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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

TP Nos. 61-C, D, M, E, N, B, J, F, H of 2016 with  
TP No. 61/397-398/NCLT/AHM/2016 (New)  
CA Nos. 55,108,115,141,142,181,12,68,151 of 2015, MA-1 of 2015  
With CP No. 16/397-398/CLB/MB/2014 (Old)

Coram:


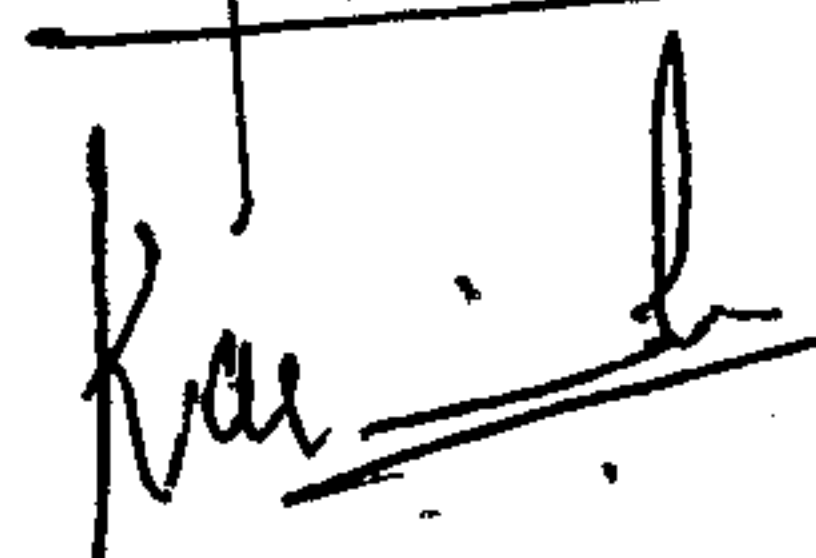
Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.03.2017**

Name of the Company: Dr. Sobhagyamal Jain & Ors.  
V/s.  
Sobhagya Hospital & Research Centre Pvt. Ltd.

Section of the Companies Act: Section 397-398 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	ASHOK MEHTA	PCS.	A.R. for Petitioners	
2.	Kunal P Vaishnav	Advocate	Respondent No. 1 and 3.	

**ORDER**

Learned PCS Mr. Ashok Mehta present for Petitioner. Learned Advocate Mr. Kunal Vaishnav present for Respondent no. 1 and 3. None present for other Respondents.

Order pronounced in open Court vide separate sheet.

  
BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL

Dated this the 22<sup>nd</sup> day of March, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**T.P. No. 61-C of 2016  
CA No. 108 of 2015 (Old)  
And**

**T.P. No. 61-D of 2016  
CA No. 115 of 2015(Old)  
And**

**T.P. No. 61-M of 2016  
CA No. 151 of 2015(Old)  
And**

**T.P. No. 61-E of 2016  
CA No. 141 of 2015(Old)  
And**

**T.P. No. 61-N of 2016  
CA No. 68 of 2015(Old)  
And**

**T.P. No. 61-B of 2016  
CA No. 55 of 2015(Old)  
And**

**T.P. No. 61-J of 2016  
C.A. No. 12 of 2015(Old)  
And**

**T.P. No. 61-F of 2016  
CA No. 142 of 2015(Old)  
And**

**T.P. No. 61-H of 2016  
CA No. 181 of 2015(Old)  
And**

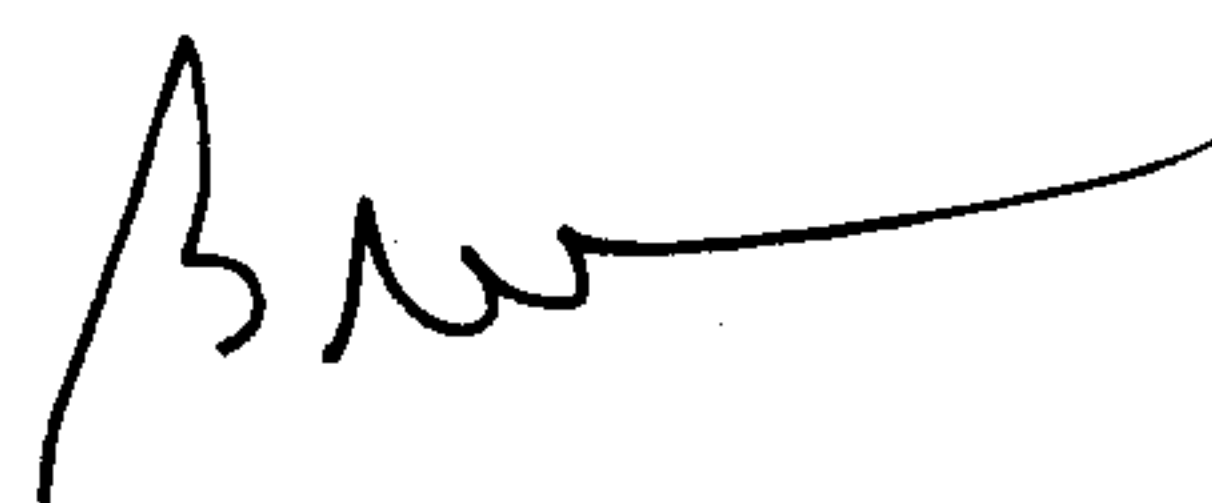
**MA No. 1 of 2016**

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

**Date: 22<sup>nd</sup> day of March, 2017**

**In the matter of:**

**SOBHAGYA HOSPITAL & RESEARCH CENTRE PVT.LTD. & ORS.**



1. Dr. Rakesh Shivhare  
S/o Shri Sureshchandra Shivhare,  
Aged about 40 years,  
D-37, Apollo D.B. City,  
Nipania Road,  
Indore. (Petitioner No.2)

2. Dr. Sandip Saxena  
S/o. Shri Chandra Shekhar Saxena  
Aged about 39 years,  
460, Goyal Nagar,  
Indore. (Petitioner No.3)

3. Shri Suresh Choukse  
S/o. Shri Shaligram Choukse  
Aged about 50 years  
13/5, Pardeshipura,  
Indore. (Petitioner No.4)

: Petitioners.  
(No. 2 to 4)

Versus

1. Sobhagya Hospital & Research Centre Pvt.Ltd,  
Dispensary Part 2, Scheme No.74-C,  
Sector-B, Vijay Nagar,  
Indore-452010 Madhya Pradesh.

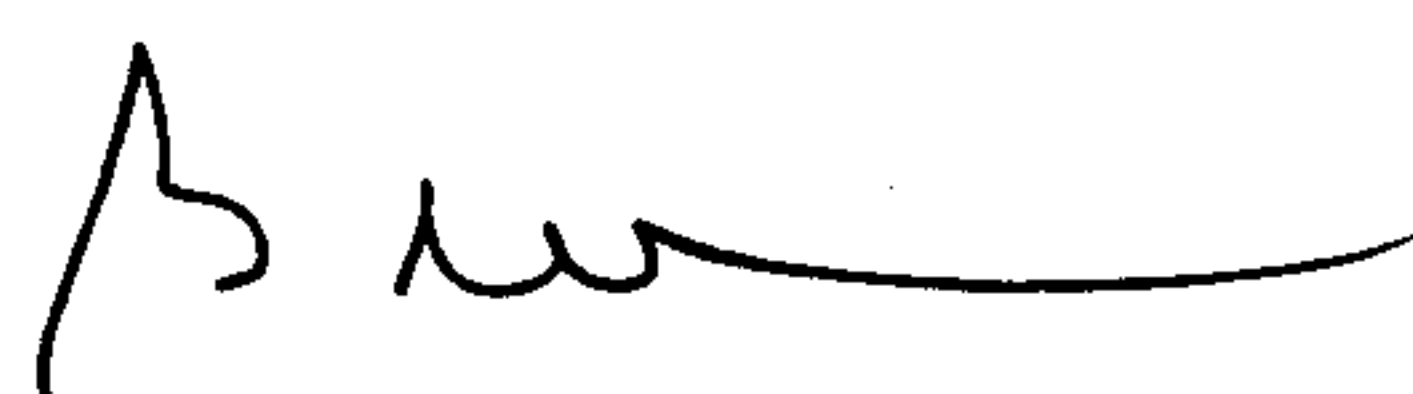
2. Mr. Anil Jain,  
S/o Shri Bhikamchand Jain  
Aged 54 years,  
402, Sukhsagar Apartment,Block No.2  
Race Course Road, Indore

3. Dr. Subodh Jain, Aged 40 years  
S/o. Shri Suhagmal Jain,  
149 Royal Bungalow City,  
Sukhliya, Indore.

4. Dr. Nitin Modi, aged 44 years  
62, FH, Sch.No.54, Vijay Nagar,  
Indore.

5. Dr. Hariprasad Yadav,aged 46 years,  
S/o. Late BL Yadav,  
101, Raunak Vihar,  
3/1 Ravindra Nagar  
Palasia, Indore.

6. Dr. Sandeep Julka,  
Aged 41 years,  
S/o. Shri Yashpal Julka,



138, Royal Bunglow City,  
Sukhliya, Indore.

