

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, MUMBAI**

**T.C.P. NO.36/397, 398/NCLT/MB/2014 &**

**C.P. NO.1/245/NCLT/MB/MAH/2016**

CORAM:

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

In the matter of Sections 397 & 398 of the Companies Act, 1956.  
and Section 245 of the Companies Act, 2013.

**PARTIES IN TCP 36/2014**

Mr. R. Prasanth .. Petitioner

V/s.

UBC Engineers Private Limited &  
Ors. .. Respondents

**PARTIES IN CP 1/2016**

Mr. K.N. Pillai & Ors. .. Petitioner

V/s.

Mr. R. Prasanth & Ors.  
.. Respondents

**PETITIONER IN TCP 36/2014**

Mr. R. Prasanth

**RESPONDENTS IN TCP 36/2014**

- |    |                              |    |                 |
|----|------------------------------|----|-----------------|
| 1. | M/s. UBC Engineers Pvt. Ltd. | .. | Respondent No.1 |
| 2. | Mr. K.N. Pillai              | .. | Respondent No.2 |
| 3. | Mr. Kailash Barde            | .. | Respondent No.3 |
| 4. | Mr. Pramod N. Pillai         | .. | Respondent No.4 |
| 5. | Mr. Mohammed Salim           | .. | Respondent No.5 |

**PETITIONERS IN CP 1/2016**

- |    |                   |    |                 |
|----|-------------------|----|-----------------|
| 1. | Mr. K.N. Pillai   | .. | Petitioner No.1 |
| 2. | Mr. Kailash Barde | .. | Petitioner No.2 |

**RESPONDENTS IN CP 1/2016**

1. Mr. R. Prasanth .. Respondent No.1
2. M/s. UBC Engineers Pvt. Ltd. .. Respondent No.2
3. M/s. SAP Enterprises .. Respondent No.3
4. M/s. SAP Marine Infra Pvt. Ltd. .. Respondent No.4

**PRESENT ON BEHALF OF THE PARTIES:**

**FOR THE PETITIONER IN CP 36/2014 & FOR THE RESPONDENTS IN CP 1/2016**

Mr. Bidan Chandran, Advocate

**FOR THE RESPONDENTS IN CP 36/2014 & FOR THE PETITIONERS IN CP 1/2016**

Ms. Prachi Manekar-Wazalwar, Advocate

**ORDER**

**Reserved on:05.01.2017**

**Pronounced on: 06.02.2017**

1. These two Petitions, now under consideration, are in the nature of cross-petitions. C.P. 36/2014 was filed on 19<sup>th</sup> May, 2014 before the CLB and C.P. 01/2016 was filed on 8<sup>th</sup> June, 2016 before NCLT. The respective Ld. Representatives have stated that C.P. 36/2014 is the main Petition, hence proposed to argue first this C.P.

**BRIEF FACTS & BACKGROUND: -**

2. The grievance of the Petitioner as emerging from the Petition is summarised below to keep brevity in mind.

2.1 The Respondent No.1 Company viz. M/s. UBC Engineers Pvt. Ltd. was incorporated on 20<sup>th</sup> April, 2005, having its Registered Office at Belapur, Navi Mumbai. The main business is to undertake civil construction contracts of Military Engineering Services. The Company is registered as Government Contractor. The authorized shareholding pattern of the Company is stated to be as under:-

1.	Mr. K. N. Pillai	52,000 shares	First Director since incorporation
2	Mr. Kailash Barde	24,000 shares	First Director since incorporation
	Mr. R. Prasanth	24,000 shares	First Director since incorporation
Total		100000 shares	

2.2 However, the issued, subscribed and paid up shareholding was as under:-

1.	Mr. K. N. Pillai	20,800 shares	52%
2	Mr. Kailash Barde	9,600 shares	24%
	Mr. R. Prasanth	9,600 shares	24%
Total		40,000 shares	100%

