

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD**Company Application No.37 of 2016****[In Company Petition No. 9 (ND) of 2014]**Dated Monday, the 19th DAY OF DECEMBER, 2016

CORAM: Mr. V.S.R. AVADHANI & Mr. H.P. CHATURVEDI

(Judicial Members)

In the matter of M/s Shefali Papers Limited

Between

1. M/s Golden Vyapar (P) Ltd.,
1. Mr. Sushil Kumar Singh
3. Mr. Prashant Kumar Singh
4. Mr. Ajay Kumar Jain
5. Mrs. Sangeeta Jain
6. Mr. Pawan Goel
7. Mr. Deepak Goel
8. Smt. Anju Goel
9. Mr. Mukesh Goel
10. Mr. Mudit Goel
11. Aakansha Goel
12. Mr. Om Prakash
13. Mrs. Poonam Goel
14. Mr. Gauri Shankar Goel
15. Mr. Baldev Prasad Goel & Sons HUF
16. Mrs. Pushpa Goel
17. Mr. Ajay Kumar Gupta
18. Mr. Raju Jha
19. Mr. Subash Goel
20. Mrs. Sandhya Goel
21. Conecraft Papers Pvt Ltd.,
22. Mr. Jai Kishore Gupta
23. Kiran Agarwal
24. Mr. Manish Agarwal
25. Mr. Rameshwar Prasad Goel
26. Smt. Neelam Agarwal
27. Mr. Praveen Agarwal
28. Somya Agarwal
29. Nisha

...Non-applicants (Petitioners in Company Petition)

AND

1. M/s. Shefali Papers Limited
2. Mr. Gagan Walia
3. Mrs. Aruna Karnwal
- Ms. Rupali Walia

...Applicants (Respondents in Company Petition)

Claim: Petition under Regulation 44 of the Company Law Board Regulations, 1991 to dismiss Company Petition No.9 (ND) of 2014.

Shri Rakesh Kumar & Shri Aditya Nayyar, Advocates for the non-applicants (Petitioners)

Ms. Swasti Tripathi, Practicing Company Secretary for the applicants (Respondents)

*For
conference
K. K. K. K.
19/12/2016*

*2
N. K. K.
19/12/16*

his

The Company Application came before us for hearing in the presence the Advocates above named on various dates and finally on 8.11.2016 and having heard the arguments of both the counsel and having perused the written arguments of both sides and also the material on record, the Bench delivers the following

ORDER

(Per Mr. V.S.R. Avadhani, Judicial Member)

I. The Application was originally filed before the Company Law Board, New Delhi on 21.01.2014. The record made over to this Bench after the constitution, does not indicate that the application was given any number by the CLB and therefore it is re-numbered here. This Company Application is filed by the Respondents in the Company Petition, with a prayer to dismiss the CP on the preliminary objections as follows:

- (i) The Petitioners are not shareholders or Directores of the Company and so they have no locus standi under sec. 399 of the Companies Act, 1956;
- (ii) They have approached the Tribunal instead of Board for Industrial and Financial Reconstruction (BIFR); and,
- (iii) They have approached the Tribunal after delay of 8 years.

We shall refer to the factual matrix of the case for better understanding and to focus our discussion on the material points for deciding this application.

(i) The Company Petitioners (henceforth called as 'non-applicants') complaining certain acts of oppression and mismanagement against the Respondents (henceforth called as 'applicants') sought for the reliefs under sections 58 and 59 of the Companies Act, 2013 read with Sections 397, 398, 399, 402, 403, 406 read with Section 111 of the Companies Act, 1956. The core reliefs are: (1) to declare the Respondents 2 to 4 ceased as Directors of the Company due to illegal, fraudulent, deceptive and highly prejudicial acts; (2) to restrain the Company from alienating the properties, investments and other assets; (3) to restrain the Company and other Respondents from changing, altering, modifying the capital and board structure and suspend the operation of any Board resolutions or the General meeting of members; and (4) To direct Respondent no 4 to restore the funds of One Crore to the Company