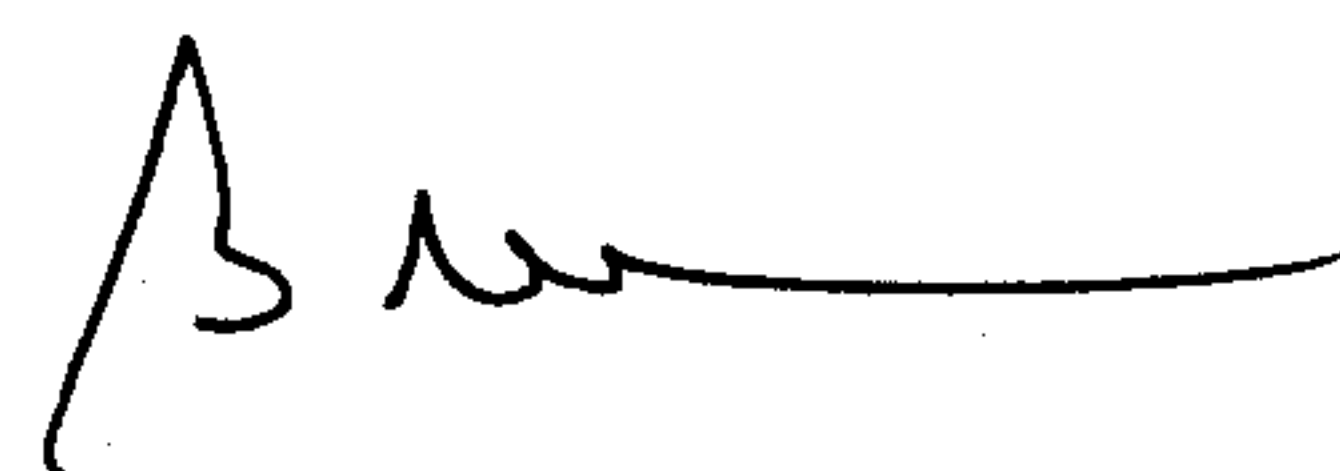
7. Dr. Ravi Nagar aged 40 years,  
S/o. Shri Rajendra Nagar  
B-40, Chandra Nagar, M.R.9,  
Indore.
8. Dr. Pravar Passi, aged 45 years,  
G-2, Utkarsh, 139, Indrapuri,  
Indore.
9. Bank of India  
Mid Corporate Branch, Airen Heights,  
14-PU-3, Scheme No.54, Vijay Nagar,  
Agra Bombay Road, Indore.
10. Registrar of Companies, Madhya Pradesh  
Sanjay Complex, A-Wing, 3<sup>rd</sup> Floor,  
Jayendra Ganj, Lashkar  
Gwalior-474009 Madhya Pradesh.
11. Dr. Sobhagyamal Jain  
Aged about 59 years,  
S/o. Shri Kanhaiyalal Jain,  
48-B, Vijay Nagar Scheme No.54  
Opposite Mangal City,  
Indore.  
(Originally Petitioner No.1 transposed as  
R-11, vide CLB Order dated 7.11.2014) : Respondents.

**Appearance:**

Learned PCS Mr. Ashok Mehta for Petitioners No. 2 to 4.  
Learned Advocate Mr. Kunal P. Vaishnav for Respondents No. 1 and 3.  
Learned Advocate Ms. Sakshi Mehley for Respondent No.2.  
Learned Advocate Mr. Manoj Munshi for Respondents No. 4 to 7.  
Learned Advocate Mr. M. Dutta for Respondent No.11.  
None appeared for Respondents No. 8 to 10.

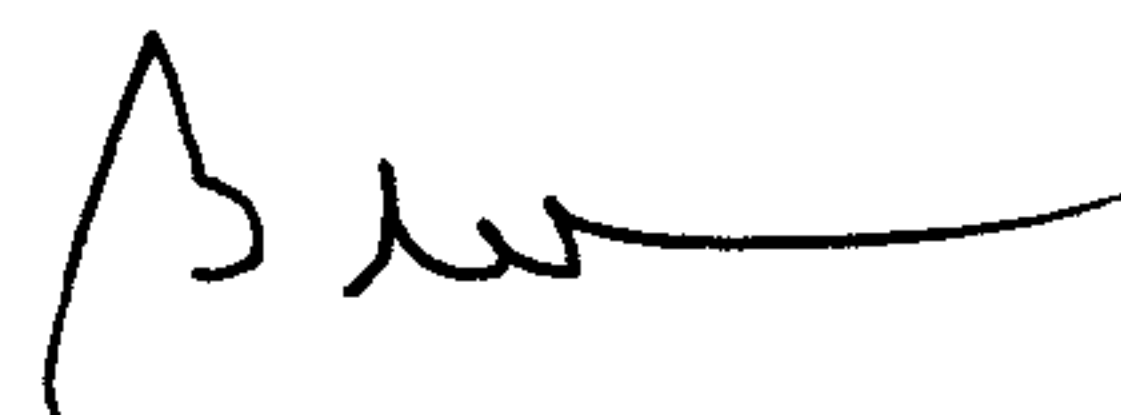
**COMMON ORDER**

Pronounced on 22<sup>nd</sup> March, 2017





1. The parties in this order are referred to as they are arrayed in CP No. 16 of 2014 (Old) T.P. No. 61 of 2016 (New) for the sake of convenience.
2. During the pendency of CP No. 16 of 2014 before the Company Law Board, Mumbai, first petitioner, Dr. Sobhagyamal Jain was transposed as 'Respondent No.11', vide CLB Order dated 7.11.2014. Therefore, Dr. Sobhagyamal Jain is referred to as "Respondent No.11" in this Common Order.
3. Petitioners No. 2 to 4 filed TP No. 61-C of 2016 (Old No. CA 108/2015) praying for the following reliefs;
  - (a) Reappointment of Petitioners No. 2 to 4 as Directors of 1<sup>st</sup> Respondent Company;
  - (b) To direct Respondents No. 2, 3, and 11 and Dr. Sunil Rajan to tender their resignations as Directors of 1<sup>st</sup> Respondent Company without absolving them from their liabilities as Directors of 1<sup>st</sup> Respondent Company;
  - (c) Direction to Respondents No. 2, 3 and 11 and Dr. Sunil Rajan to hand over management, assets and records of 1<sup>st</sup> Respondent Company.
  - (d) Direction to Respondents No. 2, 3 and 11 and Dr. Sunil Rajan to sell the shares held by them in R-1 Company prior to the date of Rights Issue, to Petitioners No. 2, 3 and 4 as per Paragraph 18 of the Consent Terms;
  - (e) To annul the allotment of Rights Issue carried out by 1<sup>st</sup> Respondent Company;
  - (f) Direction to Respondents No. 2, 3, 11 and Dr. Sunil Rajan to refund all moneys borrowed by them from the 1<sup>st</sup> Respondent Company;
  - (g) Direct Respondents No. 2, 3 and 11 and Dr. Sunil Rajan to repay the loan to Religare Finvest Limited;
  - (h) To direct R-2, R-3, R-11 and Dr. Sunil Rajan to maintain status quo in respect of financial and commercial matters of 1<sup>st</sup> Respondent Company;



4. T.P. No. 61-D of 2016 (CA No. 115/2015 Old) is filed by Respondents No. 1 and 3 for the following reliefs;

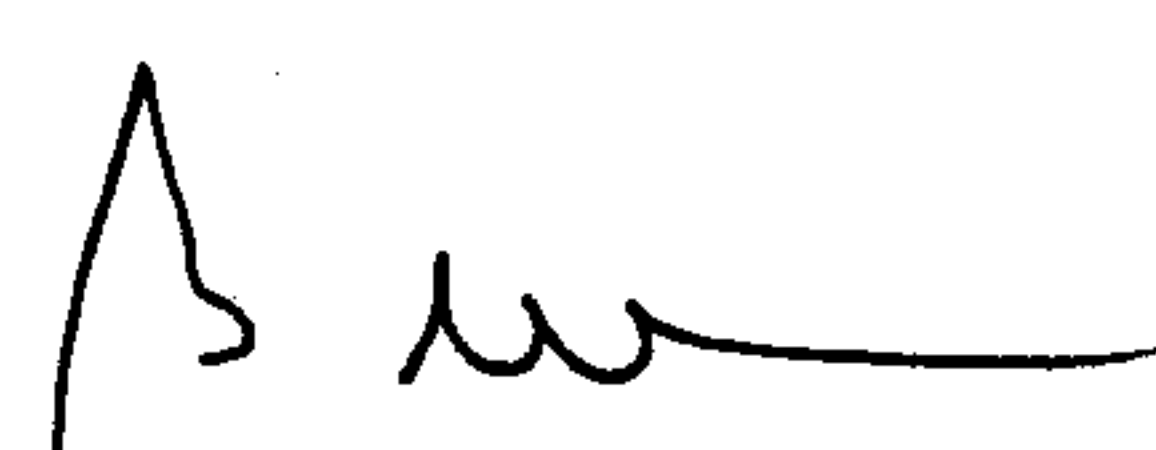
- (a) To direct the Petitioners No. 2 to 4 and to immediately hand over all duly executed transfer deeds without filling the names of the purchasers to Respondent No.3 or to permit Respondent No.3 to give effect to transfer of 1070 equity shares owned by Petitioners No. 2 to 4;
- (b) To direct Petitioners to withdraw all legal cases mentioned in Annexures 2 and 3 of Consent Terms dated 14<sup>th</sup> December, 2014;
- (c) To direct not to agitate false and baseless issues;

5. TP No. 61-M of 2016 (CA No.151/2015 Old) is filed by Respondent No.11 who is originally Petitioner No.1 for the following reliefs;

- (a) To declare that the Affidavit dated 6.12.2014 purportedly executed by him is a forged and fabricated document;
- (b) To declare that loan obtained by R-2 and R-3 from M/s. Religare Finvest Limited is without consent/approval of the Board and it is illegal and unlawful;
- (c) To declare that appointment of Shri Amit Jain and Smt. Nidhi Jain as Additional Directors of 1<sup>st</sup> Respondent Company is illegal, unlawful and consequent acts performed by Board of 1<sup>st</sup> Respondent Company as illegal;
- (d) To declare that Consent Terms dated 14.12.2014 and Consent Order dated 15.12.2014 were obtained on false undertaking and misrepresentation and to recall the same;
- (e) To declare that Applicant is entitled for a sum of Rs. 8,50,000/- towards outstanding professional fees.