2.3 The Petitioner was given the responsibility as 'Director In-charge - MES Projects'. The Petitioner's role and responsibility was to give directions to the Project Managers and to resolve the technical issues. According to the Petitioner, he happened to be the key person to look after the projects, to obtain day-to-day progress report of the projects and also to meet higher officials of the government departments. The other Directors were involved in administration work of the Company. Since the Petitioner was not assigned administrative responsibility, therefore, he has not

interfered with the day-to-day affairs of the Company. He had implicit faith in Respondent No.2 Mr. K.N. Pillai. The allegation is that due to the conduct of R-2 and certain developments the faith was dented. R-2 has consolidated all the powers while the Petitioner was away looking after the projects at various far off sites. R-2 had laid foundation to take over the Company in connivance with his son. The allegation is that with the connivance of Respondent Nos. 3 to 5 the assets of the Company have also been siphoned. The Petitioner was deliberately kept away from the Head Office as well as the management of the Company. However, whenever in town the Petitioner had attended the office and side-by-side also conducted the meetings with Colaba MES Project Manager. The meeting of the Board of Directors was not called regularly. According to the Petitioner, the last Board meeting was conducted on 11<sup>th</sup> January, 2007.

2.4 The Petitioner has inspected some of the records and shocked to notice that one of the premises was transferred in the name of the Respondent No.2 without any Board Resolution. The Petitioner was kept in dark and mischievously obtained his signature to transfer the office property on the ground of offering the property for the purpose of security to MES. Later on, the office premises was substituted with a plot of land owned by the Company situated at Dighoda. Once the office premises was released by MES authorities, the Respondent No.2 has later on mischievously transferred the said premises in his name and the Petitioner was kept in dark.

2.5 The Respondent No.2 started collecting the rent of the said premises from the Company. The steps were taken without Board Resolution.

2.6 Next allegation is that Four partnership firms were floated by R-2, all having registered office at the address of the Company. The services of the staff were utilized for personal gain and for the work of the firms causing huge loss to R1 Company. The expenses were booked in the accounts of R1 Company. There is an allegation that a huge amount of ₹1.50 crore was siphoned from the Company by R2, towards material and labour for the construction of bungalow owned by Respondent No.2. Respondent No.2 has constructed his bungalow at Kharghar, Navi Mumbai by misappropriating the funds of the Company. The Petitioner has placed reliance on some of the invoices to demonstrate that although the building material was supplied for the construction of the said bungalow but accounted for in the accounts of the R1 Company.

2.7 The next allegation is that more than ₹15 lakhs were siphoned off and used for the alteration work of another bungalow situated in Kochi, owned by the wife of R2. The construction material and the manpower of the R-1 was mis-utilized.

2.8 Further, an allegation is that a loan of 24,10,000/- was given to M/s. Unibuild Engineers, a partnership firm of R2 along with other Respondents i.e. R3 to R5. On the other hand, the Company had taken loans from banks and financial institutions on high rate of interest. The loan was given by R1 to interested Directors without informing the Petitioner.

2.9 An attempt was made to fraudulently replace the name of the Petitioner, therefore, Form No.20B was submitted to the RoC and in place of the Petitioner the name of the R4 was shown as holder of 9,600 shares of R1 Company. When it was detected the Respondents have rectified the said fault.

2.10 When the Petitioner has objected the alleged *mala fide* activities the benefits such as salary of ₹70,000/- per month and travel allowance, etc. were stopped. The benefits were arbitrarily withdrawn without any notice in advance.

2.11 The Petitioner has received Notice of EOGM to be held on 29<sup>th</sup> April, 2014 with the Agenda to remove the Petitioner from the Board of Directors. The Notices or letters were deliberately despatched belatedly or backdated so that the Petitioner could not have time to reply or react. Thereupon, the salary of the driver of the Petitioner was also stopped. The Petitioner has narrated few instances that a letter dated 1<sup>st</sup> April, 2014 was despatched on 4<sup>th</sup> April, 2014 which was delivered on 8<sup>th</sup> April, 2014. Likewise, a letter dated 7<sup>th</sup> April, 2014 was despatched on 10<sup>th</sup> April, 2014 and received by the Petitioner on 12<sup>th</sup> April, 2014. Those Notices were only facades to remove the Petitioner from the Company without affording a chance to clarify his position. As per the provisions of the Companies Act, 21 days' prior Notice is mandatory for holding AGM which was not observed by the Respondents.

2.12 The Company had never distributed dividend and the profits were retained for the purpose of the business. The Petitioner was told lies by the Respondents that the dividends would be declared when the Company would become financially strong.

