the public aware about the mismanagement and other tactics carried out by the 1<sup>st</sup> Respondent company which would prejudice the interest of shareholders at large.
24. The petitioner again vide letter dated 14.07.2015 informed the bank about siphoning off funds by the respondents along with its parent company M/s. Promed Labs Private Limited.

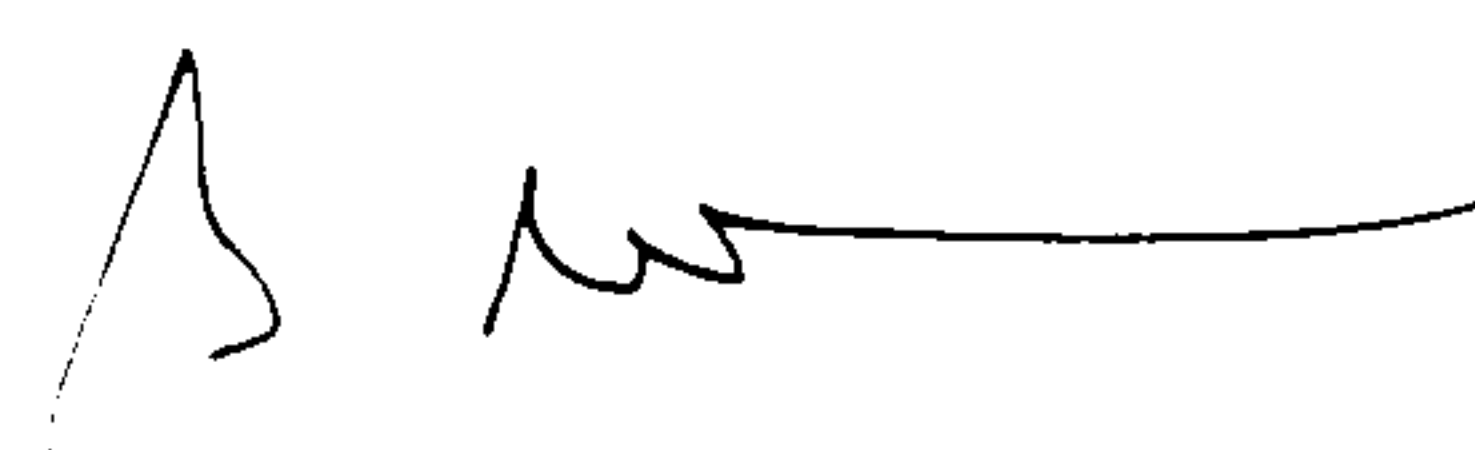




25. The petitioner got issued another legal notice dated 23.07.2015 bringing on record the poor financial condition of the company and illegal disposal of plot No. 43. On 25.07.2016 the petitioner wrote another letter to the bank about the mis-utilisation of funds by the respondents and the respondents are showing false and fabricated value of stock.
26. The respondents through advocate gave vague reply on 09.08.2015 and the petitioner got issued rejoinder.
27. The petitioner vide letter dated 17.08.2015 addressed to the Secretary, M/s. Arun Commercial Premises Ltd., Mumbai requested that the respondents may not be permitted to transfer any property without the consent of the petitioner.
28. The petitioner got issued legal notice dated 01.09.2015 wherein the petitioner claimed the amount lying in the credit of the respondent company.
29. The petitioner in his capacity as Director of the company got issued another legal notice dated 01.09.2015 calling upon the respondents to make payment of outstanding remuneration due to him for the services provided to the respondent company along with the payment, gratuity, leave encashment etc.
30. The petitioner being a promoter Director of the respondent company has been totally deprived from participation in the day to day affairs of the respondent company and no notice either for board meeting or for the shareholders meeting has even been received and the respondents simply show convening and holding of meetings on paper without any due compliance about which the petitioner has objected on several occasions.

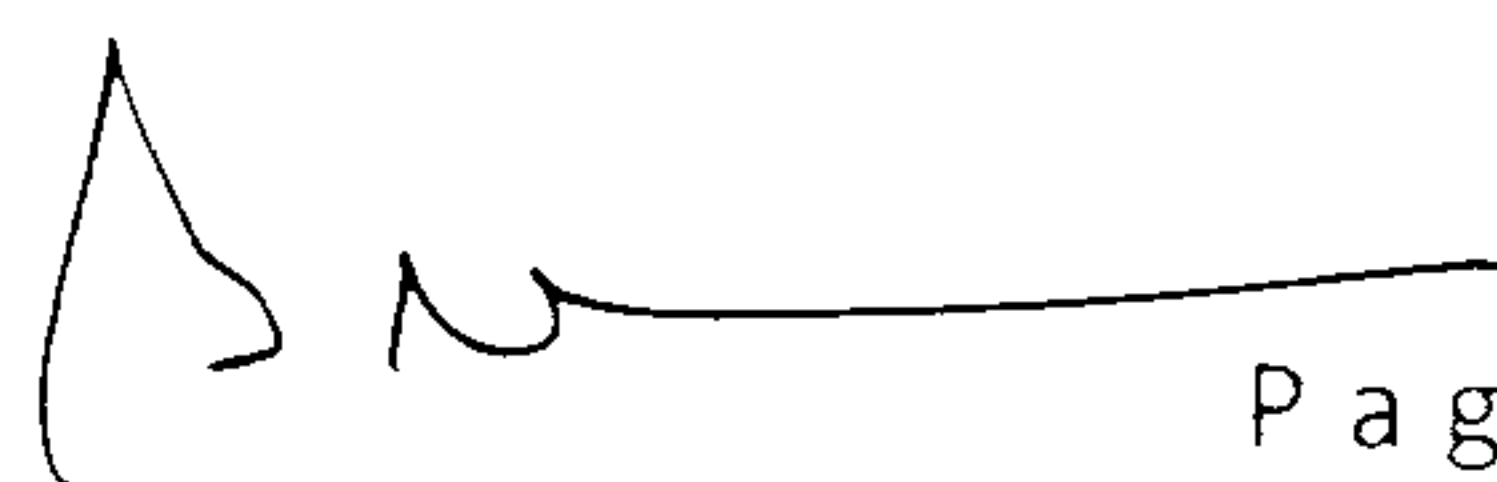


31. On 07.09.2015 the petitioner got issued a legal notice reiterating its demand for convening Annual General Meeting but the respondents did not give any reply.
32. The petitioner once again wrote detailed letter on 10.09.2015 to State Bank of India informing about the status of the practice being followed by respondents No.2 to 6 to siphon off the funds and to dispose of the assets of the 1<sup>st</sup> respondent company.
33. On 15.10.2015, the respondent No. 3, issued notice for extra ordinary general meeting on 07.11.2015 for sole agenda item of disposing off the pharma unit and taking up of the company.
34. The petitioner by his letter dated 02.11.2015 informed that the notice of extra ordinary general meeting is incomplete and the petitioner does not approve the said agenda of the meeting and requested the respondents not to proceed with the said agenda.
35. The respondent company with sole objective to ouster the petitioner from the respondent company issued letter of offer dated 19.10.2015 thereby allotting right shares at a high rate of premium of 40% in proportion of 1:4. The respondents by issuing such letter of intent wants to increase their shareholding which ultimately reduces petitioners' control in the company.
36. Along with the notice of extra ordinary general meeting the respondents did not enclose performance statement of the company. According to the petitioner, affairs of the company is in most arbitrary manner, ignoring the interest of other stakeholders for their own personal gain and it is evident from the minutes of the Extra Ordinary General Meeting