(ii) The Company *Shefali Papers Ltd* (hereafter called 'Company') was incorporated in the year 1991; and in 1999 it went to BIFR, having been declared as 'sick company'. The Respondents' group infused funds of Rupees one Crore as evidenced by the order of BIFR dated 23.5.2007 which was utilized for making one time settlement of loan due to Banks and Financial Institutions. As part of the arrangement, the Respondents have acquired shares in the Company as follows:

Sl. NO.	No. of Shares	Date allotment	of	Percentage of share holding
1.	11, 21, 350	21.06.2010		21.44
2.	8, 78, 650	21.06.2010		16.80
3.	5, 01, 450	12.04.2010 to 30.4.2010		9.59
4.	3, 86, 900	30.09.2010		7.40

(iii) It is the case of the Petitioners, during 2006 and 2013 they paid a sum of Rs. 96, 86, 729/- for the revival and rehabilitation of the Company and all together, the petitioners' group paid a sum of Rs. 2, 64, 01, 229 whereas the Respondents did not put in anything during this period for the revival of the Company. After acquisition of shares, except the Petitioners' group and the general public, the Respondents did not hold any percentage of shares in the company. But the Company under the management of the Respondents failed to show the shares held by the Petitioners' group in the Balance Sheets and Annual Returns even though the shares are transferred under the signature of respondent 2 and others as directors, and the share certificates duly endorsed have been delivered to the Petitioners' group. It is pleaded in the Company Petition that the Respondents have illegally disposed off some of the machinery during 2013 worth more than 70 lacks and were intending to sell further. The Petitioners have also made allegations of fraudulent accounting; embezzlement of funds etc against the Respondents but those minutiae is not relevant in the context of deciding the preliminary objections taken by the applicants.

(iv) The Respondents in the Company Petition-the applicants herein, while admitting in their application which is the subject matter of this Order, that during the years 1999 and 2009 till its revival, the Company was before BIFR contended that the Company petition is not maintainable as per Sec. 399 of the Act because, the Petitioners are not Shareholders or Directors of the Company. The Petitioners, if they have any grievances against the Orders or directions passed by the BIFR, they should approach the BIFR only and not the Tribunal. Their other contention is that the Petitioners are guilty of laches in complaining about the events occurred in the light of Order of BIFR dated 8.11.2005 and therefore, the Petition is barred by limitation. They urged to dismiss the Company Petition on the above grounds.

(v) Responding to the said application-the non-applicants, have filed a detailed counter contending inter alia that they are having 54% of the total of the total paid up capital of the Company and that even if the 20 lacks shares (equal to 38%) allotted afresh to them in the EGM dated 14. 6.2010 is excluded, the Petitioners are having 17% which is sufficient to maintain the Petition. It is contended that there was an understanding that after revival of the Company by the BIFR, it would be totally acquired by the Petitioners' group. They have shown in detail the dates and documents evidencing the allotment of shares claimed by them and asserted that even though the share certificates are given to them, the Respondents failed to show them in the Annual Return and balance Sheets fraudulently. The non-applicants therefore pleaded that they have adequate percentage of shares to maintain the Company Petition and that the other disputed facts have to be settled in the final hearing of the Company Petition on merits only.

In the Rejoinder filed by the applicants, they have almost reiterated the pleas taken in the application.

(vi) We have heard the Ld. Counsel for both the parties and perused the written submission made by them to supplement the oral arguments and also the material documents. The questions for determination before us are:

- 1) Whether the Petitioners have not less than one tenth of shares and thus have locus standi to maintain the Company Petition?




2) Whether the questions involved in the Company Petition have to be decided by the Board for Financial Reconstruction? If so the jurisdiction of this Tribunal is barred?

3) Whether the Company Petition is barred by limitation, delay and laches?