2.13 The Petitioner has sought certain clarification and also demanded inspection of the accounts, however, refused. The documents were forged by the Respondents. He was abruptly removed from the 'Kochi Project' and R2 had taken over the charge. The ulterior motive was to carry out alteration work at the bungalow of his wife in Kochi by using the funds of the Company.

2.14 The next allegation is that the bungalow at Navi Mumbai of Respondent No.2 was constructed by using the money of the Company. The invoices of building material were raised in the name of the Company, but used for the construction of bungalow.

**ARGUMENTS from PETITIONER'S side:-**

3. From the side of the Petitioner, Ld. Advocate Mr. Bidan Chandran appeared and argued at length that all the other Directors have joined hands and illegally removed the Petitioner. He has pleaded that malpractice was committed by the Respondents. He has pleaded that being in minority the Petitioner was oppressed. Also the affairs of the Company were mismanaged. To corroborate the allegations, attention was drawn on one of the invoices (No.116) of 'Bharat Buildcom' of ₹36,527/- dated 31<sup>st</sup> January, 2014 which was issued in the name of R1 Company but the site mentioned was 'Kharghar'. Ld. Counsel has, therefore, tried to convey that the building material was not supplied at the address of the office, but it was supplied for the personal use of R2. On identical manner another invoice (No. 98) of 15<sup>th</sup> December, 2013 of ₹36,527/- is also placed on record. The building material was delivered at Kharghar. According to the argument no building material was required at the office of the company and there was no repair work, even then there were invoices of Nirmal Agencies dated 2<sup>nd</sup> April, 2014 for PVC pipeline, PVC bend, etc., etc. totalling ₹71,367/- accounted for in the books of the Company. All that building material of Nirmal Agency was also delivered at Kharghar.

3.1 Ld. Counsel has drawn attention on a letter dated 1<sup>st</sup> April, 2014 addressed to the Petitioner written by Mr. K.N. Pillai in the capacity of Managing Director informing the cancellation of



remuneration and cancellation of benefits of a Director. It was pointed-out that the reasons given were incorrect and not legally sustainable in the eyes of law such as non-attending the office, non-cooperation, not looking after regional office at Kochi, responsibility of losses of 'Kochi Project', etc. According to the Ld. Representative, all these allegations were baseless because the Petitioner was not expected to be present at the head office since he was assigned to look after the 'Kochi Project'. A Notice for his removal was dated 7<sup>th</sup> April, 2014 and the date of Board meeting at the office of the Company was also scheduled for 7<sup>th</sup> April, 2014. However, the EOGM was later on deferred to 29<sup>th</sup> April, 2014 with the Agenda to remove the Petitioner from the directorship. There were no systematic dates of meeting because vide one explanatory statement u/s 173 of the Companies Act, 1956 dated 7<sup>th</sup> April, 2014 it was resolved that the Petitioner was removed from the directorship from 1st April, 2014. The Petitioner has given a detailed reply to Company on 22<sup>nd</sup> April, 2014 explaining his position but overlooked. In the said letter, the Petitioner has explicitly indicated several discrepancies in the accounts of the Company. Ld. Counsel has concluded that this is a clear case of oppression of one of the directors / shareholders and mismanagement of the Company. Since it is a case of oppression and mismanagement, therefore, an Order should be passed to disqualify the Directors from the Respondent No.1 Company and a Receiver should be appointed to manage the business of the Company. The constitution of the Board should also be changed and Respondent No.1 Company be directed to purchase the shares of R2 and R3.

3.2 The Ld. Counsel of the Petitioner has placed reliance on the decision of **Life Insurance Corporation of India vs. Escorts Limited (1986) 1 Supreme Court Cases 264** for the legal proposition that a duty is casted upon the management to disclose in



an explanatory note all material facts relating to the Resolution coming up for General Meeting to enable the shareholders to form a judgement. The Petitioner as a Director was removed without assigning due reasons and also without explaining to the shareholders. The removal was illegal and bad in law.

3.3 One more Case Law is cited viz. **S.P. Chengalvaraya Naidu (Dead) by LRS vs Jagannath (Dead) by LRS and Others, Civil Appeal No. 994 of 1972 – decided on October 27, 1993, (1994) 1 Supreme Court Cases 1** for the legal proposition that on the ground of fraud, even if a decree is obtained by non-disclosure of true facts, such decree is liable to be set aside. Therefore, the argument is that the Respondent No.2 has created personal assets by playing fraud on the Petitioner and the Respondent No.1 Company.