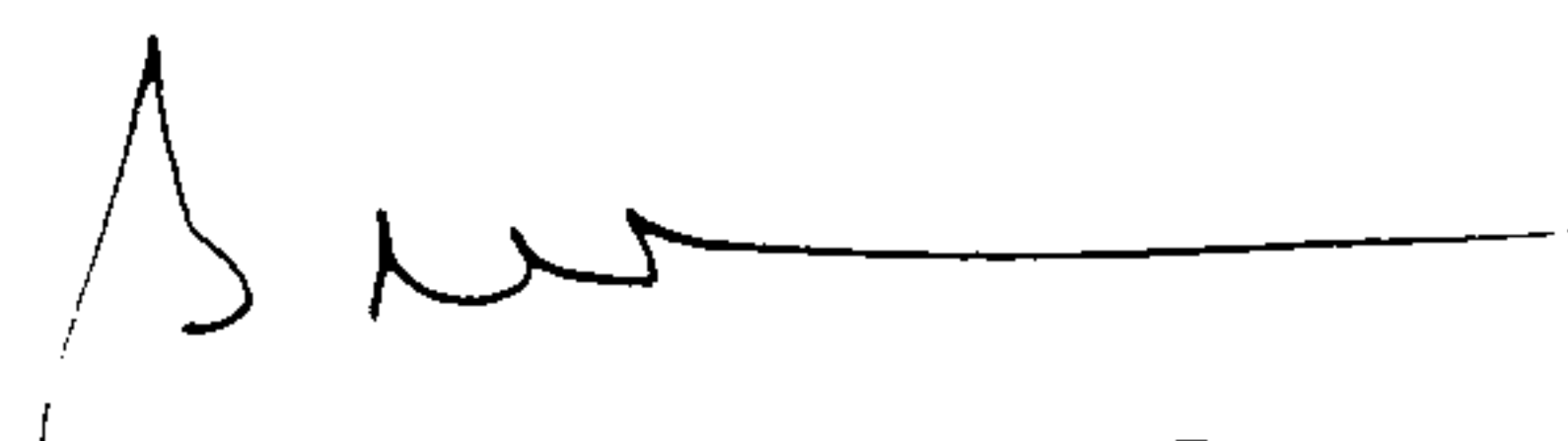


and its agenda dated 07.11.2015. In the meeting dated 07.11.2015, disposal of the pharma unit undertaking was approved.

37. According to the petitioner, no notice for the meeting was ever received by him after August, 2006 and the respondents are running the company in gross violation of the provisions of the Companies Act, 1956.
38. The respondents are not only guilty of violating the provisions of section 285 of the Companies Act, 1956 but they are equally guilty of illegally managing affairs of the Company.
39. The respondents have not supplied a copy of the annual accounts along with auditors' report to the petitioners as required u/s 219 of the Companies Act, 1956.
40. The petitioner reiterates that the respondents have suppressed the financial information from the petitioner thereby oppressing the rights of the petitioner.
41. After August 2006, the respondents have been arbitrarily and illegally managing affairs of the company by showing non-existent employees on roll of the Respondent Company. Employees appointed in respondent company are working for the parent company M/s. Promed Labs Pvt. Ltd. Thereby the respondents have mis-utilized funds of the company.
42. The petitioner has also alleged that prior to 15.10.2015 for Extra Ordinary General Meeting dated 07.11.2015, no notice for any meeting, be it board meeting or general body meeting was ever issued. The petitioner also alleges that while submitting report dated 02.09.2014, have given qualification about non provision of doubtful debts to the extent of Rs. 64,54,959/- which was at Rs. 1,58,40,700/- in the previous year to show false profitability in the respondent company.



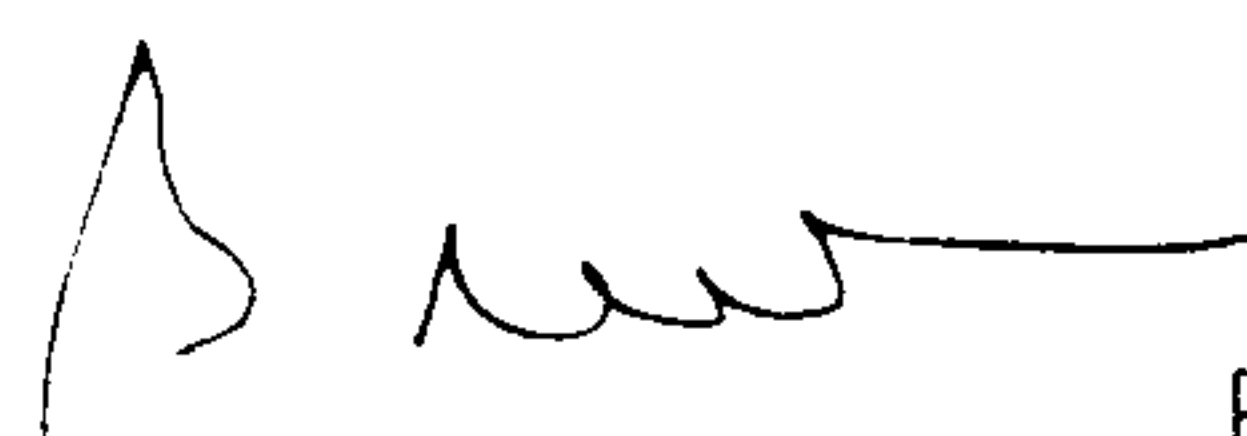
43. The respondents have accepted unsecured loan from several parties without complying with the relevant provisions of the Companies Act, 1956 and the respondents did not pass any resolution or filed any return with the office of Registrar of Companies, Madhya Pradesh and Chhattisgarh to show the acceptance of such unsecured loans.
44. The petitioner further states that the relationship between the petitioner and respondents No. 2 to 6 has broken down and it is not possible for the petitioner and the respondents No. 2 to 6 to continue together in the company.
45. According to the petitioner it is a fit and proper case to order for winding up of the company except that it would be inequitable to do so since this would unfairly prejudice the petitioner who has invested his life time savings in the respondent company and such order would also adversely affect the interest of several employees of the company. The petitioner also states that the facts of the case require investigation u/s 235 of the Companies Act 1956.
46. Petitioner pray for the following reliefs: -
- (1) for appropriate orders, reliefs and directions under section 397, 398, 402 and 403 of the Companies Act, 1956 to bring an end to the aforesaid acts of oppression and mismanagement perpetrated by the respondents and for necessary orders and reliefs in respect thereto, including as prayed for herein.
  - (2) that this Hon'ble Board be pleased to pass appropriate orders under sections 397, 398, 402 and 403 of the Companies Act, 1956 for appropriate management of the company and for that purpose to appoint such appropriate and fit person as this Hon'ble Board





may deem fit and proper as Administrator, and/or appoint an independent committee of management for managing the affairs of the company for such time and on such terms and conditions as this Hon'ble Board may deem fit and proper;