II. Scope of the enquiry: Before dealing with the questions above, we have to first bear out what is the span and realm of the present enquiry. The application is filed under Regulation 44 of the Company Law Board Regulations, 1991 which is comparable to Rule 11 of the National Company Law Tribunal Rules 2016. These Regulation and Rule respectively are saving the inherent powers of the former Company Law Board and the present Tribunal. There is no dispute that the CLB and this Tribunal can entertain an application for adjudicating upon the maintainability of the Company Petition, particularly if the Petitioners did not qualify the eligibility criteria prescribed under Sec. 399 of the Act of 1956.

(i) The nature of such application challenging the maintainability of the Company Petition on certain preliminary objections is analogous to the power of civil court to decide the application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure. Explaining the scope of such enquiry the Supreme Court on more than one occasion has laid down the law that the court is precluded from considering the defence of the defendants and their evidence. The view of the Apex Court is that plain language of Order VII Rule 11 of the Code shows that for determination of an application under this provision, the Court has to look into the plaint. At the stage of considering the case for rejection of plaint the stand of the defendants in the written statement or in the application they made under Order VII Rule 11 is wholly immaterial. In all other situations, the claims will have to be adjudicated in the course of the trial only. (Vide: **P. V. Guru Raj Reddy rep by GPA Laxmi Narayan Reddy vs. P. Neeradha Reddy; Bhau Ram vs. Janak Singh & Others.**¹)

(ii) Therefore, if on a meaningful, not formal, reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the Code taking care to see that the grounds mentioned therein are fulfilled.

(iii) The Company Law Board in earlier cases has settled the position that an objection as to the maintainability of the Company Petition is only to be allowed at an initial stage if there is absolutely no doubt that the Petition is not maintainable and that it is a general principle that a petition is to be thrown out at an initial stage if it is unarguable on the demurrer and that the issue of qualification where being a question of fact and law, the correct position is required to be ascertained on hearing the parties on merits as well. (Vide: **Desh Cam Technological Resources P. Ltd and Others vs. Rajendra Keshwani and others**²)

In view of that proposition, we are bound to take into consideration the averments in the Company Petition and the documents enclosed thereto to persuade ourselves whether the Petition is maintainable; and we are precluded from taking into consideration the defence of the applicants. We proceed to examine the case within that limited scope of enquiry.

¹ (2012) 8 SCC 701

² 2009) 150- CompCas 123 (CLB-Prl Bench)

III. Question No. 1: This is pertaining to the *locus standi* of the Petitioners on the ground of their eligibility by possessing one tenth of paid up share capital of the company, as postulated by Sec. 399 of the Act. According to the Petitioners (non-applicants), they have acquired the shares in three trenches as shown in the opening paragraphs of this Orders, totaling 54% of the paid up capital of the Company.

(i) The first trench is on 21.6.2010 in two lots, numbering 11, 21, 350 and 8, 78, 650 shares. The list showing the number of shares allotted to each of the non-applicants 1 to 29 against their names is shown at page 146 of the Petition paper book as Annexure II. This list is pertaining to the shares of 11, 21, 350 in number. The Share Certificates, each having face value of Rs. 5/- and paid up value of Rs. 5/- signed by *Shri Gagan Walia* (Applicant No.2) and *Shri Rameshwar Prasad Goel* (Petitioner No. 25) as Directors issued on 21.06. 2010 in favour of *Poonam Goel* and others of the Petitioner's group are filed in Annexure II at pages 147 to 176. The relevant Minutes of the Board is appearing at page 314 shows that -

"...pursuant to the Special Resolution passed by the members of the Company...dated 14th June 2010, which was produced before this meeting and initialed by the Chairman for the purpose of identification, the consent of the Board be and is hereby accorded to issue and allot 2000000 equity shares of Rs. 5/- each of the Company and accordingly, 2000000 equity shares of Rs. 5/- each of the Company be are hereby allotted to Mudit Goyal and his Associates (as prelist of allottees placed before the meeting) with distinctive Nos. from 3342801 to 5342800 on preferential basis, against the amount of Rs. 1, 00, 00, 000 already received by the company from the Mudit Goyal & his associates by way of unsecured loan..."