#### **ARGUMENTS from RESPONDENTS's side :-**

4. From the side of the Respondents, Ld. Advocate Ms. Prachi Manekar–Wazalwar appeared and stated at the outset that there was a proprietary concern of Mr. K.N. Pillai under the nomenclature 'United Building Company'. When the Company in question was incorporated on 20<sup>th</sup> of April, 2005 the Petitioner was an employee of R2. Likewise, R3 Mr. Kailash Barde was also an employee and both of them were made directors of the Company. The Company got registered itself as a Civil Contractor with MES (Military Engineering Services) and DGNP (Director General of Naval Project). The Petitioner has not only neglected the work of the Company but managed to run his own partnership firm viz. S.A.P. Enterprises. This partnership firm had two partners, the Petitioner and his wife. The Petitioner has managed to register the said partnership firm with DGNP (Vishakhapatnam). Behind the back of R-1, the Petitioner had

taken several projects in the name of his firm S.A.P. Enterprises. He has also started bidding for projects in competition with R-1. From the office of MES it was informed that for a particular project the Petitioner has participated in the bidding in favour of his firm. He has also started taking projects in Goa and other places in competition with the projects of the Respondent No.1 Company. Ld. Counsel has informed that the Petitioner had deliberately caused losses to R1. He was assigned the 'Kochi Project' which was neglected by him resulting into losses. Since he was cheating with the Company and running a competitive business, hence he was removed from the directorship. Ld. Counsel has pointed out that at that juncture his removal from the directorship was stayed by the Hon'ble Company Law Board vide an Order dated 9<sup>th</sup> April, 2015. This Petition was filed on 19<sup>th</sup> May, 2014 as a revenge when he was removed from the directorship w.e.f. 1<sup>st</sup> April, 2014. Ld. Counsel has responded point wise as under.

4.1 In respect of the allegation of transfer of Belapur Plot (G-36) the explanation was that for the purpose of registration as a Civil Contractor with Indian Navy and immovable property was required to be shown in the name of UBC (R1). The said property was originally belonged to R2 and his wife. The R2 had made a sacrifice and transferred the said property in the name of UBC. Later on, after about three years, when UBC was financially in a position a plot at Uran Dighode was purchased by UBC. Thereafter the Belapur plot (G-36) was returned to R2. The Petitioner was privy to all those facts. The Petitioner has signed the Affidavits when for a brief period of three years the property was given to the Company. It was done merely to complete certain formalities pertaining to MES registration. He has also signed the statement of accounts and balance sheets wherein the said transaction was duly recorded and approved by the

Board. Even then, now raised false allegation. The allegation being baseless deserves to be rejected.

4.2 About the allegation in respect of Kochi bungalow, the same was used as a regional office at Kochi since 2012. The Petitioner himself used to stay in the said bungalow to supervise the 'Kochi Project'. The VAT Registration, MES correspondence and the address as regional office of UBC, all were from the said address. The renovation was required to maintain good regional office which was from time-to-time informed to the Petitioner. At that point of time, he had not objected. In total, about ₹15 lakhs were incurred for renovation. Ld. Counsel has pleaded that the expenditure on renovation was duly reflected in the books of accounts and the Petitioner was also duly informed.

4.3 The Petitioner has breached his fiduciary duties. He has started another concern doing the same business due to which the R-1 Company suffered financially and market reputation . The Petitioner has promoted his personal business and defamed the R-1. He has not complied with the commitments given to the Government Offices due to which the name of R1 Company was defamed. Because of all these activities, it was decided to remove him from the directorship of R-1 Company. The Petitioner was given sufficient time. He was served with proper Notice. Initially EOGM was convened on 29<sup>th</sup> April, 2014, but due to the introduction of Companies Act, 2013 provisions, another meeting was called on 12<sup>th</sup> May, 2014 by due service of notice, much in advance, through e-mail dated 3<sup>rd</sup> May, 2014. Notice was also served by courier. Acknowledgement is on record. Therefore, it is pleaded that the allegation of irregular intimation or improper service of Notice is factually and legally wrong.