- (3) that this Hon'ble Board be pleased to declare the business transacted in the extra ordinary general meeting on 07<sup>th</sup> November, 2015 as illegal and void;
- (4) that this Hon'ble Board be pleased to quash the letter of offer issued by the respondents to secure the interest of minority shareholders;
- (5) that this Hon'ble Board be pleased to appoint chartered accounts as special auditors for carrying out special audit of the company this Hon'ble Board deems fit and submit special audit report to this Hon'ble Board and be also be pleased to direct the Chartered Accountants to revalue the equity shares of the respondent company and with a direction to furnish a copy of the same to the petitioner;
- (6) allow the petitioner to sell the shares of the company held by him to the respondents at a price determined by an independent valuer appointed by this Hon'ble Board;
- (7) that this Hon'ble Board be pleased to direct the respondents to release the remuneration and other benefits as rightfully due to the petitioner in accordance with law;
- (8) direct an investigation into the affairs of the respondent company under section 235 of the companies Act and upon receipt of report of such investigation, direct the respondent No. 2 to 6 to



reimburse all losses suffered by the company as a result of their actions or omissions;

- (9) impose costs of this petition upon the respondent No. 2 to 6; and
- (10) such further or other relief or order be made and/or directions be given as to this Hon'ble Board may seem fit and proper.

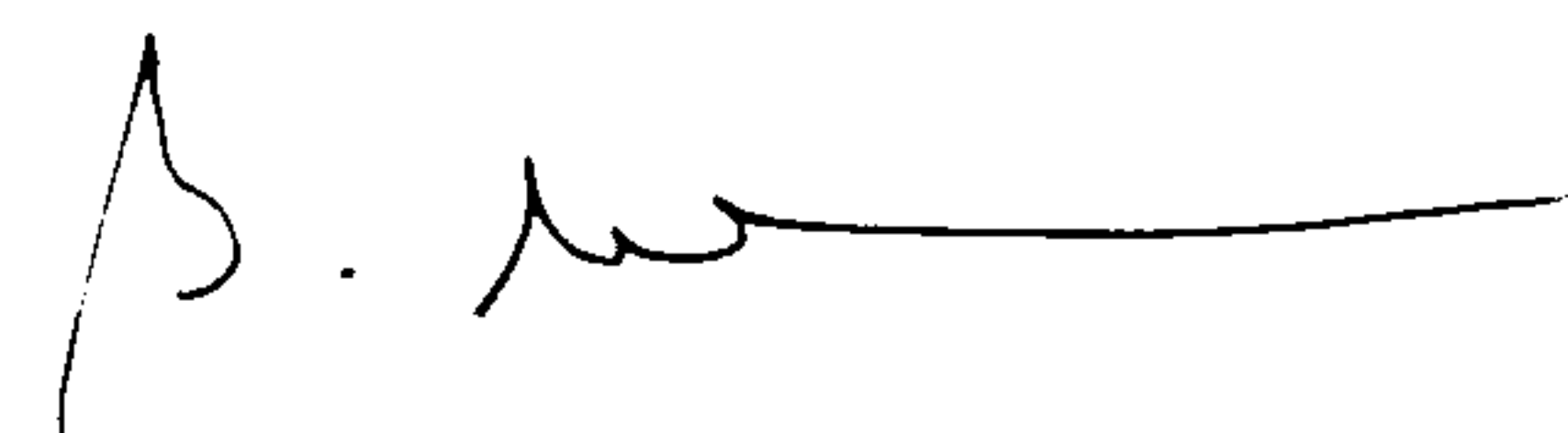
**CASE OF THE RESPONDENTS:**

- 47. First and foremost plea of the respondents is that the petitioner admittedly holds only 6002 shares in the first respondent company which is 2.20% only of the total paid up share capital of the 1<sup>st</sup> respondent company and therefore he is not competent to file this petition in view of Section 399 of the Companies Act, 1956.
- 48. It is the case of the respondents that the letter of consent and authority said to have been given by (1) Mr. Varun A. Khatri (2) Mrs. Shakuntala Khatri & (3) Mr. Rohit Khatri is not the consent in writing in terms of section 399 (3) read in the context of section 399 (1) which can give right to the petitioner to file this petition. Letter of consent and authority filed by petitioner purportedly in compliance of section 399(3) of the Companies Act, 1956 is not even signed by any of the aforesaid three family members. Further it is only an authority and not consent in terms of section 399(3). On this aspect the respondents relied upon the following decisions:
  - (i) *S.S. Laxminarayanan & Anr. v. Mather & Platt India Ltd. & Ors.* decided on 17<sup>th</sup> July 1997 reported in (1998) 92 CompCas 109 (CLB)



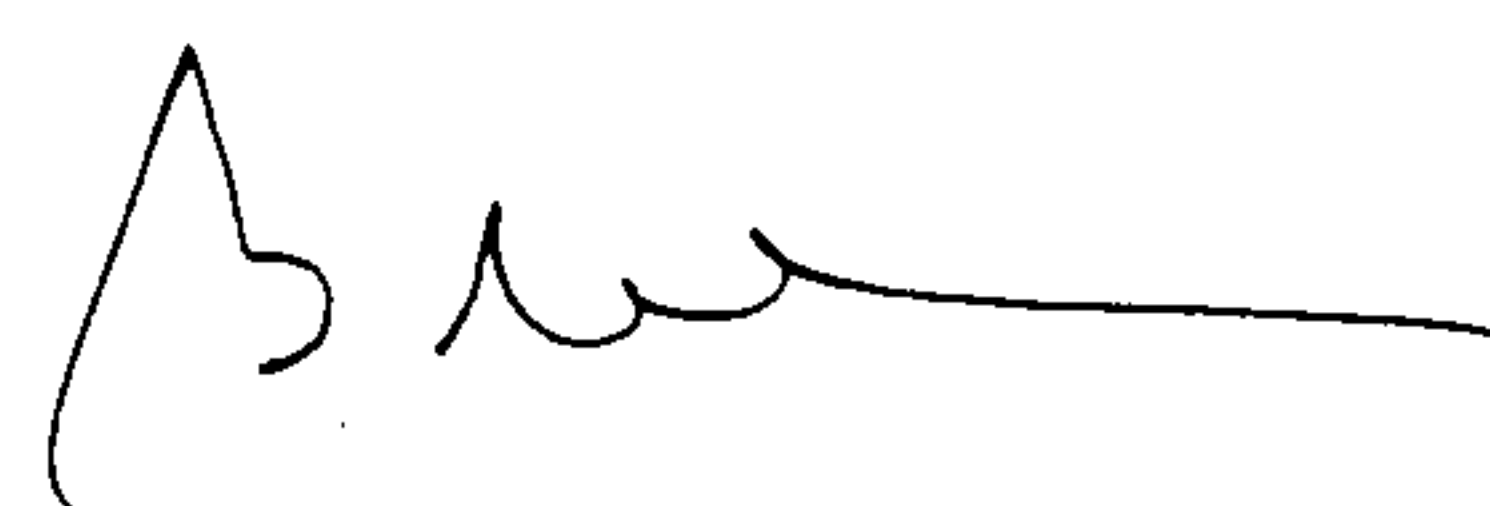
- (ii) *Syed Musharraf Mehdi & Syed v. Frontline Soft Ltd. & Ors.* decided on 9<sup>th</sup> August, 2006 reported in (2007) 135 CompCas 280 (CLB)
- (iii) *Omni India Ltd. & Ors v. Balbir Singh* decided on 14<sup>th</sup> March 1989 reported in (1989) 66 CompCas 903 (Delhi)
- (iv) Decision of the Hon'ble High Court of Madras dated 14<sup>th</sup> June 1978 in the case of *M. C. Duraiswami v. Shakti Sugars Limited.*