(ii) Annexure III, page 177 is showing details of fully paid 5, 01, 450 equity shares transferred from *Gagan Walia* and *Karuna Karanwal* for a sum of Rs. 50, 14, 500/-. Page 178 and 179 shows the details of shares/debentures transferred in favour of Petitioners' group between 30.9.2009 and 30.9.2010 (Vide Annexure III). Likewise pages 191 and 192 contain the details of partly paid up shares transferred from *Gagan Walia*, *Rupali Walia* and 2 others (3, 86, 900 shares for a total consideration of Rs. 38, 69, 000 out of which a sum of Rs. 17, 00, 000 was paid by Petitioners' group) and page 192 contains the details of shares transferred between 30.9.2009 and 30.9.2010 in favour of Petitioners' group. Similarly, the Extract of the Minutes of the EOGM dated 14. 6. 2010 (page 313) reads:

"RESOLVED THAT....in accordance with and conformity to the draft revival scheme as approved by the Hon'ble BIFR vide its order dated 08.11.2005 and supplementary orders dated 23.5.2007 and 6.5.2009, consent of the Company be and is hereby accorded to the Board to create, offer issue and allot 20, 00, 000 equity shares of Rs. 5/-each on preferential basis to Mudit Goyal and his Associates, out of the unsecured loan/Share Application Money obtained by the Company from the said Mudit Goyal and his Associates and used in one time settlement of loans of the Company with banks/financial institutions and used for revival of the Company as approved by the Hon'ble BIFR in its orders"

"RESOLVED FURTHER THAT all the aforesaid that he Board of Directors of the Company be and is hereby authorized to take all such steps as may be necessary for allotment of aforesaid 20, 00, 000 equity shares of Rs. 5/-each to Mudit Goyal and his Associates, which shall be counted and reckoned as co-promoters contribution towards revival of the Company and shall rank *pari passu* with the existing equity share capital of the Company from the date of such allotment"

In paragraph 6.12 of the Company Petition the non-applicants have given the details of the contributions made by their group in various forms as follows:

Sl. No	Nature of contribution	Amount of contribution
1	Equity Contribution	1, 00, 00, 000
2	Unsecured Loan	67, 00, 000
3	Direct payment of UP Sales Tax Authorities	29, 86, 729
4	Purse consideration for purchase of shares	50, 14, 500
5	Part payment of purchase consideration	17, 00, 000

(iii) Thus the stand of the Company Petitioners that they are having more than one tenth of the total paid up capital, is corroborated by the documents including the minutes of the Meeting of Directors and EGOM and the share certificates signed by no other than the 2nd Respondent in the Company Petition, *Shri Gagan Wallia*. As against these pleas and documents of the Company Petitioners, the contention of the Applicants is found from various parts of the Application as below:

(a) It is pertinent to mention that the names of the Petitioners are not reflected in the annual Returns filed by the Respondents Company (para 5 read with Annexure R 2 Colly.); and,

(b) There has never been any allotment of equity shares in favour of the Petitioners herein, as clear from the perusal of the annual returns of the Company between the years 2010 and 2013 (vide Page 6 of the Application).

(iv) Except the above averments, we could not find from the Application of the applicants anything amounting to denial of the documents filed by the Company petitioners in support of the plea of their not possessing requisite shares to qualify the test of Sec. 399. But, in the Rejoinder filed by the applicants (Respondents in the Company Petition) at paragraphs 5 and 6 they have pleaded as follows:

"5. It is submitted that the alleged share transfer forms are incomplete and inappropriate, the said share transfer forms were never executed and no shares were issued/allotted to the Petitioners in pursuance of the alleged share transfer forms. That had there been any transfer in pursuance of the alleged share transfer forms, the same would have reflected Annual Returns of Respondent No. 1 Company for the period ending 2010, 2011, 2012, and 2013. It is however an admitted position that the Annual Returns for period ending 2010, 2011, 2012 and 2013 do not reflect the name of any of the Petitioner as a shareholder in the Respondent No. 1 Company."