4.4 Ld. Representative has negated point-wise the allegations. In respect of siphoning of the funds, the argument is that merely a bald allegation has been made without any supporting evidence. The Petition does not contain at all the proof of transfer of funds for personal use of the Respondents. Few building material bills have been annexed, that too in respect of Kharghar property. The said property was used as a storehouse to store building material and other material because the company was planning to establish a project. There was JNPT Project expected to be carried out with Terex Norells (a shipping company of China), however, that could not be worked out. Instead of that, another project at Pipava was given which resulted into good profit. In support, various e-mails exchanged and letter written are relied upon. The property in question at Kharghar was approved by Terex officials and thereafter the Respondent No.1 and Terex have also entered into a distributorship agreement. UBC was under obligation to arrange a distributor's office near JNPT. Ld. Counsel has also intimated that on 21<sup>st</sup> June, 2014 a Board meeting was held and a Resolution was passed to allow the Petitioner to take inspection of such expenses. There was no misappropriation, hence at that time the Petitioner has not made any comment or allegation, Ld. Representative has pleaded.

4.5 There is an allegation that the name of the Petitioner was omitted from the Forms submitted to RoC, but as per the Respondents, the Petitioner had not intimated DIN due to which the name of the Petitioner could not be mentioned. However, when it was intimated, the due correction was made.

4.6 In respect of the allegation that the loans were given by R1 to the concerns owned by R2, the reply is that approximately a temporary loan of ₹24 lakhs was given to Unibuild Engineers. The

Petitioner has not annexed the complete statement of bank account to hide the true fact. The correct fact was that on 25<sup>th</sup> April, 2014 ₹15 lakhs were returned through cheque. That transaction was duly recorded in the books of accounts of R1. Likewise, on 26<sup>th</sup> April, 2014 ₹9.54 lakhs were returned. The bank statement is an authoritative proof which was deliberately concealed by the Petitioner. Ld. Counsel has, therefore, pleaded that the Petitioner has not filed this Petition with clean intention.

4.7 The Petitioner was removed because of his negligence and continuous absence from the workplace. He was served with Notice, even then, he has neither replied nor attended. Rather, on 8<sup>th</sup> May, 2014, on the complaint of the Petitioner, a Criminal Case was lodged against the Respondents. The Compilation consists the date-wise details of Notices issued and the Board meetings held. All the formalities were completed as prescribed under law and thereafter the Petitioner under compulsion was removed. He was removed under compulsion due to his nefarious activities detrimental to the interest of the Company.

4.8 Few Case Laws have also been cited. Instead of discussing all the Case Laws in detail, the subject or the ratio laid down therein, referred below:-

- (a) **Suppression of material facts :-**
- (i) **S.P. Chengalvaraya Naidu vs Jagannath AIR 1994 SC 853.**
  - (ii) **Dalip Singh vs State of Uttar Pradesh and Others (2010) 2 SCC 114.**
  - (iii) **A.V. Papayya Sastry and Others vs Govt. of A.P. and Others (2207) 4 SCC 221**

- (b) **Director can be removed by majority :-**
- (i) **Life Insurance Corporation of India vs Escorts Ltd. and Others (1986) 1 SCC 264.**
- (c) **Director can be removed if in competing business :-**
- (i) **Rajeev Kapur and Others vs Grentex and Co. P. Ltd. and Others [2013] 178 Comp Cas 28 (Bom).**
- (d) **Essence of oppression and mismanagement – conditions applied - circumstances under which winding up justified :-**
- (i) **Shanti Prasad Jain vs Kalinga Tubes Ltd. [1965] 35 Comp. Cas. 351; A.I.R. 1965 S.C. 1535.**
- (e) **Petitioner to come with clean hands :-**
- (i) **Sangramsinh P. Gaekwad and Others vs Shantadevi P. Gaekwad (Dead) through LRS. And Others (2005) 11 SCC 314.**
- (f) **Fiduciary duties of Director :-**
- (i) **Dale vs Carrington vs. P.K. Prathapan (2005) 1 SCC 212.**