6. TP No. 61-E of 2016 (CA No. 141/2015 Old) is filed by Respondents No. 4 to 7 for the following reliefs;

- (a) To declare Consent Terms (Annexure B) as "Failed" due to breach committed by Respondents No. 2 and 3;
- (b) To declare the Applicants as 'Directors of R-1 Company';



- (c) To declare the Applicants are entitled to control the management and affairs of R-1 Company;
- (d) To direct R-2 and R-3 to hand over possession and control over the management and affairs of the R-1 Company and its assets to the Applicants;
- (e) To set aside the appointment of Mr. Amit Jain and Smt. Nidhi Jain;

7. TP No. 61-N of 2016 (CA No.68/2015 Old) is filed by Respondents No. 4 to 7 for the following reliefs;

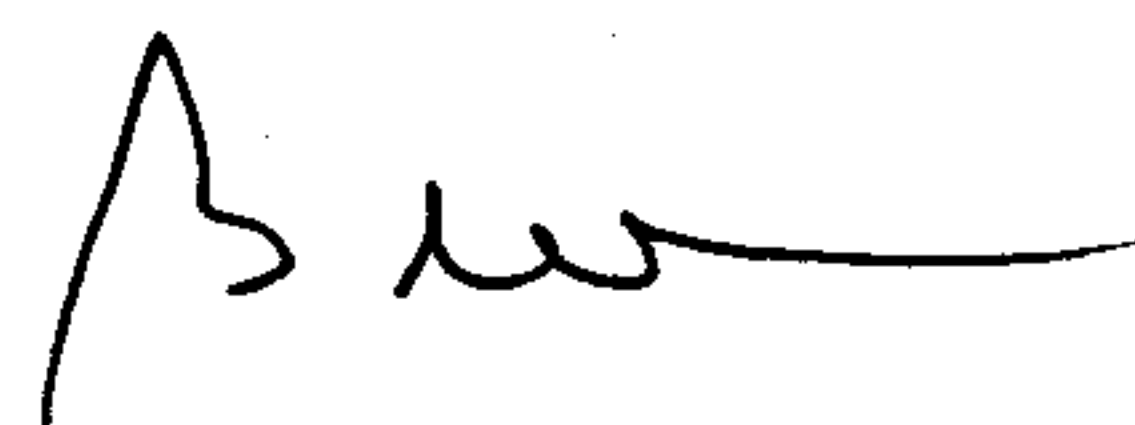
- (a) Issue direction to the Escrow Agent to receive and accept the cheques of Rs. 5,20,12,802 deposited by Respondents No. 4 to 7;
- (b) To direct the Escrow Agent to return the share certificates and transfer deeds pertaining to 1900 equity shares to Respondents No. 4 to 7;
- (c) To appoint an Administrator or an independent Chairman of Respondent No.1 Company to look after affairs of Respondent No.1 Company

8. TP No. 61-B of 2016 (CA No.55/2015 Old) is filed by Respondents No. 4 to 7 for the following reliefs;

- (a) To direct Respondents No. 2 and 3 to pay the instalments of Rs. 2,47,06,083/- due and payable on 15.3.2015 with interest on or before 7<sup>th</sup> April, 2015;
- (b) To direct Respondents No. 2 and 3 to deposit post-dated cheques for Rs. 9,88,24,324/-;
- (c) To direct Respondents No. 2 and 3 and to release the personal guarantee given by R-4 to R-7 to Bank of India;
- (d) To direct Respondents No. 2 and 3 to pay the outstanding professional charges to R-4 to R-7;

9. TP No. 61-J of 2016 (CA No.12/2015 Old) is filed by Respondents No. 4 to 7 for the following reliefs;

- (a) To direct Respondents No. 1 to 3 and 8 to deposit post-dated cheques;





(b) To direct Respondents No. 1 to 3 and 8 to get the personal guarantee given by Respondents No. 4 to 7 released from the Bank;

(c) to clarify the phrase used in Clause (4) of the Consent Terms "the respective rights of the parties, as invoked prior to signing of Consent Terms shall become effective."

10. TP No. 61-F of 2016 (CA No. 142/2015 Old) is filed by Respondent No.2 praying for the following reliefs;

(a) To appoint independent Administrator to supervise the control and affairs of the 1<sup>st</sup> Respondent Company;

(b) To restrain Bench Officer of CLB, Mumbai who has been appointed as Escrow Agent to handover, deliver, sell shares lying with him to Respondent No.3 and to deliver such shares only to the 2<sup>nd</sup> Respondent (Applicant);

(c) To restore Respondent No.2 in the position of Chairman and Director of 1<sup>st</sup> Respondent Company;

(d) To restrain Respondent No.3 or any other person from stopping Respondent No.2 from entering into Hospital;

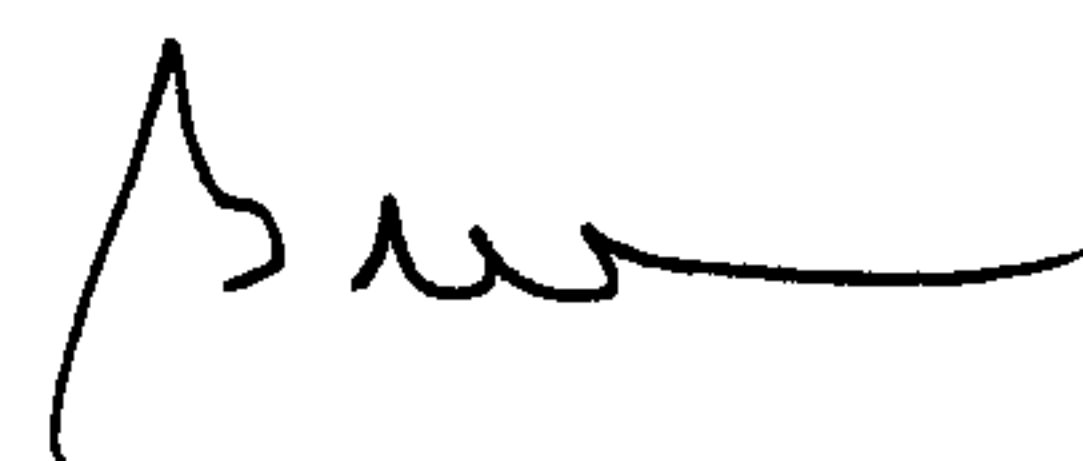
(e) To set aside the appointment of Amit Jain as Additional Director of Respondent No.1 Company and Smt. Nidhi Jain as Additional Director of Respondent No.1 Company;

(f) To direct Respondent No.1 Company to close all Bank accounts opened by R-3 along with Mr. Amit Jain and Mrs. Nidhi Jain;

11. TP No. 61-H of 2016 (CA No. 181/2015 Old) is filed by Respondent No.1 and Respondent No.3 to decide the maintainability of TP No. 61-C of 2016 (CA No. 108 of 2015 Old) in the first instance as directed by the Hon'ble High Court in MCOMA No.6/2015.

12. MA No. 1 of 2016 is filed by Respondent No.11, originally Petitioner No.1 offering to sell his shares at the rate of 80,000 per share to the purchasing group as decided by this Tribunal.

13. The facts, in brief, that led to the filing of all these Applications are as follows;





(i) Petitioners No. 2 to 4 and Respondent No.11 filed TP No. 61 of 2016 (CP No. 16 of 2014 Old) alleging certain acts of oppression and mismanagement praying for;

(a) a direction to Respondents No. 2 to 8 not to issue shares and make further allotment of shares, and for a direction to Respondents No. 2 to 8 to surrender their voting rights;

(b) To recognise the Petitioner as 'Authorized Representative of the 1<sup>st</sup> Respondent Company' to operate the account of 1<sup>st</sup> Respondent Company in Bank of India;

(c) To direct the Respondent Directors to hold meetings of Board of Directors by complying with all the provisions;

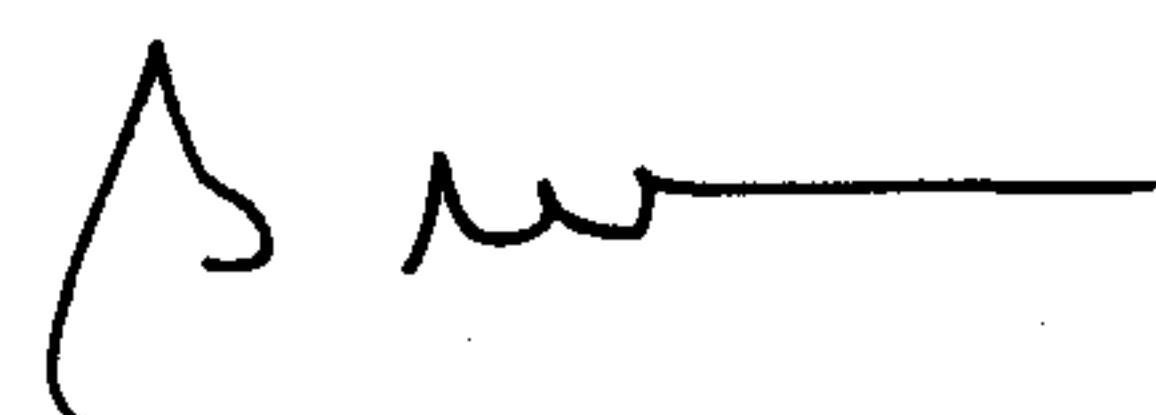
(d) To direct the Registrar of Companies, Madhya Pradesh to record that 1<sup>st</sup> Respondent Company is in management dispute.

(ii). During the pendency of the CP No. 16 of 2014 in CA No. 93 of 2014 the Company Law Board by its order dated 24.3.2014 appointed Hon'ble Mr. Justice N.K. Modi as 'Mediator' to settle the dispute between the parties.

(iii) The Company Law Board by its order dated 2.4.2013 appointed Hon'ble Shri Justice Deepak Verma, Former Judge of the Hon'ble Supreme Court as 'Mediator' to resolve the disputes between the parties.

(iv) Ultimately, the Consent Terms have been arrived at between the parties.

(v) The Consent Terms between Respondents No. 2 and 3 and Dr. Sunil Rajan and Petitioners No. 2 to 4 and 3 others in respect of 1070 equity shares of 1<sup>st</sup> Respondent Company



was reduced into writing in the form of Annexure 'A' on 14.12.2014 but the said Consent Terms were signed only by Respondents No. 2 and 3 but not by Dr. Sunil Rajan.

(vi) Another Consent Terms were entered into between R-2, R-3 and Dr. Sunil Rajan, and R-4 to R-7 in respect of 1900 shares and the same were reduced into writing in the form of Annexure 'B' on 14.12.2014. Annexure 'B' was not signed by Dr. Sunil Rajan.