"6. That the share certificates annexed with the Petition are of the year 2010, if the said share certificates were issued to the said Petitioners in June 2010, then the same would have reflected in the subsequent Annual Returns of the Respondent No. 1 Company. However, no such shareholding is being reflected in the subsequent Annual Returns of the Respondent NO 1 Company. Therefore, the submissions/averments pertaining to shareholding of the Petitioners in pursuance of the alleged share transfer forms and share certificates hold no legal ground and deserve to be outrightly rejected."

(v) From the above statement made in the Rejoinder filed by the Applicants, the Bench is able to notice that it is not at all the case of the

applicants that the share certificates, or minutes of the meetings relied upon by the non-applicants are fabricated or manipulated or otherwise fictitious. Their sole plea is that those documents reflecting allotment and transfer of shares to the Petitioners' group cannot be accepted because such share transfer is not reflected in the Annual Returns between 2010 and 2013.

(vi) As we have already observed at the beginning, the scope of enquiry does not permit the Tribunal to consider the defence but only to decide the maintainability of the Petition on the averments made in the Company Petition besides the documents filed by the Company Petitioners in support of their plea. Keeping in view this position, we are satisfied that the Petitioners have made out grounds with necessary pleading and documents to show that they are members of the Company. We explicate our reasoning as follows.

(vii) In **Ram Gopal Patwari & others vs. Patwari Exports (P) Ltd & others**³ it has been observed that the prima facie evidence to the shares could be either the share certificate or even the register of members and in the absence of share certificates or entry in the register of members, if a person could establish that certain shares have been allotted to him, then for the purpose of section 399 of the Act, he could be treated as a member. Even though the context is different, the share certificate is the best evidence to prove the Company Petitioner is holding those shares in the absence of any other event or contingency.

(viii) Further, there is no absolute proposition that the Company Petition shall be thrown out if the Petitioner shall not pass the test of eligibility under Sec. 399. The following cases may add strength to this opinion.

(ix) In **Shri Balaji Textile Mills Pvt. Ltd. and Anr vs. Ashok Kavle and Ors.**,⁴ a Division Bench of the Karnataka High Court took the view that the word "member" should be understood in the context in which it is used. It was held that allotment of shares is a matter of contract between the parties and such contract could be either expressed or implied. If a person is treated by the company as its shareholder, his right to membership cannot be questioned by the company at a later point of time on the ground that there was no compliance with the provisions of section 41(2) of the Act. When that finding of the Division Bench was challenged in Appeal before the Supreme Court the court refused to interfere with the findings of the High Court while deciding preliminary issue and held that only during the enquiry in the Company Petition, the Tribunal has to decide the question whether the Petitioners are members of the Company. (Vide: **Balaji Textile Mills Private Limited vs. Ashok Kavle**⁵) The observation of the Apex Court reads:

"On the materials adduced before the court, the court came to the conclusion that there has been substantial compliance with S. 41 (2) of the Companies Act. In the interest of justice we are of the opinion that it is not necessary at this stage to express our opinion about the correctness or otherwise of the view expressed by the High court but we direct that the proceedings under S. 397 & 398 of the Companies Act, will decide this question whether the petitioners are members of the Company, in view of they having agreed to become so in writing, will be

³ (2010) 160 CompCas 116 (CLB-New Delhi)

⁴ (1989) 66 Company Cases 654 (Kar)

⁵ 1988 3 JT 2502

decided in accordance with law. Both the parties will be entitled to adduce further evidence.

(x) Gujarat High Court in **Gulabrai Kalidas Naik and Ors vs. Laxmidas Lallubhai Patel and Ors.**,⁶ held as follows:

"Now, it may be that, in a given case, the petitioners invoking the Court's jurisdiction under sections 397 and 398 are in a position to show that even though their names are not to be found in the register of members of the company, yet they have such an indisputable and unchallengeable title to the membership of the company that the Court may entertain a petition at their instance."