49. Coming to the matter of mismanagement and oppression detailed in the petition, the respondents state that the allegations raised are false and vague without any documentary proof.
50. The petitioner was not removed as Director but in fact he was reappointed as Director as desired by the shareholders on 28<sup>th</sup> Annual General Meeting of the company held on 30.09.2008 and therefore the said action does not in any way falls into the category of oppressive to petitioner or mismanagement in the affairs of the respondent company.
51. The respondents submit that due notices were issued to Directors/shareholders including the petitioner and the petitioner group persons but they did not appear the meetings and came up with false and frivolous pleas. As per the provisions of the Companies Act, 1956 and SEBI Regulations pertaining to mergers, acquisitions and change in object of the company, 90% majority shareholders have a right to buy the shares of absentees under existing scheme if a resolution of the majority shareholders are not acceptable to the micro size minority shareholders in a company. These provisions are based on absolutely legal and logical grounds of "wisdom and legal decisions of the substantial majority shareholders". Normally, majority prudent decisions can be considered as an oppression on the petitioner.



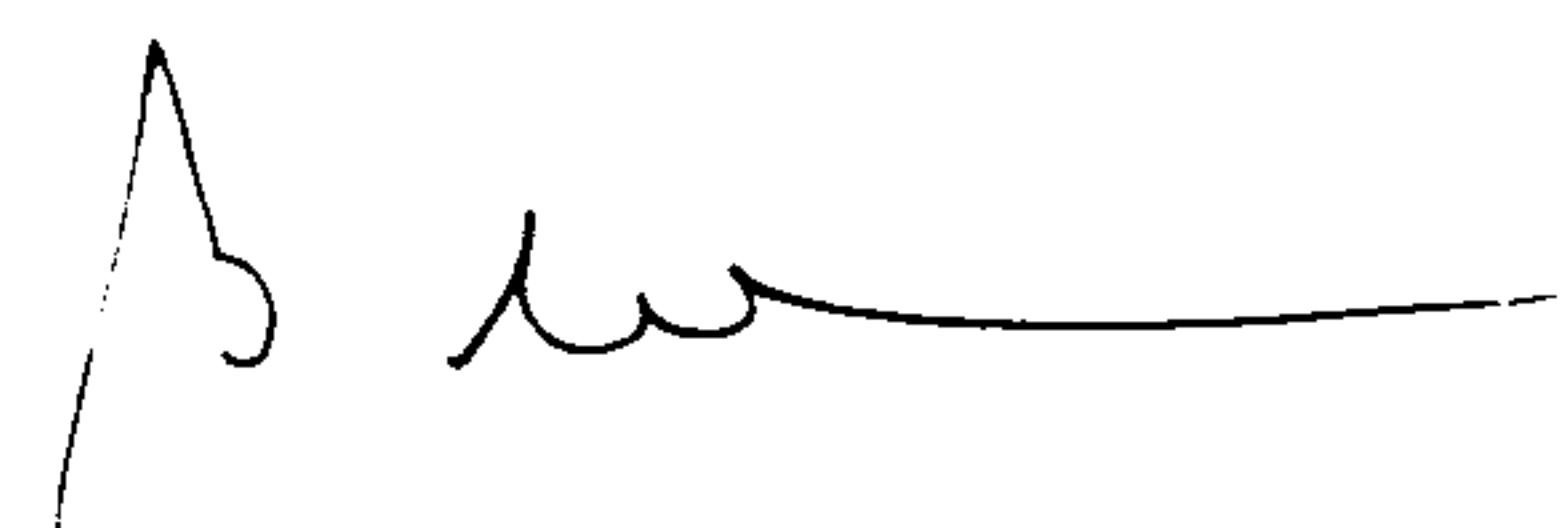
52. The petitioner asked all details of the company viz. minutes of Board Meeting held and resolution for the financial years 2006-07, 2007-08 and 2008-09 as well as details of information sent to Board members and shareholders regarding annual general meeting held during the said three years as well as the copies of information sent to Registrar of Companies for the said three years. According to the respondents none of the provisions of Companies Act, 1956 and 2013 authorise any shareholder to call for, inspect and/or take extracts from the records of the company which are part of the proceedings and communication relating to and or forming part of Board meetings and meetings of any committees thereof.
53. Section 163 of the Companies Act, 1956 and corresponding sections 94 and 88 of the Companies Act, 2013 enables the shareholder to obtain copies of certain registers. In fact, the respondent company asked the petitioner to first inspect and then ask for specific copies which would be provided to him. This was intimated to petitioner vide correspondence dated 16.05.2009 and 23.05.2009. The petitioner instead of inspecting the documents created an imaginary and flimsy story of having received blank papers. On this aspect learned Company Secretary appearing for the respondents placed reliance on the decision in *Sravya Finance and Investment v. Kumars Metallurgical* reported in (2006) 134 CompCas 818 (CLB).

The petitioner has no authority to call for meeting of shareholders of the company. The person who issued notice was not having requisite majority to issue such a notice under the Companies Act, 1956. The petitioner was having 2.16% shares as on the date of issuing the notice. Son of the petitioner, Mr. Rohit Khatri has not even granted his consent to this petition when he was reportedly the mover of the notice of the general meeting. According to the notice, meeting was scheduled to be held on 15.05.2009 but the petitioner stated in the petition that he was stopped at the gate on 08.05.2009.





54. According to the respondents, they sold plot No. 43 after following all due statutory process under the Companies Act and within the knowledge of the lending bank and thereafter the sale proceeds were used to pay bank liability and the remaining proceeds were deposited in the said bank as fixed deposit. Sale of plot No. 43 is an absolute prudent business decision to protect the interest of the respondent company as well as its stakeholders including the petitioner. In the sale of plot No. 43 there was no objection from the lending bank. The petitioner was referring the sale of plot No. 43.
55. The respondents state that, the petitioner, more than once, stated in the petition that the respondents are siphoning off funds without citing a single instance and without producing any documentary evidence. The petitioner also made vague allegations of not giving correct value of stocks to the lending bank. The petitioner is only having 2.4% shares in the respondent company and has not been elected Director in the respondent company since September 2008. The petitioner after seven years is making false claims and stating that he is not allowed to participate in the management. Since May 2009 the petitioner has started writing meaningless letters to the respondent company.
56. During May 2009 the petitioner wrote similar five letters with similar contents. The respondent company gave two replies. From the replies the petitioner understood that he would not be able to make any case out of it and decided not to proceed ahead.
57. Thereafter, the petitioner kept quiet for two years and thereafter started writing similar letters to the respondent company demanding copies of the documents. The petitioner not only wrote letters to the respondents but also to third parties including the auditor of the respondent company. The petitioner wrote eight letters to the respondent company during ten weeks of July-August 2011.