(vii) Basing upon Annexures A and B Consent Terms, the Company Law Board passed the following order dated 15.12.2014;

1. *C.P. taken up in the presence of the parties and their respective Ld. Counsels named above, as per the Attendance Sheet.*

2. *Two sets of Consent Terms have been filed, one is executed between the Petitioner Nos. 2 to 4 and Respondents Nos. 2 and 3 and others, and another executed between the Respondent Nos. 4 to 7 and Respondent Nos. 2 and 3. They shall be marked as Annexures "A" and "B" for the purpose of identification and will form part of this order. The Consent Terms, as contained in Annexures "A" and "B", were read over and explained to the parties. The Ld. Counsels for the parties confirmed the same. The Consent Terms are, therefore, accepted. It is expected that the parties shall comply with the consent terms, as agreed upon between them, within the time stipulated therein. Mr. S.P. Sawant, Bench Officer, is appointed as Escrow Agent, under whose supervision the compliances shall be made by the parties. The final remuneration of the Escrow Agent Mr. S.P. Sawant shall be fixed later on. However, a sum of Rs. 10,000/- may be paid as a part remuneration, as agreed by the Respondents' Counsel Mr. Vijayesh Atre.*

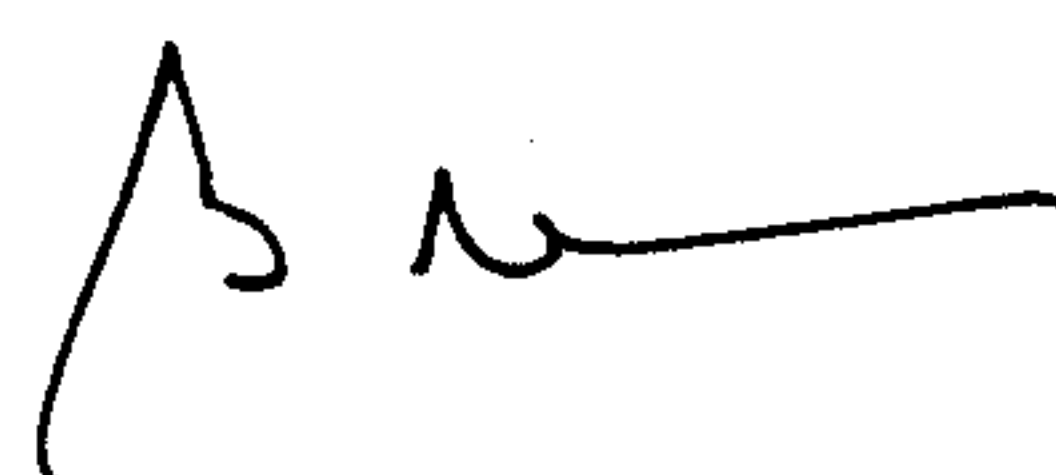
3. *The Company is now free to allot the shares and the order dated 21/2/2014 passed by the CLB is modified to this extent.*

4. *The C.P. stands disposed off in the above terms.*

5. *If the parties feel any difficulty in implementation of the Consent Terms, they may approach the CLB for clarification or further orders.*

6. *Lastly, the CLB expresses its gratitude to the Hon'ble Mr. Justice Deepak Verma (Retd.) for his valuable contribution and assistance, without which this settlement could not have been possible.*

7. *No order as to costs.*



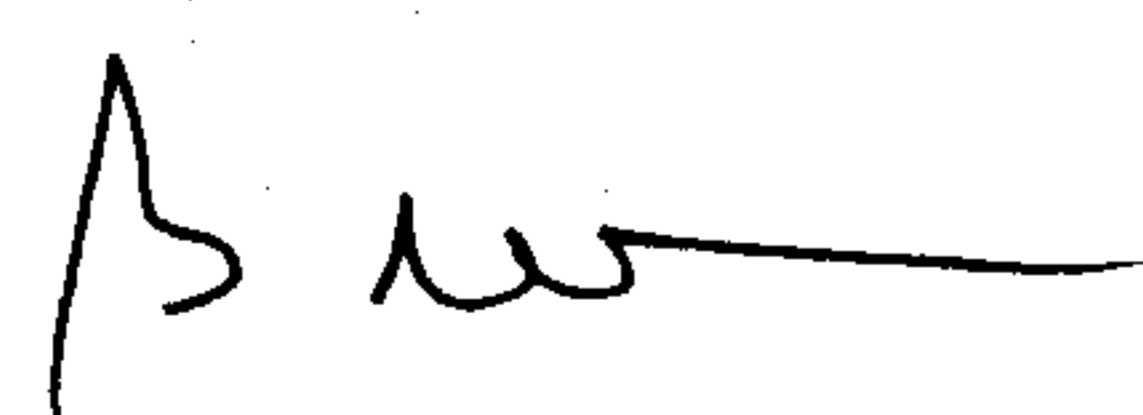


8. *copy of the order be issued to the parties."*

As can be seen from the Consent Terms contained in Annexures 'A' and 'B', Respondents No. 1 and 2 are the first purchasers of the shares.

(viii) The selling persons are Petitioners No. 2 to 4 under Annexure 'A' and Respondents No. 4 to 7 in Annexure 'B'. The Consent Terms in Annexure 'A' further reads that in case of default on the part of Respondents No. 2 and 3 in purchasing the shares of Petitioners No. 2 to 4, the petitioners shall purchase the shares of Respondents No. 2 and 3. Here, it is pertinent to mention that although Respondents No. 2 and 3 and Dr. Sunil Rajan are referred to as 'purchasers of shares' in both Annexures A and B, Dr. Sunil Rajan did not subscribe his signature to the Consent Terms contained in Annexures A and B. The Company Law Board by its order dated 15.12.2014 confined the Consent Terms only to Respondents No. 2 and 3 and they are the purchasing Respondents. Therefore, this Tribunal, for the purpose of disposal of this Application, can only treat the Respondents No. 2 and 3 as 'purchasers'.

(ix) After the Consent Terms were put for implementation, disputes arose between the Petitioners No. 2 to 4 and Respondents No. 2 and 3, and between Respondents No. 4 to 7 and Respondents No. 2 and 3 on the other, in implementation of terms contained in Annexures 'A' and 'B' respectively. Thereafter, Petitioners No. 2 to 4 filed TP No. 61-C of 2016 (CA No. 108 of 2015 Old). Respondents No. 1 and 3 basing on the order of the Hon'ble High Court of Madhya Pradesh in Miscellaneous Company Appeal No. 6 of 2015 dated 20<sup>th</sup> July, 2015, filed TP No.61-H of 2016 (CA No. 181 of 2015 Old) requesting this Tribunal to decide the maintainability of TP No.61-C of 2016 (CA No. 108 of 2015 Old).





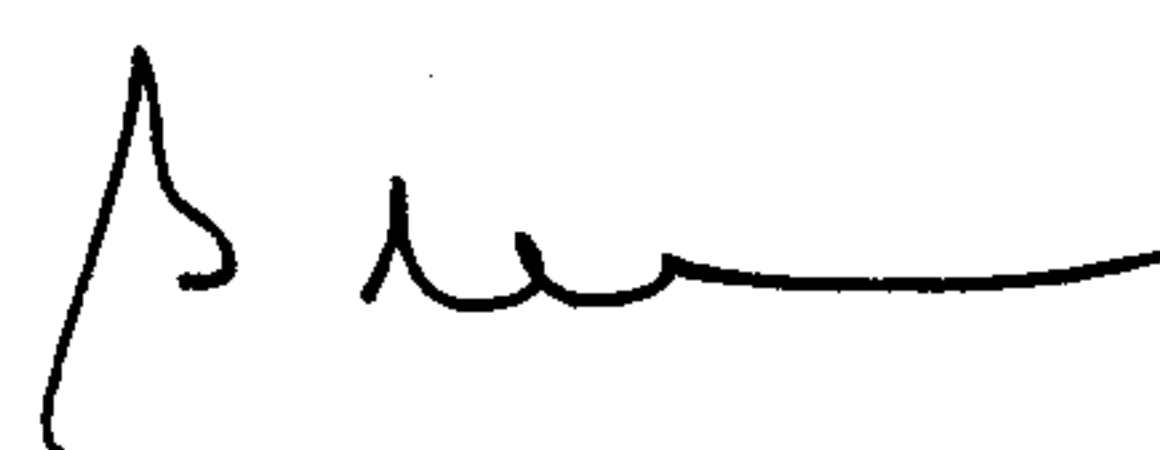
14. During the course of arguments before this Tribunal, learned counsel appearing for all the parties in this batch of Applications have consented for hearing of all Applications together and accordingly an order has been passed by this Tribunal on 30<sup>th</sup> August, 2016. Here, it is pertinent to mention that Respondents No.2 and 3 also filed applications bearing TP No.61-D of 2016 (CA No. 115 of 2015 Old) and TP No. 61-F of 2016 (CA No. 142 of 2015 Old) seeking certain directions from this Tribunal basing on the Consent Terms contained in Annexures 'A and 'B'. Therefore, Respondents No. 1 to 3 did not insist upon the maintainability of TP No. 61-C of 2016 (CA No. 108 of 2015 Old) to be decided first.

15. However, the fact remains that TP No. 61 of 2016 (CP No. 16 of 2014 Old) has been finally disposed of by Company Law Board, Mumbai by order dated 15.12.2014 basing on the Consent Terms in Annexures 'A and 'B'.

16. Therefore, the question that emerges for determination is, to what extent this Tribunal has got jurisdiction in granting the reliefs or directions prayed for by the parties in these batch of Applications. Therefore, it has become necessary for this Tribunal to address the aspect of jurisdiction of this Tribunal to entertain and dispose of these Applications, and, if so, to what reliefs/directions.