**JUDGEMENT / FINDINGS:-**

5. Arguments of both the sides have been heard at length. Voluminous records / compilations have been carefully examined. The Case Laws cited are duly perused. This is a case where the Company was incorporated on 20<sup>th</sup> of April, 2005. The undisputed fact is that as per the Memorandum of Association of UBC Engineering Pvt. Ltd., the main object for the incorporation was to takeover 'proprietary concern' viz. United Building Company of Mr. K.N. Pillai (R-2). R2 happened to be the founding Director of R1. He had inducted two of his employees from his proprietary concern. In the cross petition (CP No. 01/2016) it is stated that Mr. R. Prasanth was working as Junior Engineer in the said firm of R2. The inducted employees were made Directors / Shareholders of R1 Company. In



the newly incorporated Company, the Petitioner and Respondent No.3 were made Directors and each of them has been allotted 24% shares in the Company. Rest 52 % was with Mr. Pillai ( R-2 ). The facts have also indicated that the Petitioner was an executive – employee – director, therefore, drawing remuneration regularly. In the records, there is an Affidavit, opposing interim relief, signed by R-2 verified on 31<sup>st</sup> May, 2014 wherein it was affirmed that the Petitioner was earlier an employee of the proprietorship concern of R-2. This background has relevance because in the reply to the main Petition the R2 has narrated that on conversion/acquisition of proprietorship concern into private limited company funds as well as immovable assets were required. For the purpose of registration with MES authorities, an immovable property was required to be disclosed/ offered by the Company. Since the Respondent Company was newly incorporated, having no immovable assets in its name, an 'agreement for sale' was executed by R-2 in favour of the Respondent Company in respect of a property situated at Plot No.G-36, Belapur, Navi Mumbai. All these facts, at the outset, thus indicate that the Respondent No.2 being a Promoter made certain sacrifices at the initial stage when the Company took off and started the business. At this juncture, it is also relevant to make an observation that the allegations levelled against the Respondent No.2 & others have been dealt-with in the Reply and other Compilations filed by the Respondents. My view on each allegation, based upon the appreciation of evidences, is summarised below.

5.1 An allegation is that property bearing No. G-36, Belapur, Navi Mumbai was illegally siphoned/transferred by R2 in his personal ownership, although the property belonged to R1 Company. Evidence on record has demonstrated that on 9<sup>th</sup> June, 2005 Mr. K.N. Pillai (R2) has transferred the said property in the name of the Company only to meet out an objection of the Director (Contracts)



for Offg. Chief Engineer that the immovable property shown by UBC was the personal property of one of the Directors, hence could not be taken as the property of the Company. Other evidences have, therefore, revealed that it was nothing but a time-gap arrangement. Later on when the Company has purchased Dighode property on 14<sup>th</sup> March, 2008, the previous arrangement/ agreement of G-36, Belapur property was reversed. As a consequence vide a letter dated 6<sup>th</sup> March, 2009, MES authorities were informed that the immovable property (G-36, Belapur) to be replaced with Dighode property. An interesting evidence is that the said replacement was very much in the notice of the Petitioner. He was not only a part and parcel of all those decisions but also signed an Affidavit in the capacity of a Director for the said replacement of the property. Not only this, a balance sheet was drawn on 31<sup>st</sup> march, 2012 of the Company wherein the other immovable property was reflected and not the Belapur property. The said balance sheet was in the notice of the Petitioner as duly signed by him. There are several co-related evidences on record to further fructify the said temporary arrangement. Without going in to further details, in short, a view can be formed that by any stretch of imagination it was not a siphoning of one of the immovable properties of the Company by R2. I, therefore, hold that the allegation is baseless and do not stand in the eyes of law.

5.2 Next, an allegation is that the name of the Petitioner was not intimated to the RoC in certain Forms filled up. This allegation is not very seriously contested because of the simple reason that the DIN of the Petitioner was not available at that point of time when the Forms were submitted. However, later, on getting the requisite information the due compliance was made. As a result, the allegation as on date does not survive.

5.3 Next allegation is that the premises of the Company was used for business purposes of the four concerns (partnership firms) owned by the Respondent No.2. The Company occupied second floor of G-36, Belapur. However, on the other hand, the Respondents have placed on record the evidences, such as, service tax registration details, wherein the office address or the address of the business of the said four concerns was not exactly the same, although within the same building. In the Rejoinder, it is not contradicted. The allegation appears to be vague and lacking thorough enquiry on the part of the Petitioner. Before levelling any allegation an in-depth investigation is expected from the side of the Plaintiff. This allegation has no legs to stand, thus deserves rejection.