58. The petitioner understood that he would not be able to make any case out of it and decided not to proceed in the matter and remained silent for one year. Thereafter on 22.06.2012 the petitioner sent a notice through his counsel to the respondent which was appropriately replied by the respondents through their advocate on 04.08.2012. Thereafter on 22.06.2012 the petitioner went into shell for three years.
59. The respondent company issued notice claiming Rs. 1.34 crores from the petitioner. After receiving the said notice, the petitioner requested time for repayment of the amount as a pretext that the limitation for filing civil suit will come to an end in three years though it was continuous. This fact is evident from the fact that there is no correspondence from the petitioner between 22.06.2012 to 30.06.2015.
60. The respondents stated that the petitioner has not brought to the notice of the Tribunal that before filing of the present petition, the respondent No. 1 company has already filed a suit for recovery of Rs. 1,34,22,577/- against the present petitioner on 05/10/2015 and the said suit is pending adjudication.
61. Petitioner prepared various documents which was not issued. The said documents are correspondence dated 12.05.2009, dated 21.05.2009, dated 11.07.2011, dated 08.08.2011 and dated 18.08.2011.
62. The respondents submit that they have no intentions to close the 1<sup>st</sup> respondent company. The respondents sold some of its unusable/ immovable properties under the scheme of reorganisation of respondent No. 1 which has been necessitated according to the report of bank and auditors of the company who have advised the 1<sup>st</sup> respondent company. Subsequently, respondent No. 1 have decided to issue right shares and/or sale of some of the unusable assets of the respondent company.



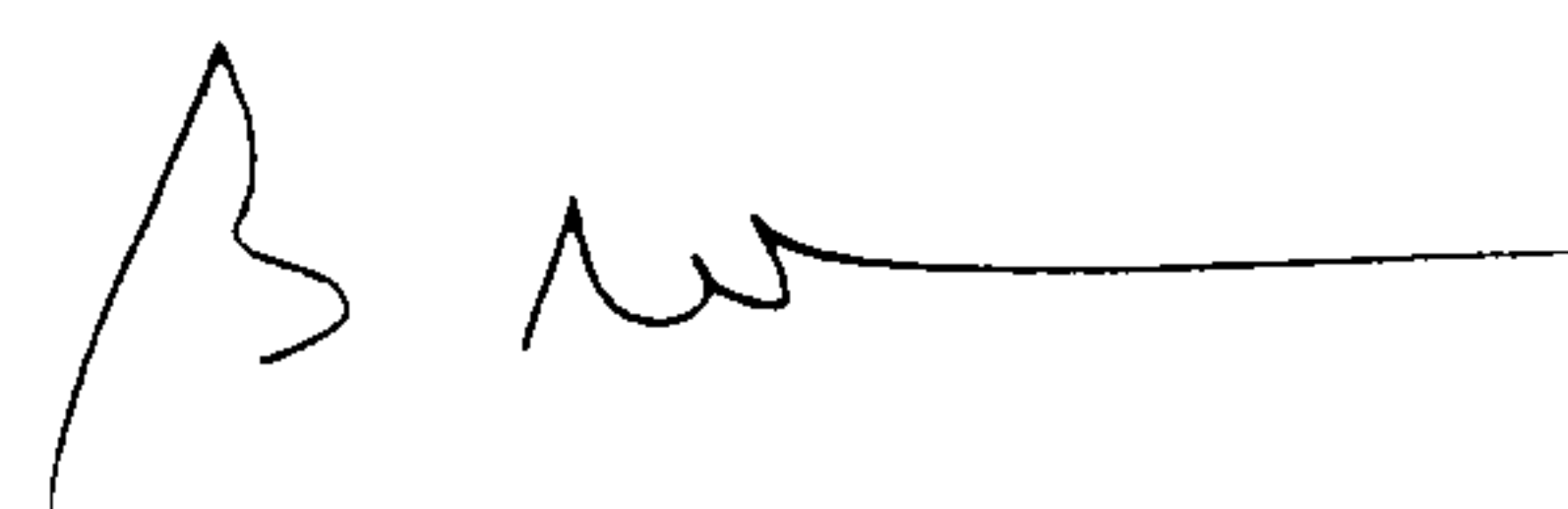
**REJOINDER**

63. In the rejoinder petitioner states that according to Section 1A of Power of Attorney Act, 1882, a Power of Attorney includes any instruments empowering a specified person to act for and in the name of the person executing it.
64. The petitioner has reiterated that he is a competent person and a letter of consent and authority in this regard and a Power of Attorney is placed at Ex. 3 on page Nos. 92-95, and at page No. 209A and 209B.
65. The respondent has demonstrated the share value as Rs. 140/- based on valuation report obtained from CA Ritesh Katariya of Katariya & Co., Indore and one CA Nikhil Bandi of S. Bandi & Co. Basis for arriving at such valuation and copies of financial statements from wherein such values have been arrived at, have still not been provided to the petitioner.
66. The Respondent has not provided financial statements which confirmed the basis for valuation of shares as on 30.09.2016.
67. Even according to the respondent the petitioner was reappointed as Director in the 28<sup>th</sup> Annual General Meeting held on 30.09.2008 and thereafter till such time the petitioner has got right to ask for documents which includes financial statements which would have been made available to him as a Director till 30<sup>th</sup> September, 2008 and thereafter as a shareholder till date.
68. The petitioner is ready to purchase shares of the respondents at Rs. 140/- per share.



69. Based on the pleadings and contentions of both parties the following points emerge for consideration: -

- (1) Whether the petitioner is entitled to make an petition u/s 397 or 398 of the Companies Act, 1956.
- (2) Whether removal of the petitioner as Director of the company on 30.09.2008 amounts to an act of oppression.
- (3) Whether the sale of pharma unit undertaking proposed at Extra Ordinary General Meeting on 07.11.2015 itself is an act of mismanagement.
- (4) Whether notice of shareholders' meeting and Board of Directors' meeting have been served on the petitioner from August, 2006.
- (5) Whether the petitioner was denied minutes of the board meetings held and resolutions for the financial years 2006-07, 2007-08 and 2008-09 as well as Annual General Meeting held during the three years required u/s 163 of the Companies Act, 1956.
- (6) Whether allotting right shares at a higher rate of premium of 40% in proportion of 1:4 reducing the control of petitioner in the company which amounts to the act of oppression.
- (7) Whether the respondents misappropriated funds of the company by showing payments to the non-existing employees.
- (8) Whether the petitioner was denied outstanding remuneration, gratuity, leave encashment etc.
- (9) Whether the respondents are conducting affairs of the company in a manner oppressive and prejudicial to the petitioner.