17. On this aspect, the Hon'ble Supreme Court, in **Manish Mohan Sharma and Others. Vs. Ram Bahadur Thakur Ltd. And Others**, reported in (2006) 4 SCC 416, held as follows;

*"A consent decree has been held to be a contract with the imprimatur of the court superadded. It is something more than a mere contract and has the elements of both a command and a contract. (As was said by Privy Council as early as in 1929". "The only difference in this respect between an order made by consent and one not so made is that the first stands unless and until it is discharged by mutual*

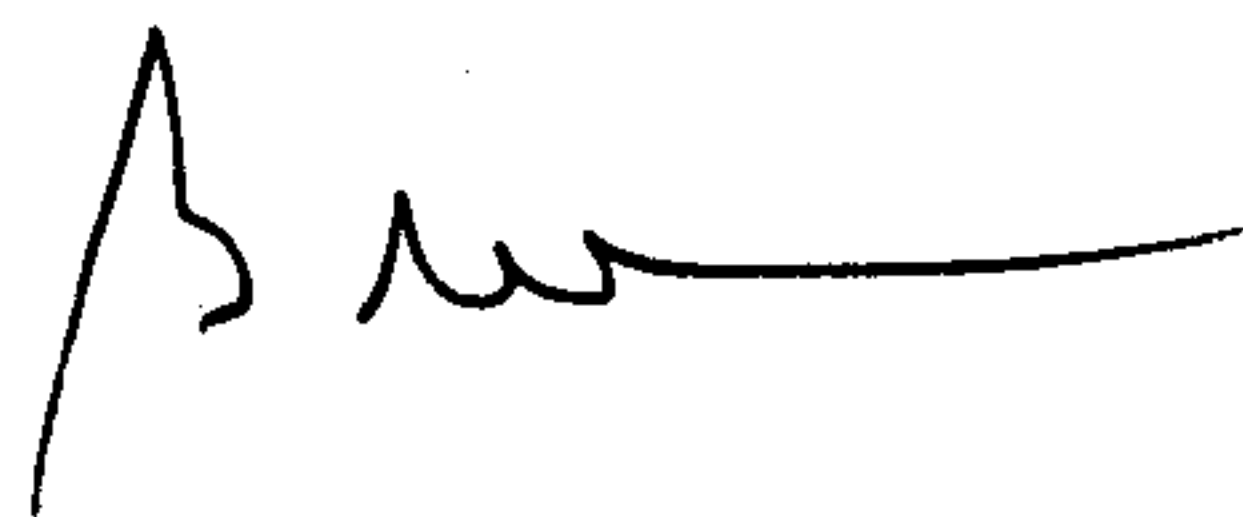


*agreement or is set aside by another order of the court; the second stands until and unless it is discharged on an appeal.”*

18. In the case on hand also, the order passed by the Company Law Board on 15.12.2014 in TP No. 61 of 2016 (CP No. 16 of 2014 Old) is a consent order basing on Terms of Consent contained in Annexures ‘A’ and ‘B’. It is nobody’s case that the order dated 15.12.2014 was a nullity.

19. In the decision referred to above, an Application was filed for recalling the consent order. The said Application was dismissed by the Company Law Board. An Appeal has been preferred before the Hon’ble High Court of Patna. In those set of facts, the Hon’ble Supreme Court held that if the Board found that the decree or any of its terms call for interpretation, it was within the Board’s jurisdiction to interpret that particular term and to execute the decree on the basis of such interpretation. In that Judgment, it is further held that if a decree is ambiguous it is the duty of the executing court to construe the decree. This is based upon in the case of **Topanmal Chhotumal v. Kundomal Gangaram – AIR 1960 SC 388**, at Page 390, and in the case of **Central Bank of India Ltd. Vs. P.S. Rajagopalan – AIR 1964 SC Page 743**. The Hon’ble Supreme Court, in the case of *Manish Mohan Sharma (supra)*, further observed as follows;

*“Nevertheless once having agreed to particular terms of settlement which were incorporated in a decree, the parties concerned are found to comply with the terms as may be interpreted by the executing court. Once the interpretation is done the decree must be executed as interpreted. The effort of the executing court must be to see that the parties are given the fruits of the decree. The mandate is reinforced when it is a consent decree and doubly reinforced when the consent decree is a family settlement.”*





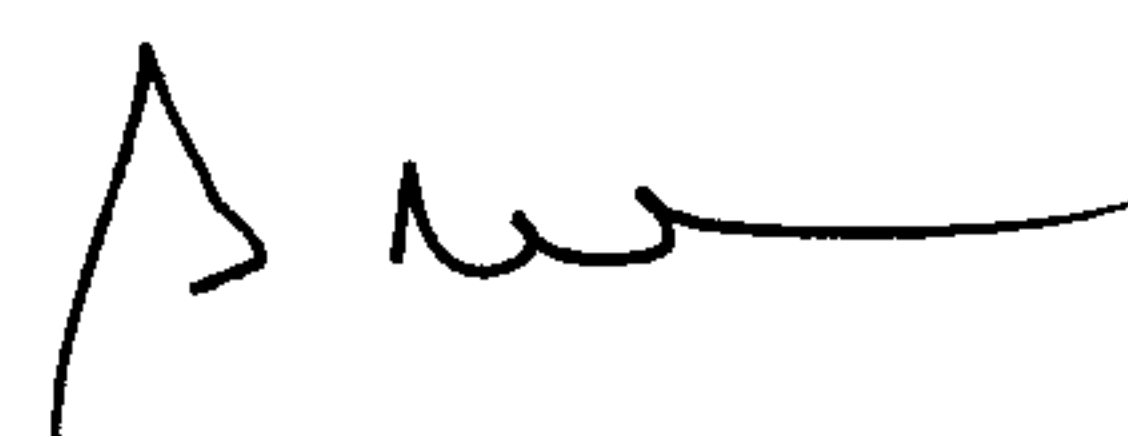
20. In view of the above said observations of the Hon'ble Supreme Court, this Tribunal is having power under Section 634-A of the Companies Act to enforce the order of the Company Law Board can exercise the jurisdiction in a manner in which the Executing Court can exercise. Therefore, the jurisdiction of this Tribunal to deal with all these Applications is limited to the extent of interpretation of the terms of the consent orders to find out whether there was a breach of Consent Terms by one party or the other. But this Tribunal has no jurisdiction to grant the reliefs or directions that were not contemplated in the Consent Terms. However, if the Tribunal comes to the conclusion that there is violation of Consent Terms by both the parties, this Tribunal can invoke Clause 19 of Annexure 'A'.

21. Keeping the limited jurisdiction of this Tribunal in mind, this Tribunal proceed further in deciding whether this Tribunal has got jurisdiction to entertain which of the applications among these Applications filed by various parties and to which of the reliefs prayed are within the jurisdiction of this Tribunal.

22. Some of the reliefs prayed in TP No. 61-C of 2016 (CA No. 108 of 2015 Old) are based on the interpretation and execution of the Consent Terms in Annexure "A".

23. In view of the above discussion, T.P. No. 61-H of 2016 (CA No. 181 of 2015 Old) filed by Respondents No. 1 and 3, questioning the maintainability of TP No. 61-C of 2016 (CA No. 108 of 2015 Old), shall stand disposed of.

24. Dr. Sunil Rajan filed MA No.1 of 2016 offering to sell his shares to any one of the parties who is willing to purchase his shares. It is pertinent to mention here that Dr. Sunil Rajan is described as a party to the Consent Terms Annexure 'A', but it is a fact that Dr. Sunil Rajan did not subscribe his signature to the Consent Terms, Annexures 'A' and 'B'. It is clear from the material on record that Dr. Sunil Rajan did not choose to participate in the settlement. Dr. Sunil

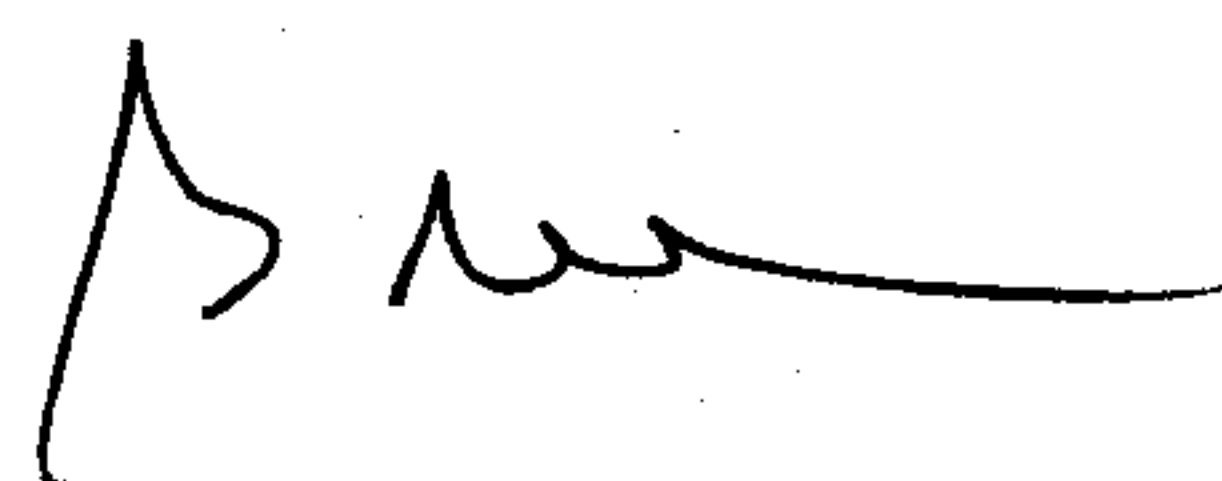




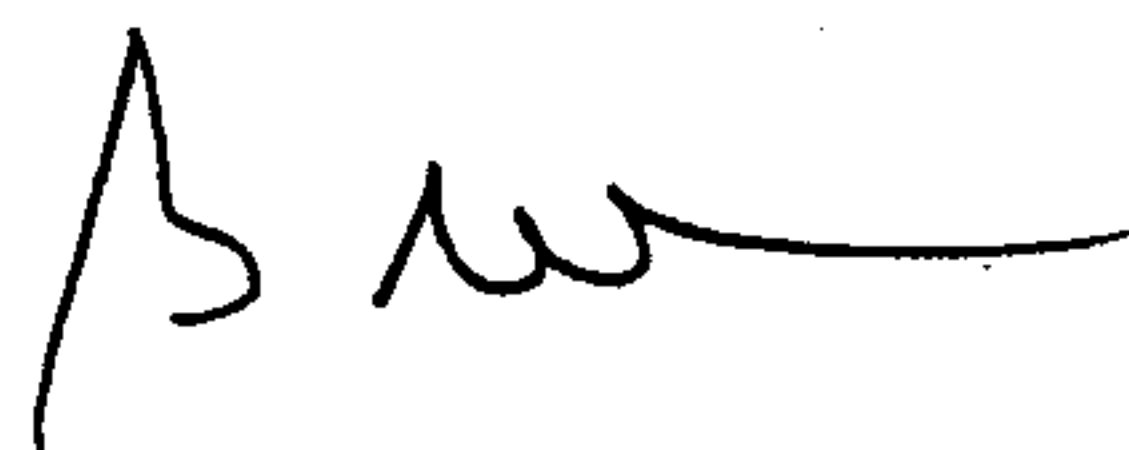
Rajan is not a party to the main petition, TP No. 61 of 2016 (CP No. 16 of 2014 Old). Therefore, the reliefs prayed by Dr. Sunil Rajan before this Tribunal at the stage of implementation of the Consent Terms is not at all maintainable. This Tribunal has no jurisdiction to entertain MA No. 1 of 2016 at this stage of the proceedings. Therefore, MA No. 1 of 2016 is dismissed as not maintainable for want of jurisdiction.