5.4 A vehement allegation is that substantial amount, stated to be to the tune of ₹1.50 crore, was siphoned by Mr. K.N. Pillai for personal bungalow at Kharghar. The Respondents have given a detailed explanation that the property in question was meant for the business purpose of the Company, hence the expenditure, if any incurred, must not be considered as a personal expenditure. Certain letters, e-mails are on record to demonstrate that a shipping company of China (TarexNoell) was interested in joining hands with UBC, therefore, a suitable location near JNPT was renovated. If a property is developed for the business purposes, then it is not fair to allege misappropriation of funds. Over and above, the Petitioner was part of the decisions taken, hence it is not justifiable on his part to allege that those decisions were not in the business interest of the Company. The business interest of the Company is paramount; hence the allegation is not sustainable in the eyes of law.

5.5 The Petitioner has also alleged that a sum of ₹15 lakhs was siphoned to renovate personal property at Kochi. Although it is correct that the Kochi bungalow belongs to wife of the Respondent

No.2, but the said premises was used by the staff of UBC as a regional office of the Company. A portion of the said property was converted into an office of the Company and used for holding meetings of the staff. The address of the said bungalow was duly recorded in VAT registration forms. The MES authorities have also made correspondence at the said address as a regional office address of the Company. The Respondents have not denied that for upkeep of the said property some renovation and repair was required but undisputedly it was used for the staying/functioning of the staff of the Company. In the Reply filed by the respondents, certain evidences are annexed which demonstrate that the communication for the 'Kochi Project' was made from the said address. Not only this, the said property was used for the accommodation of the Directors. It has also been stated that even the Petitioner used to stay at the same place whenever visited Kochi. If I consider the totality of the circumstances, especially when the Company is a closely held company, managed by limited Directors, then the expenditure incurred cannot be considered as an unreasonable or unproductive expenditure. This is not a case that the property in question was totally unrelated or unconnected with the business activity of the R1 Company. I, therefore, hold that in spite of the fact that the property in question did not belong to the Company, but being used for the purpose of the Company, therefore, wrong and unjustifiable to allege the impugned siphoning off the funds for personal purposes. The allegation is overruled.

5.6 As far as the question of alleged loans given to the four concerns, stated to be owned by the Respondent No.2, is concerned once the amount in question was squared-up within a month's time and there is no specific denial, hence the allegation is baseless, thus deserves to be dismissed.

5.7 A vehement objection as also the main controversy and reason for filing this Petition is the removal of the Petitioner from the directorship of the Company. As far as the question of service of due Notices are concerned, the Respondents have placed on record that on 7<sup>th</sup> April, 2014 Notice of EOGM for removing the Petitioner was issued for the meeting to be held on 29<sup>th</sup> April, 2014. On 22<sup>nd</sup> April, 2014 the Petitioner has written a detailed letter addressed to Mr. K.N. Pillai, Managing Director, UBC Engineers Pvt. Ltd. wherein it was admitted that there was a previous meeting on 18<sup>th</sup> March, 2014 and thereafter reference to two letters respectively dated 4<sup>th</sup> April, 2014 and 7<sup>th</sup> April, 2014. The grievance of the Petitioner was that the dates of despatch and the dates of meetings were not sufficient in advance; as well as not followed the provisions of the Companies Act. It was also objected that the Notices were only a 'facade' to carry out the cancellation of remuneration and removal from directorship. To overcome the objections raised, the Company has issued another Notice on 3<sup>rd</sup> May, 2014 for holding EOGM on 12<sup>th</sup> May, 2014 at the registered office of the Company. A requisition with a demand to hold EOGM for the consideration of removal of Mr. R. Prasanth from the post of Director of the Company was also issued. The Board of Directors conducted a meeting on 12<sup>th</sup> May, 2014 and resolved to convene EOGM to consider the removal of said Director. On 6<sup>th</sup> June, 2014, EOGM was held and Minutes of the Meeting are placed on record, according to which the Petitioner was removed. The reasons have been elaborated in the Minutes for taking the said decision. Undisputedly, the Petitioner had formed a partnership firm viz. M/s. SAP Enterprises (SAP) along with his wife as Partner. The Respondent No.1 Company has found that the business was diverted to SAP. In the cross petition (CP No. 01/2016) all these facts have been narrated and placed on record that a Private Limited Company was also formed by the Petitioner without giving any information to R1 and other Directors. The non-cooperation and negligence were