(10) Whether the respondents made any material change in shareholding of the first respondent company which is likely to affect affairs of the company in a manner prejudicial to the interest of the company

(11) To what relief?

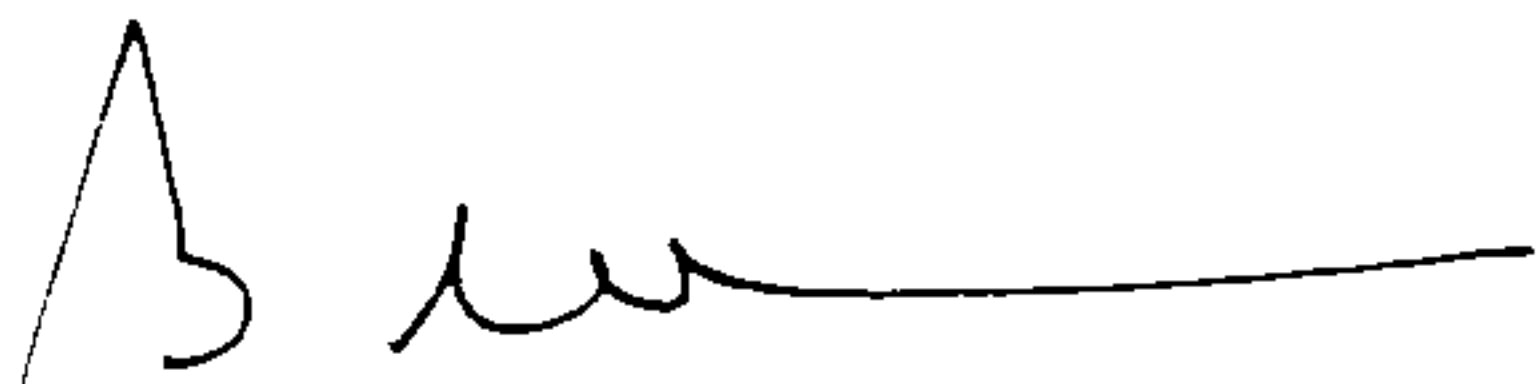
70. Point No.1: -This petition u/s 397, 398, 99, 402 and 403 of the Companies Act, 1956 is filed by the sole petitioner by name Mr. Arjandas B. Khatri.

In the petition in para VI (2) at page 8 it is stated as follows:

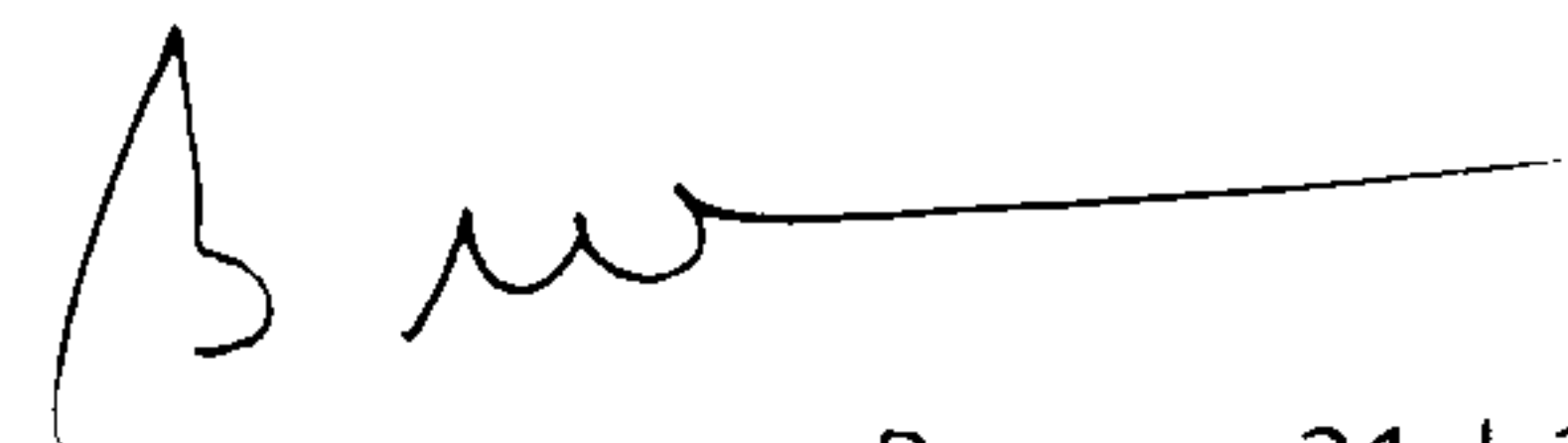
“the petitioner along with his family members owns a total of 27,500 fully paid equity shares of Rs. 100/- each, aggregating to 11% of the equity of the company for last so many years and this is the undisputed position as on the date of filing of the present petition”

71. The petitioner attached a schedule with the petition and filed letter of consent and authority shown as Annexure P-3. The schedule attached to the petition is as follows: -

Sl. No.	Name of member	Address	No. of shares held	Whether all calls and other sums due on shares have been paid
01	Mr. Arjandas B. Khatri	36-B Gopalbaug Indore-452 004 (M.P.)	6002	Yes
02	Mr. Varun A. Khatri	36-B Gopalbaug Indore-452 004 (M.P.)	6002	Yes
03	Mrs. Shakuntala Khatri	36-B Gopalbaug Indore-452 004 (M.P.)	10698	Yes
04	Mr. Rohit Khatri	36-B Gopalbaug Indore-452 004 (M.P.)	5400	Yes



72. A perusal of annexure P-3, letter of consent, discloses that the petitioner and three others shown in the aforesaid schedule altogether having 27500 shares of Rs. 100/- each as on the date of filing this petition. The said consent letter is notarised. The signature of the petitioner is there in the said letter stating that it was accepted by him. It is also signed by one Mr. Sunil Kapoor s/o of Mr. Shyam Kapoor of Indore.
73. A reading of the consent letter dated 18.11.2015 shows that the petitioner and other shareholders shown in the schedule nominated the petitioner and authorised the petitioner to act on their behalf to make a petition u/s 397, 398, 402 & 403 of the Companies Act, 1956 before Company Law Board, National Company Law Tribunal, Maharashtra Bench etc. But signatures of M/s. Varun A. Khatri, Rohit Khatri & Mrs. Shakuntala Khatri are not there in the said consent letter. There is no reference in the consent letter dated 18.11.2015 regarding Attorney Deed dated 03.07.2009 which is at page 209A of the petition. There is also no reference in the entire petition regarding Attorney Deed dated 03.07.2009 but in the rejoinder it is stated that the petitioner is a competent person under the provisions of the Companies Act, 1956 in view of the consent letter and Power of Attorney. The said rejoinder is signed by Mr. Varun Khatri who is son of petitioner as Power of Attorney holder of the petitioner. A copy of the Power of Attorney dated 19.03.2016 executed by the petitioner in favour of his son Mr. Varun Khatri is enclosed with the rejoinder.
74. A perusal of the Attorney Deed dated 03.07.2009 shows that it was executed by Mrs. Shakuntala Khatri, w/o Mr. Arjandas Khatri, Mr. Varun Khatri, and Rohit Khatri hereinafter called as the first party, in favour of Mr. Arjandas B. Khatri, s/o. late Shri Bhajandas Khatri, hereinafter referred as second party.
75. A perusal of the Attorney Deed show that the first party gave all rights of their shares to the second party. The Attorney Deed authorises the second party to enter into any transaction of first party and there is also