25. Respondent No.2 filed TP No. 61-F of 2016 (CA No. 142 of 2015 Old). The averments in the Application filed by Respondent No.2 clearly go to show that there is an inter-se dispute between Respondent No.2 and Respondent No.3. Respondent No.2 is asking for reliefs that arose on account of the disputes between Respondents No. 2 and 3 also. This Tribunal, sitting as an Executing Court, and while making attempt to interpret Consent Terms Annexures 'A' and 'B', has no authority or jurisdiction to decide the inter-se disputes between Respondents No. 2 and 3. Therefore, the reliefs prayed by Respondent No.2 in TP No. 61-F of 2016 (CA No. 142 of 2015 Old) to the extent they relate to inter-se disputes between Respondent No.2 and Respondent No.3 cannot be agitated before this Tribunal, and this Tribunal has no jurisdiction to entertain such reliefs at this stage of the proceedings. However, the reliefs claimed by the 2<sup>nd</sup> Respondent which expressly and primarily relate to the interpretation of the Consent Terms can be entertained and decided.

26. Respondents No. 4 to 7 filed TP No. 61-E of 2016 (CA No.141 of 2015 Old) mainly seeking the reliefs that it should be held that the Respondents No. 2 and 3 violated the Consent Terms and that the amount paid by Respondents No. 2 and 3 should be forfeited. Respondents No. 4 to 7, after filing TP No. 61-E of 2016 (CA No. 141 of 2015 Old), filed TP No. 61-N of 2016 (CA No. 68 of 2016 Old), TP No. 61-J of 2016 (CA No. 12 of 2015 Old), and TP No. 61-B of 2016 (CA No. 55 of 2015 Old) which are connected with the reliefs prayed in TP No. 61-E of 2016 (CA No. 141 of 2015 Old) and therefore they can be answered relief-wise by this Tribunal.



27. Respondent No.11 filed TP No. 61-M of 2016 (CA No. 151 of 2015 Old). It is to remember that Respondent No.11 is the 1<sup>st</sup> Petitioner and during the pendency of TP No. 61 of 2016 (CP No. 16 of 2014), he transposed himself as 'Respondent No.11'. The main relief prayed by Respondent No.11 is to cancel the consent order. This Tribunal has no jurisdiction to cancel the consent order. Moreover, Respondent No.11 is not a party to the Consent Terms. In case if Respondent No.11 is aggrieved by the Consent Terms, he can approach the appropriate forum for reliefs. The basis for Respondent No.11 to file this Application is the order passed by the CLB which reads; "If the parties feel any difficulty in implementation of the Consent Terms they can approach the CLB for clarification or further orders. Respondent No.11 is interpreting the word "parties" as 'parties to the petition'. The Company Law Board passed the order basing on the Consent Terms. Therefore, it should be interpreted that the Company Law Board had in its mind only to the parties to the Consent Terms, but not parties to the Company Petition. Respondent No.11 at the appropriate time ought to have opposed the disposal of the Company Petition basing on the Consent Terms arrived at between some of the parties to the proceedings without including all the parties. Therefore, Respondent No.11, at this stage, cannot ask for a relief of setting aside the consent order passed by the Company Law Board on 15.12.2014. In that view of the matter, there is no need to address to the reliefs prayed by Respondent No.11, except to the extent they are common in other Applications. Now, coming to Respondents No. 1 and 3 who have filed CA No. 115 of 2015, as can be seen from the main reliefs prayed in the said Application, they are asking this Tribunal to interpret what is contained in the Consent Terms and to grant reliefs pursuant to the Consent Terms. To the extent that the reliefs pertain to the interpretation of the Consent Terms and implementation of the Consent Terms, this Tribunal can address to those reliefs.





28. Violations said to have been committed by Respondents No. 2 and 3.

Respondents No. 2 and 3 are the purchasers of shares of Petitioners No. 2 to 4 vide Annexure 'A' of the Consent Terms and the purchasers of shares of Respondents No. 4 to 7 vide Consent Terms Annexure 'B'. The main violation, that has been pleaded and highlighted by Petitioners No. 2 to 4 and Respondents No. 4 to 7, in their respective Applications, is the violation of Consent Terms as contained in Para 5 of the Consent Terms in Annexures "A" and "B", which is identically the same. Para No. 5 of Annexures "A" and "B" is as follows;

*"5. Until realization of the consideration amount to the Selling Respondents as provided in Clause 4 above, the Respondents shall not transfer, dispose off and or create third party rights in any manner whatsoever, except in the ordinary course of business including the Banks for financial facilities, in any of the assets, fixed and movable of the Respondent No. 1 Company."*

Admittedly, Respondents No. 2 and 3 created charge over the assets of 1<sup>st</sup> Respondent Company to secure an amount of Rs. 21 Crores. Even according to the Petitioners, out of Rs. 21 Crores borrowed from M/s. Religare Finvest Ltd., Rs. 11,29,44,766.16 was utilized for repayment of loan to Bank of India. It is also an admitted fact that some payments have been made to the selling shareholders, i.e., Petitioners No. 2 to 4 and Respondents No. 4 to 7 from the amounts borrowed by Respondents No. 2 and 3 from M/s. Religare Finvest Ltd., by routing through some of the Companies in which Respondents No. 2 and 3 are Directors.

29. The crucial question is whether payment of consideration towards purchase of shares by borrowing amounts from M/s. Religare Finvest Ltd., by creating charge over the properties of 1<sup>st</sup> Respondent Company is in violation of Paragraph 5 of the Consent



Terms, Annexures "A" and "B". It is already said that if any question of violation in implementation of any Consent Terms arise, this Tribunal has got jurisdiction to decide the same. In order to decide the same, this Tribunal has to interpret Paragraph 5 of Consent Terms with reference to the background upon which the Consent Terms were arrived at. In this context, it is necessary to refer to certain Affidavits of Respondents No. 2, 3, Dr. Sunil Rajan and Respondent No.11. Respondent No.2 in his Affidavit dated 5<sup>th</sup> December, 2014 clearly stated that he shall purchase the offered shares out of his own funds. Respondent No.3 in his Affidavit dated 5<sup>th</sup> December, 2014 stated the same fact. Dr. Sunil Jain, who is also supposed to be a party to the Consent Terms also stated in his Affidavit dated 5.12.2014 that he shall purchase the offered shares out of his own funds. Respondent No.11 in his Affidavit dated 6<sup>th</sup> December, 2014 stated that the object behind the purchase of shares by the existing shareholders who are purchasers of shares is to enable the existing shareholders to have first right of refusal while exercising right to purchase offered shares in conformity with the provisions of the Companies Act, 2013. The said statements are also there in the affidavits of Respondents No. 2 and 3 and Dr. Sunil Rajan. Any attempt to canvass that those affidavits were obtained by misrepresentation etc., etc., are not within the scope of this Tribunal to decide in this proceedings. It is pertinent to mention that those affidavits were filed before arriving at the Consent Terms dated 14.12.2014. Therefore, basing on those affidavits only, the Consent Terms were arrived at. Therefore, the understanding between the purchasers of the shares and sellers of the shares is that the sale consideration for the purchase of shares shall be paid out of their personal funds and not from the funds of the Company or by creating charge over the properties of the 1<sup>st</sup> Respondent Company. The argument of the learned Counsel for the Respondents No. 1 and 3 that the manner in which the consideration was paid to the Petitioners No. 2 to 4 and Respondents No. 4 to 7 is immaterial when they are walking out the Company and handing over the management of the Company on the face of it appears to be correct,

but it is against the Consent Terms. If really the intention of the parties to the Consent Terms is to derive funds by creating charge over the Company's properties, they would have made the same as part of the Consent Terms. The argument of the learned Counsel for the Respondents No. 1 and 3 that initially Respondents No. 2, 3 and Dr. Sunil Rajan have agreed to purchase the shares but Dr. Sunil Rajan had withdrawn even before the Consent Terms were transformed into the order of the Company Law Board dated 15.12.2014, and as it is the obligation of the Respondents No. 2 and 3 to discharge loan due to Bank of India for which personal guarantees were given by the sellers of the shares, Respondents No. 2 and 3 created a charge over the properties of the 1<sup>st</sup> Respondent Company and borrowed an amount of Rs. 21 Crores and a major portion of it was paid to discharge the loan due to the Bank of India by the 1<sup>st</sup> Respondent Company. It is also contended by the learned Counsel for the Respondents No. 1 and 3 that apart from the part of the loan amount and the amount arranged by 2<sup>nd</sup> Respondent, 3<sup>rd</sup> Respondent has invested more than Rs. 9 Crores for purchase of the shares and therefore Respondent No.3 has acted in a bona fide manner in creating charge over the properties of the 1<sup>st</sup> Respondent company in order to obtain loan from M/s. Religare Finvest Ltd. No doubt, the facts and the circumstances prevailing then and in an anxiety to discharge the loan due to the Bank of India and in an anxiety to honour the Consent Terms, Respondents No. 2 and 3 might have chosen to create charge over the properties of the 1<sup>st</sup> Respondent Company in favour of M/s. Religare Finvest Ltd., and used the part of the loan amount for purchase of shares. Obviously, the said course of action is not contemplated in the Consent Terms. What is not contemplated in the Consent Terms cannot be inserted by this Tribunal while implementing the Consent Terms or while deciding the violation of the Consent Terms. Nothing prevented Respondents No. 2 and 3 to inform the sellers of shares, i.e., Petitioners No. 2 and 4 and Respondents No. 4 to 7 about creating charge over the properties of 1<sup>st</sup> Respondent, about taking loan from M/s. Religare Finvest Ltd., and obtain their consent. Therefore, the





course of action chosen by the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent in creating the charge over the properties of 1<sup>st</sup> Respondent Company and using a part of the loan amount for purchase of the shares is not in contemplation of the Consent Terms and more in violation of Para 5 of the Consent Terms and the Affidavits given by Respondents No. 2 and 3 referred to above. Therefore, the Petitioners Nos. 2 to 4 have committed violation of contents of Para 5 of the Consent Terms, Annexures "A" and "B".