(xi) A Ld. Single judge of the Karnataka High Court in **Srikanta Datta Narasimharaja Wadiyar Vs. Venkateswara Real Estate Enterprises (Pvt.) Ltd. and Ors.**,⁷ endorsing to the view of Gujarat High Court remarked thus:

"So, the Gujarat High Court has not categorically ruled that the petition should be thrown out on the ground that the petitioner has not got on the register of members. If, in a given case, it is shown that, though the name of a person is not shown in the register of members, if he had been treated as a member by the company, the company court can always exercise its equity jurisdiction. This court should not decline to exercise its equity jurisdiction on the ground of mere technicality..."

(xii) It would thus appear that the Courts are not prepared to lay down as an absolute proposition of law that action under section 397 and 398 can be taken only by a person whose name is found in the register of members maintained by the company. Though a general proposition to this effect was laid down, still an exception was recognised to the general rule namely that in a given case a person who can show an undisputable and unchallengeable title to the membership of the company may file a petition under section 397/398, even though his name is not formally entered in the register of members.

(xiii) It seems to us, in light of the authorities cited above, that the interpretation to be placed on section 399 vis-a-vis petitions filed seeking relief from oppression and mismanagement should be governed not strictly by the requirements of the section, so long as in substance and effect the person complaining of acts of oppression and mismanagement has been recognised or treated as shareholder/member by the conduct of the company, and that in giving effect to the remedies against the grievance, considerations of equity and justice should be allowed to prevail.

(xiv) Coming to the facts of the case, now that the Petitioners in the CP have propounded their case as members of the Company holding not less than one tenth of the paid up share capital as on the date of filing of the Company Petition and further contended that the Respondents have fraudulently and deliberately omitted to show the transfer of the shares in favour of the Petitioners' group in the Annual Returns. This is a question of fact. Further, the contention of the Applicants/Respondents that the Share Transfer Forms are not properly submitted and that transfer is not affected etc are the questions of fact to be decided in the enquiry in the Company Petition on merits. For the purpose of maintainability of the Company Petition, therefore, it

⁶ (1977) 47 Company Cases 151 (Guj)

⁷ 1990) 68 Company Cases 216 (Kar)

is sufficient to hold them eligible because the Petitioners have been issued share certificates, and the Meeting of Members and the Meeting of Board of Directors have approved the allotment of shares. There is no denial that the total number of shares thus decided to be transferred in favour of the Company Petitioners and also reflected in the share certificates issued to them is amounting to not less than one tenth of the paid up capital of the Company as on the date of filing of the Company Petition.

IV. Question No. 2: The contention of the applicants is that because the Company Petitioners' group has agreed to become co-promoter of the Company and agreed to invest a considerable amount in order to revive the company as per orders passed by the BIFR dated 8.11.2005, 23.5.2007 and 6.5.2009, grievance, if any, of the Petitioners shall be ventilated by approaching the BIFR only. To support this contention, the applicants rely on ***Pasupati Fabrics Ltd and others vs. Priyanka Overseas Pvt Ltd and Others Co⁸*** of Delhi High Court.

(i) We have scrutinized the Order of BIFR dated 23.5.2007. The relevant portion of the Order reads:

"(a) The company would be permitted to reduce the value of the Company's equity by 50% and the Company would also be exempted from the applicable provisions, viz., provisions under section 100-103 of the Companies Act, 1956, in this regard;

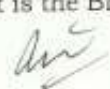
(b) The Company would be permitted to convert the fund infused by the associates of the existing Promoter(s) viz. M/s Mudit Goyal and Association (MGA) in the form of equity and the company would also be exempted from the applicable provisions of"

(ii) The other two Orders of the BIFR are not filed before us. What the above referred order of the BIFR indicates is that the investment made by the Petitioners' group was converted to equity. In *Pasupati Fabrics* case (Supra), the dispute arose as to the allotment of shares to IDBI as per the sanctioned scheme formulated by the BIFR, without following the provisions of the Act and Rules and that dispute was between the co-promoters inter se, who became co-promoters only on the strength of the BIFR Orders and not otherwise. The dispute was as to who was a promoter as per orders of the Board. In that context, the High Court came to hold thus:

"54. Once the legal position and scope of the two Acts is understood in the manner explained above, the irresistible conclusion would be that for all matters relating to the SS, it is the BIFR alone which shall have the jurisdiction. Notwithstanding, attempt is made by learned senior counsel for Mr. Raj Kumar Jain to contend that issues raised could be dealt with by the CLB..."