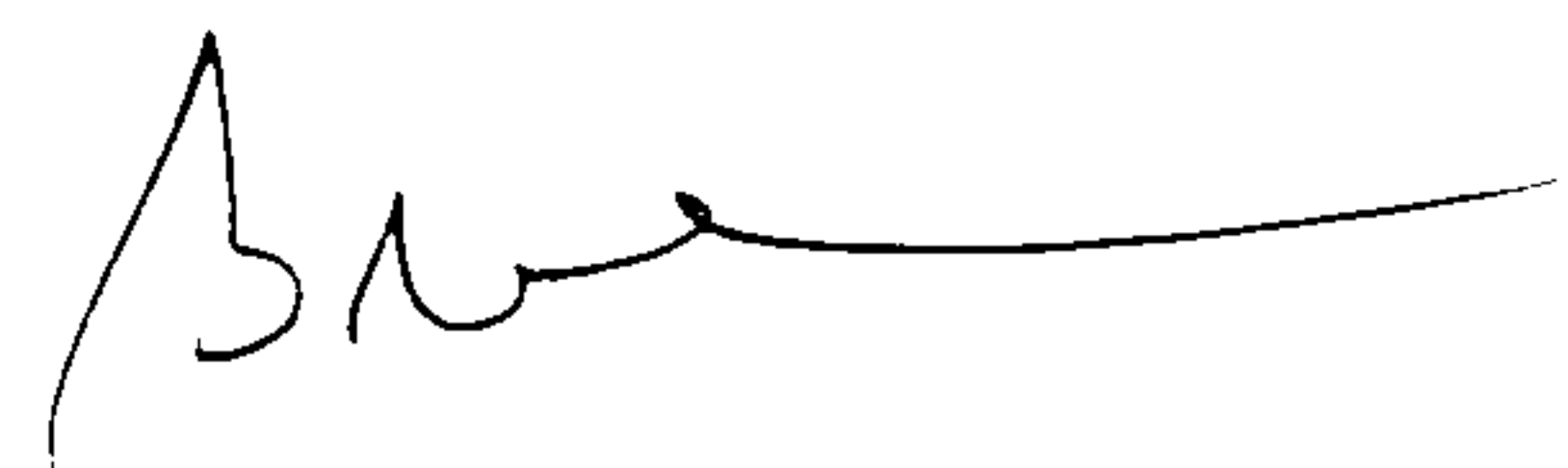
arbitration clause in the Power of Attorney, but there is no mention in the Attorney Deed dated 03.07.2009 authorising the petitioner to file the petition u/s 397 and 398 of the Companies Act, 1956 before the Company Law Board. There is no mention in the Attorney Deed that Mrs. Shakuntala and M/s. Rohit Khatri & Varun Khatri gave consent to the petitioner to file a petition u/s 397 & 398 before the Company Law Board. First of all, there is no reference to the Attorney Deed in the original petition although a copy of it is annexed to the petition. For the first time in the rejoinder it is stated that by virtue of Attorney Deed also the petitioner is entitled to file this petition.

76. In this context, it is necessary to refer to sub-sections 1, 2 & 3 of sec.399 which is reproduced for ready reference: -

**Right to apply under sections 397 and 398**

**399** (1) The following members of a company shall have the right to apply under section 397 or 398:-

- (a) In the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;
- (b) In the case of a company not having a share capital, not less than one-fifth of the total number of its members.



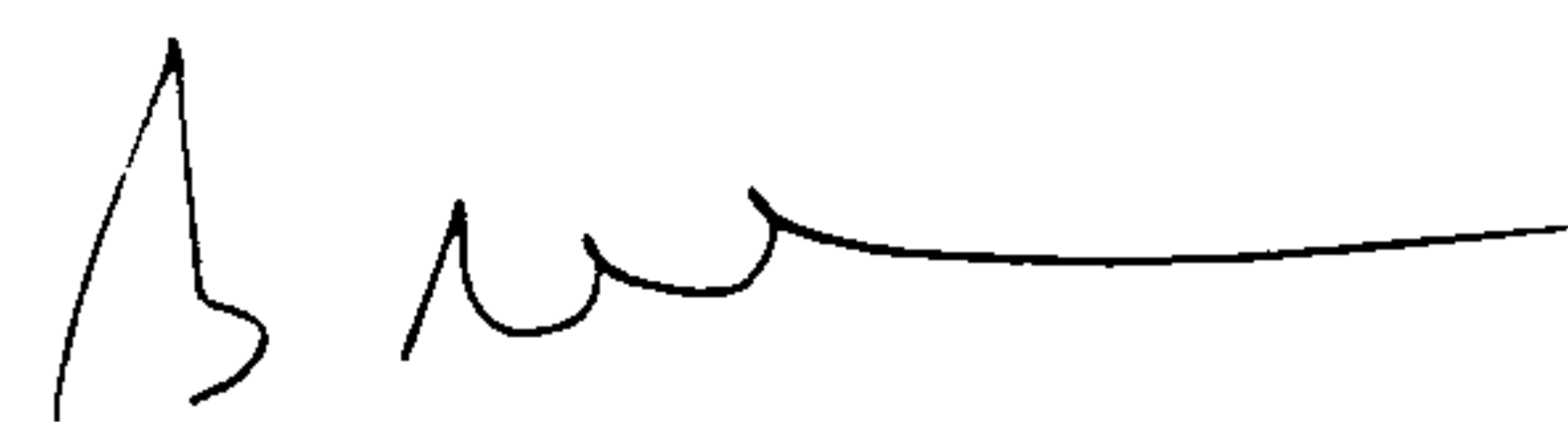
(2) For the purpose of sub-section (1) where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application by virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

77. In view of sub-section 3 of section 399, a member who is entitled to make an application by virtue of sub-section 1, 2 & 3 of section 399 shall obtain consent in writing from the rest of the members.


78. In the case on hand, there is no dispute about the fact that the petitioner along with Mrs. Shakuntala Khatri, M/s. Varun Khatri & Rohit Khatri are having more than 10% of the share capital of the company. Contention in this petition is that M/s. Varun Khatri, Rohit Khatri and Mrs. Shakuntala Khatri gave consent in writing authorising the first petitioner to file this petition. In fact, the petitioner has filed consent letter shown as annexure P-3 to the petition. As already said, the consent letter did not bear the signatures of Mrs. Shakuntala Khatri, M/s. Varun Khatri and Rohit Khatri. In the Attorney Deed dated 03.07.2009 there is no mention that the petitioner was given consent to make application on behalf of Mrs. Shakuntala Khatri, M/s. Varun Khatri and Rohit Khatri.

79. Plea of the respondents as can be seen from the reply filed by them is that, the letter of consent filed by the petitioner is not at all a valid consent. It is further plea of the respondents that the Attorney Deed dated 03.07.2009 did not give any authority or consent to the petitioner to file this petition.