30. The next violation pleaded by Petitioners No. 2 to 4 is that Respondents No. 2 and 3 have not paid the sale consideration amount towards purchase of their shares as contemplated in the Consent Terms Annexure "A".

31. In this context, it is necessary to refer to relevant Consent Terms in Annexure "A" at Para 4, which reads as under;

*"4. The entire consideration towards the purchase of Sale Shares shall be paid by the Respondents to the Petitioners & Others in four (4) equal instalments of Rs. 2,14,00,000/- (Rupees Two Crore Fourteen Lakhs only) each payable at forty five (45) days interval, and out of the above, the first of the instalment shall be paid in two tranches, consisting of 5% (Rs.42,80,000/- Rs. Forty two lacs Eighty thousand) payable at the time of execution of the present consent terms and the balance 20% (Rs. 1,71,20,000/- Rs. One crore seventy one lacs twenty thousand) shall be payable within a period of thirty days from the execution of the present consent terms and the respondents shall deposit of post dated cheques, the last one of which will be payable before the expiry of six (6) months from the date of the consent terms becoming effective through the Order of the Hon'ble Company Law Board."*

32. It is contended by learned counsel for the Petitioners that the consent order was passed on 15.12.2014 and therefore Petitioners shall pay the first instalment on 14.1.2015; second instalment on 28.2.2015; third instalment on 14.4.2015; fourth





instalment on 29.5.2015, but Respondents No. 2 and 3 paid amounts on 20<sup>th</sup> January, 2015; 14<sup>th</sup> April 2015; 14<sup>th</sup> April, 2015; and the last instalment on 30<sup>th</sup> June, 2015 with a delay of 15 days and therefore there is violation of condition in Paragraph 4 of the Consent Terms, Annexure "A".

33. It is the contention of the learned counsel for the Respondents No. 2 and 3 that the overall understanding of Paragraph 4 of the Consent Terms is that Respondents No. 2 and 3 shall pay the entire sale consideration of Rs. 8,56,00,000 within six months from the date of consent order and it has been substantially complied with and there is only a delay of 15 days in making the loan payment. Learned Counsel appearing for Respondents No. 1 and 3 contended that this Tribunal has got power to extend the time prescribed even in the Consent Terms when it merged into the consent order. In support of his contention, he relied upon a decision in *Smt. Periyakkal And Others Vs. Smt. Dakshyani*, reported in (1983) 2 SCC Page 127. In that decision, the Hon'ble Supreme Court held that "Court can enlarge time stipulated in the compromise decree in the interests of justice to give relief to the aggrieved party against a forfeiture clause in the compromise." In the case on hand also, time was prescribed by the parties to the Consent Terms for payment of sale consideration towards purchase of shares of Petitioners No. 2 to 4 in Annexure "A". In view of the decision of the Hon'ble Supreme Court, this Tribunal has got power to enlarge the time fixed by the parties for compromise in the Consent Terms.

34. In this context, it is necessary to refer to Paragraph 20 of Annexure "A", which reads as follows;

*"20. The parties undertake not to apply for extension of time to perform any of the actions stipulated in the present terms which shall be self operative."*



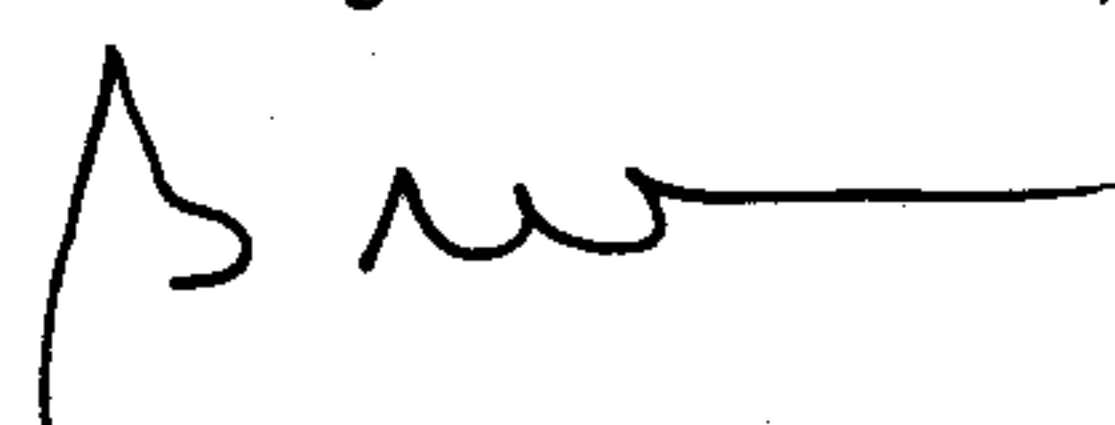
35. This is also one of the arrangements between the parties to Annexure "A" Consent Terms. Moreover, in the case on hand, Respondents No. 2 and 3 who are the purchasers of the shares had not asked for any extension of time by filing an application either before the expiry of time or after the expiry of time.

36. In the case on hand, the Consent Terms, Annexure "A" further elaborates that in case of failure of Respondents No. 2 and 3 to purchase the shares of Petitioners No. 2 to 4, a default notice has to be issued to the Respondents No. 2 and 3 and thereupon Petitioners shall purchase the shares of Respondents No. 2 and 3 as per Paragraphs 17 to 19 of the Consent Terms contained in Annexure "A" and therefore extension of time prescribed in the Consent Terms also amounts to stopping the Clock moving further in the manner in which it was envisaged in the Consent Terms in Annexure "A". Therefore, depending on the facts of this case, this Tribunal cannot extend time to the Respondents No. 2 and 3 to pay the sale consideration especially in the absence of such application before the due date or immediately after the due date. Hence, it can only be held that there is breach of Paragraph No.4 of Consent Terms in Annexure "A".

37. Another breach canvassed on behalf of the Petitioners is that professional charges have to be paid within six months from the date of the Consent Terms but the same has not been paid. In this context, it is necessary to refer to Paragraph 8 of Consent Terms in Annexure "A", which reads as follows;

*"8. The outstanding professional fees and the amount of unsecured loan (**Annexure-1**) shall be paid by the Company within a period of six (6) months from the date of passing of the Order by this Hon'ble Board."*

Even according to the Respondents No. 2 and 3, the outstanding professional fees and the amount of salary of Rs. 1,17,68,686/- has

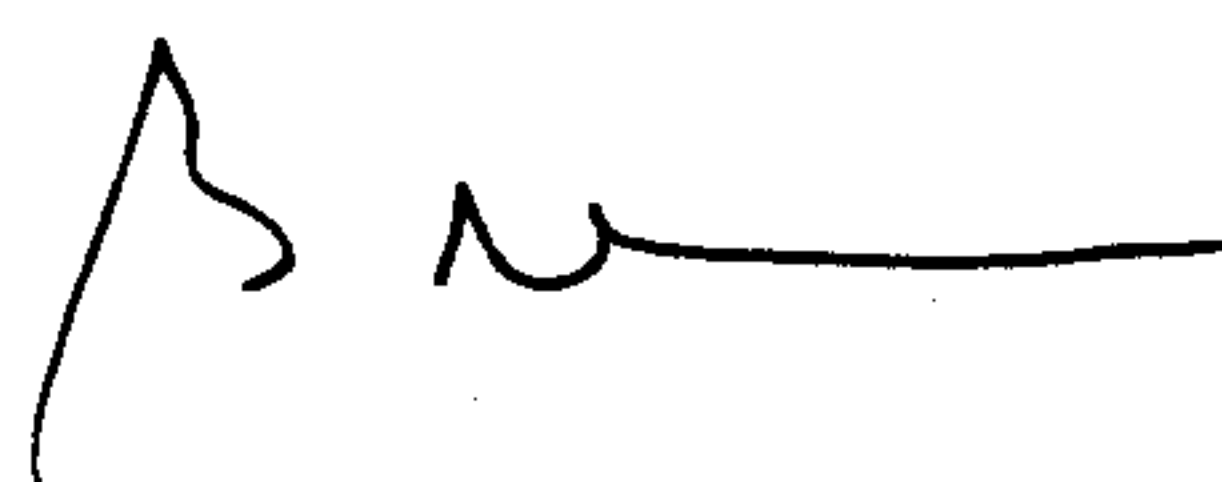


been paid by Respondent No.3 to the Petitioners No. 2 to 4 and their associates on 30<sup>th</sup> June, 2015. That means, the said amount was also not paid within six months as contemplated in Paragraph 8 of the Consent Terms. Therefore, Respondents No. 2 and 3 have committed violation of more than one, of the Consent Terms contained in Annexure "A" in respect of payments to Petitioners.

38. Coming to Respondents No. 4 to 7, it is the Consent Terms in Annexure "B" that has to be taken into consideration to decide whether there is any violation of Consent Terms by Respondents No. 2 and 3.