(iii) In fact, in the reported case, the parties have moved the BIFR seeking clarification of its order but the BIFR rejected that Petition. Then they moved the CLB which has ordered their Petition. Upsetting the order of CLB, The High Court commented in this background that:

"69. Similarly, the CLB was wrong in rejecting the contention of the appellants herein that merely because the BIFR had rejected the application of the respondents for clarification on the ground of delay and laches and not on merits, the CLB could go into that question. It is a curious way of assuming jurisdiction. Once it is held that it is the BIFR



which could issue such a clarification and application was also filed before the BIFR, if the grievance is that the said application is wrongly dismissed on the ground of delay and laches, the appropriate remedy is to challenge the order. This step, in fact, has been taken by the respondents herein and appeal has been filed."

Referring to the above view in *Pasupati Fabrics Ltd.*, the Company Law Board in **S.S. Organics Ltd and V.N. Sunanda Reddy vs. B. Subba Reddy**⁹ observed -

"...any allegation relating to non compliance with the scheme has to be agitated before the BIFR in terms of the provisions of SICA and further that the CLB would not interfere with the jurisdiction of BIFR in relation to the matters arising out of a scheme sanctioned by BIFR..."

(iv) It is therefore clear that in *Pasupati* case strongly relied upon by the applicants, the dispute was as to the interpretation of the Order of the BIFR, particularly whether certain person or institution is 'promoter' as per the approved scheme. That clarification could not be given by CLB and it is within the domain of the BIFR only. It is not the dispute on hand involving the interpretation of the Order of the BIFR. The BIFR has clearly declared in the order dated 23.5.2007 that the company is permitted to convert the fund infused by the associates of "the existing promoters viz. 'M/s Mudit Goyal and Associates" in the form of equity. Evidently, the facts of the case on hand do not show that the disputes arose out of the orders of BIFR. The dispute before us is obviously different from the BIFR orders. Thereby, there cannot be any confusion in the minds of the stake holders of the draft scheme formulated and approved by the Board for seeking any clarification or further direction. As per the documents of the Petitioners, they have become share holders and therefore, any dispute between the shareholders and the company, in terms of minority and majority groups, while dealing with management of affairs of the company, would fall within the ambit of a dispute for resolution by the Tribunal only.

We therefore hold that the Company Petition is maintainable in this Tribunal for the reliefs claimed therein on the complaint of oppression and mismanagement.

V. Question No. 3: Yet other grounds urged by the applicants to dismiss the Company Petition at the threshold are limitation, delay and laches. Limitation, delay and laches are not pure questions of law but they are mixed questions of fact and law which cannot be decided summarily in an application to dismiss the main proceedings on preliminary grounds. Reference may be had from certain decisions cited at the Bar on behalf of the non-applicants viz., **Re: Firebricks and Potteries Pvt Ltd and Others vs. Devraj Dhanaram**¹⁰; **Crystal Island Port P. Ltd vs. Ashok Chawla**¹¹. Therefore, we find that these questions cannot be decided as preliminary issues but shall be heard and decided in the main Petition on merits only.

mi

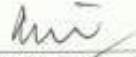
⁹ (2006) 132 CompCas 92

¹⁰ (2008) 145 CompCas 106 (CLB)

¹¹ (2010) 156 CompCas 151 (CLB)

VI. Result: In the result of the findings recorded above, the Company Application is devoid of merits and it is dismissed. We direct that in the Company Petition the pleadings shall be completed within two weeks so that the Company Petition shall be listed for final hearing without further delay. No order as to costs in this Application.

Typed by self, corrected and pronounced in open Court this Monday, the 19th Day of December, 2016.



V.S.R. AVADHANI (JDL. MEMBER)



H.P. CHATURVEDI (JDL. MEMBER)