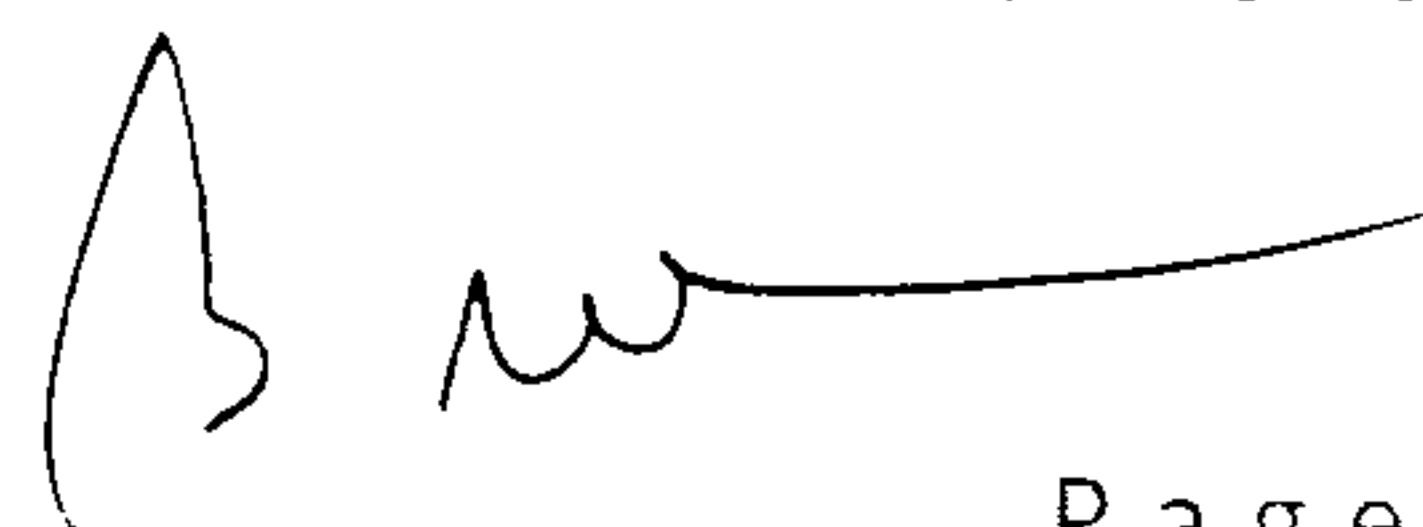


80. Learned Company Secretary for the respondent, relying upon the decisions referred to in the reply contended that, consent of other members must be in writing and other members must give consent applying their mind. He further contended that, consent in writing is mandatory but not directory. It is the contention of the petitioner that, the Attorney Deed coupled with consent letter is sufficient compliance of order u/s 399 (3) of the Companies Act, 1956 and petitioner is entitled to file this petition.
81. Section 399 of the Companies Act, 1956 contemplates consent of other members in writing to the petitioner that made the application. Regulation 18, Sl. No. 27 of Annexure – 3 of the Company Law Board Regulations 1981 contemplates that letter of consent given by other members shall be annexed to the petition.
82. In the case on hand, no doubt that, the letter of consent has been annexed to the petition but it does not bear signatures of the other three members viz. Smt. Shakuntala Khatri, M/s. Rohit Khatri and Varun Khatri. Even it is not the case of the petitioner that consent in writing is not necessary. In fact, the petitioner filed consent in writing but it is not duly signed by other members viz. Smt. Shakuntala Khatri, M/s. Rohit Khatri & Varun Khatri. In order to cover up the same, in the rejoinder, the petitioner relied upon Attorney Deed dated 03.07.2009 which also do not stipulate consent by the other three members. The Attorney Deed gives authority to the petitioner only to deal with the shares of Smt. Shakuntala Khatri, M/s. Rohit Khatri and Varun Khatri. But that does not amount to consent of other members to file this petition.
83. It may be contended that this Tribunal has to see whether in fact, the petitioner and his family members are having more than 10% shares in the total paid up share capital of the company as on the date of filing this petition without going to the technicalities of consent in writing. It can be said that, if the Court is satisfied that the petitioner represents




requisite percentage of paid up shareholding, it can be assumed that, the involvement of the company in litigation is not lightly done.

84. In the case on hand, this petition is filed by the sole petitioner enclosing consent letter said to have been issued by Smt. Shakuntala Khatri, M/s. Rohit Khatri and Varun Khatri but that consent letter is not signed by other three members. In such a case, it is not possible to assume that the petitioner is having the support of the requisite shareholding from other members. It is not a case where the petitioner himself is having requisite shareholding. No doubt petitioner along with Smt. Shakuntala Khatri, M/s. Rohit Khatri & Varun Khatri are having more than 10% share capital but without their consent the petitioner alone is not entitled to file a petition. When such consent is required and, when it is said that consent in writing has been obtained, it must be a document that should be properly executed and legally valid document.
85. The respondents in their reply specifically took up a plea that petitioner has no right to apply for the reliefs u/s 397 and 398 in view of sub-section 3 of section 399. When such is the case, it is for the petitioner to file affidavits of Smt. Shakuntala Khatri, M/s. Rohit Khatri and Varun Khatri to the effect that, they have, in fact, given consent to the petitioner to file this petition. Even in the rejoinder it is not stated that, the above said three members gave consent by way of affidavit. No such affidavits are enclosed even to the rejoinder. On the other hand, the rejoinder is signed by Mr. Varun Khatri on the basis of Power of Attorney dated 19.03.2016 given by the first petitioner.
86. In the consent letter the petitioner has signed stating that he has accepted. There is no mention in the consent letter that the petitioner signed consent letter for and on his behalf and also on behalf of Smt. Shakuntala Khatri, M/s. Rohit Khatri and Varun Khatri as Power of Attorney holder referring to the Attorney Deed dated 03.07.2009. In that view of the matter also, consent letter cannot be taken into consideration as valid consent in writing. In the absence of consent from



Mrs. Shakuntala Khatri, Rohit Khatri and Varun Khatri, the shares held by the Petitioner is only 2.20% in the paid up share capital of the company.

87. Moreover, the petitioner was removed as a Director on 30.09.2008 and this petition was filed in the year 2015. The petitioner has alleged in the petition that, no notice of Annual General Meeting and Board of Directors meeting were issued to him from August, 2006. The petitioner has also sent e-mail dated 18.05.2009 in this regard. Aforesaid facts indicate inaction on the part of the petitioner for a long period. The petitioner having waited for six long years filed this petition without obtaining proper and valid consent.
88. In view of above discussions, it can only be held that, the petitioner is not entitled to apply for any relief u/s 397 and 398.
89. In view of the finding on point No. 1, there is no need to answer the other points.
90. This petition is dismissed for the reason that petitioner is not entitled to file this petition.
91. In view of the dismissal of Main petition, T.P. No. 114-A is closed. There is no order as to costs.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

Pronounced by me in open court on this the 31<sup>st</sup> day of January, 2017.