among the other allegations. At this juncture, it is also worth to mention that the Respondent Company had to move an Application to this Bench seeking direction that the Petitioner (in that matter he was the Respondent No.1) be directed to cooperate for the up-gradation compliance demanded by MES authorities. It was also sought in the said Application to issue direction to the Petitioner to sign certain documents. An ad-interim direction was given vide an Order dated 17<sup>th</sup> October, 2016 by NCLT that for business interest of the Company Shri R. Prasanth shall co-operate and sign the requisite documents. It was further directed that no steps should be taken by either side which could be detrimental to the business interest of the Company. The directions given therein and the necessity to issue such directions were very much Indicative in nature. I am of the view that in a situation when due legal compliance had been made and formalities have been observed by the Respondent No.1 Company before taking a decision to remove from the directorship, hence there was neither a procedural lacuna nor a legal infirmity in the said decision.

6. The allegation of oppression is required to be proved with the aid of corroborative evidences, then only a judgement can be obtained favourably. Mere allegation does not suffice the purpose. The oppression complained must be shown and demonstrated by the conduct of the other members. Illustrations should be specific that there was an abuse of dominant voting power which has caused prejudice to the minority shareholders. If the illustrations are not glaring or visible, then such an allegation is nothing but a bald allegation.

6.1 The complaint of mismanagement should revolve around the financial irregularity causing loss to the Company. The mismanagement can be due to non-productive or wrong decisions

adversely affecting the business interest of the Company. The financial mismanagement can be demonstrated from the accounts of the Company. If an expenditure is incurred, but with a motive to achieve business goals, then must not be presumed a wasteful expenditure. Neither such an expenditure, if resulted into business gains, can be branded as personal expenditure. Such expenditure coupled with management decision, if taken for the future advantage, must not be discouraged merely by frivolous or baseless allegations.

6.2 Keeping brevity in mind, the case laws cited by both the sides are not discussed in this Order at length but definitely the decision taken hereinabove is guided by those precedents. The law laid down in the cited decision is that a Director is enshrined with fiduciary duty. He owes a duty to act with utmost good faith not only towards each other but towards other stakeholders. The law laid down is that no Director is allowed to misuse of power for personal gains or ulterior motives. On an overall view taken after careful reading of the precedent cited, a conclusion can be drawn that if a decision is taken by majority of shareholders keeping business interest and welfare of the Company and other stakeholders in mind, then the Directors if in majority, has statutory power to regulate the affairs of the Company and for that reason can pass a Resolution for the removal of another Director. I, therefore, hold that under the totality of the facts and circumstances of the case as discussed supra, the Petition (C.P. No. 36 of 2014) is not sustainable in the eyes of law; hence deserves to be dismissed. The grievance of the Petitioner that he had been ousted as a Director from the Respondent No.1 Company; was, however, hereby held that not an illegal decision. Likewise, the other allegations of mismanagement could not be proved to the hilt. The allegations based on suspicion cannot take the place or substitute the truth.



6.3 Consequent upon the decision taken while deciding C.P. No. 36 of 2014 that the same is not sustainable in the eyes of law, the reliefs claimed in C.P. No. 01/2016 have become redundant. In this Petition the Petitioner's (Mr. K.N. Pillai) prayer seeking direction to restrain the Respondent (Mr. R. Prasanth) from conducting business under the name and style of M/s. SAP Enterprise or M/s. SAP Marine Infra Pvt. Ltd. is hereby rejected. Once Mr. R. Prasanth is removed and no more connected with the business activity of M/s. UBC Engineers Pvt. Ltd., then naturally he is free to conduct his business independently. Keeping this principle in mind, rest of the reliefs are also rejected. This Petition is dismissed.

6.4 Both the Petitions are disposed of; hence required to be consigned to records. No Order as to costs to either side.

Dated: 6<sup>th</sup> February, 2017

*Sd/-*  
**M.K. SHRAWAT**  
**MEMBER (JUDICIAL)**