39. Respondents No. 4 to 7 in TP No. 61-E of 2016 (CA No. 141 of 2015 Old) has stated that as per Paragraph 4 of the Consent Terms in Annexure "B", Respondents No. 2 and 3 shall pay 5% of the total sale consideration at the time of execution of the Consent Terms and the balance 95% shall be paid before expiry of 9 months from the execution of the Consent Terms starting from 4<sup>th</sup> month. The total sale consideration payable by Respondents No. 4 to 7 is Rs. 10,40,25,604/-. The relevant paragraph in Consent Terms Annexure "B" is Paragraph No.4, which reads as follows;

*"4. The entire consideration towards the purchase of Shares shall be paid by the Purchasers of Shares to the Selling Respondents in four (4) equal instalments starting from 4<sup>th</sup> month and ending before expiry of nine (9) months from the execution of the present consent terms. The cheques for the first trench of 5% shall be handed over at the time of execution of the present consent terms and the balance 95% shall be payable starting from 4<sup>th</sup> month and ending before expiry nine (9) months from the execution of the present consent terms and the respondents shall deposit all post dated cheques with the Learned Bench Officer, the last one of which will be payable before the expiry of nine (9) months from the date of the consent terms becoming effective through the Order of the Hon'ble Company Law Board."*



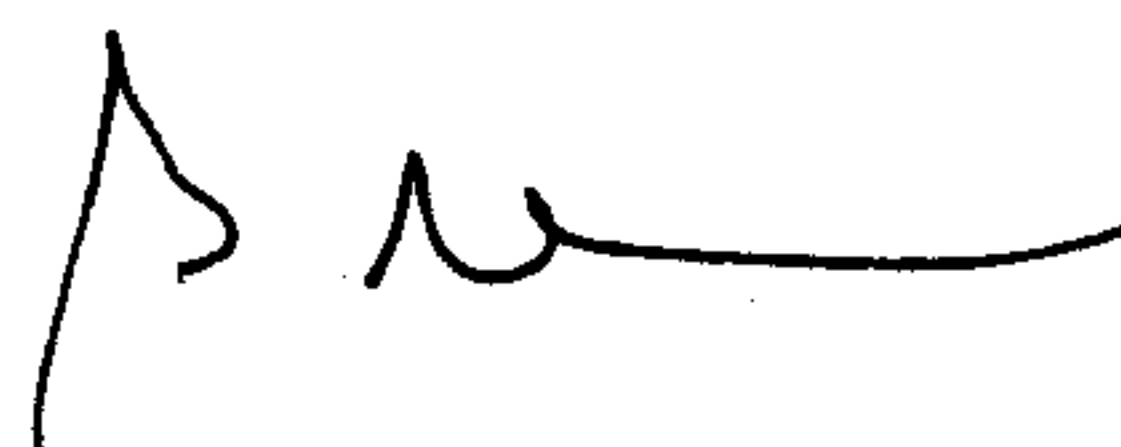


40. A reading of above said Paragraph in Annexure "B" gives an understanding that the entire sale consideration of Rs. 10,40,25,604/- shall be paid within 9 months from the date of the Consent Terms starting from the 4<sup>th</sup> month. It cannot be interpreted that Respondents shall pay the entire sale consideration in instalments. From the material available on record, it is found that Respondents No. 2 and 3 have paid the entire sale consideration of Rs. 10,40,25,604 to the Petitioners even before the expiry of 9 months' period. Therefore, there is no violation of Paragraph 4 of Consent Terms Annexure "B".

41. Coming to the violation of Paragraph No.5 of the Consent Terms Annexure "B", this Tribunal already came to the conclusion (vide Paras 28 and 29 of the order) that Respondents No. 2 and 3 have violated condition in Paragraph 5 of the Consent Terms.

42. The main contention of Respondents No. 4 to 7 is that the amount paid by the Respondents No. 2 and 3 towards sale consideration of their shares is liable for forfeiture. In this context, reference can be made to Paragraph No. 14 of the Consent Terms, Annexure "B", which reads as follows;

*"14. The purchasers of the shares shall have no option to back out from purchasing the agreed shares. The purchasers shall be responsible for the purchase of shares jointly and severally and in case of default a notice shall be issued by the Learned Bench Officer to the purchasers pointing out the default and to rectify the same within a period of fifteen days, on expiry of which it shall be assumed that the purchasers of shares are not willing to purchase such shares and in such an event the learned Bench Officer shall have liberty to issue notice of default to the purchasers and on expiry of seven (7) days of issue of such notice, the amount already paid in respect of the shares shall stand forfeited and the respective rights of the parties, as in vogue prior to signing of the consent terms shall become effective."*



A reading of the above said Paragraph clearly goes to show that before invoking the forfeiture clause, a notice shall be issued by the Bench Officer to the purchasers pointing out the default and to rectify the same within a period of 15 days and on expiry of it only it shall be assumed that purchasers of shares are not willing to purchase such shares and thereafter the Bench Officer shall issue notice of default to the purchasers and on expiry of seven days from the date of issue of such notice, the amount already paid by Respondents No. 2 and 3 to Respondents No. 4 to 7 towards sale consideration of the shares shall stand forfeited. Therefore, in this context, it is necessary to find out whether Bench Officer has issued notices as required by Paragraph No. 14. From the material available on record, no such notices have been issued by the Bench Officer, more so the Paragraph No.14 comes into operation only in case of default on the part of the purchasers, i.e., Respondents No. 2 and 3. In the case on hand, there is no default in payment of sale consideration towards purchase of shares of Respondents No. 4 to 7. Therefore, there is no scope to invoke forfeiture clause. But the fact remains that Respondents No. 2 and 3 violated Paragraph 5 of the Consent Terms Annexure "B". This relates to the source of funds derived by Respondents No. 2 and 3 but not in respect of payments. It is an admitted fact that a part of the sale consideration was paid to Respondents No. 4 to 7 by taking loan from M/s. Religare Finvest Limited by creating charge over the properties of the 1<sup>st</sup> Respondent Company.

43. The very fact that Respondents No. 4 to 7 are requesting this Tribunal to invoke forfeiture clause goes to show that they want to retain their shares and at the same time the sale consideration paid by Respondents No. 2 and 3 and that too a part of it taken as a loan by creating the charge on the properties of 1<sup>st</sup> Respondent Company. Therefore, there are no grounds to invoke forfeiture clause in this case. The contention of the learned Counsel for the Respondents No. 4 to 7 is that there is novation of contract etc., are not matters within the jurisdiction of this Tribunal to decide in these proceedings. The contention of the learned Counsel for the

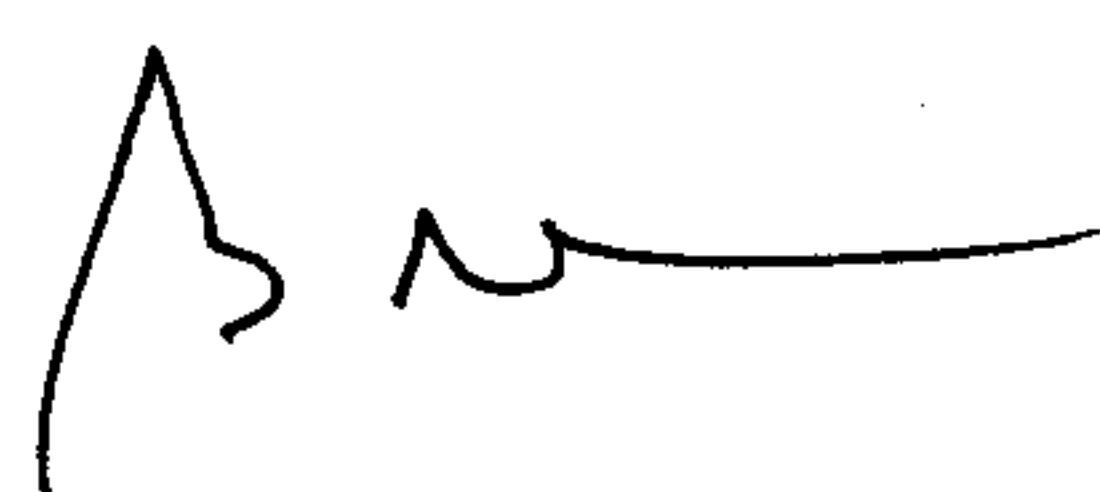


Respondents No. 4 to 7, that Respondents No. 2, 3 and Dr. Sunil Rajan shall jointly purchase and the very fact that Dr. Sunil Rajan has gone back from the Consent Terms, makes the Consent Terms void also, do not merit acceptance for the simple reason the Company Law Board in its order dated 15.12.2014 referred to the Consent Terms between Respondents No. 2 and 3, but not between Respondents No. 2, 3 and Dr. Sunil Rajan. Moreover, this Tribunal, sitting as an Execution Court, can only interpret the Consent Terms for the purpose of execution or for the purpose of finding any default in observing the Consent Terms and exercise authority as provided in the Consent Terms. The validity or otherwise of the Consent Terms is not within the jurisdiction of this Tribunal.

44. Coming to the violation of Consent Terms on the part of the Petitioners, the contention of Respondents No. 2 and 3 is that Petitioners have not deposited the said Transfer Deeds till they were called upon to do the same by the Bench Officer on 8.7.2015 and even the deposited Transfer Deeds are defective in nature. Further, it is contended by the learned Counsel for the Respondents No. 1 and 3 that Petitioners deposited the Transfer Deeds with a condition not to release the same to the Respondents No. 2 and 3. In this context, it is necessary to refer to Paragraph No.6 of the Consent Terms, Annexure "A";

*"6. On passing of the Order by this Hon'ble Board to this effect, the Petitioners & Others shall execute transfer deeds in favour of the Respondents in such manner as suggested by the Respondents and shall deposit the same with the Learned Bench Officer for safe custody."*

45. The answer to the said contention raised by the Petitioners is that the Respondents No. 2 and 3 have not suggested the manner in which Transfer Deeds have to be deposited. There is no force in the said contention of the learned Counsel for the Petitioners. Even if Respondents did not state the manner in which Transfer Deeds





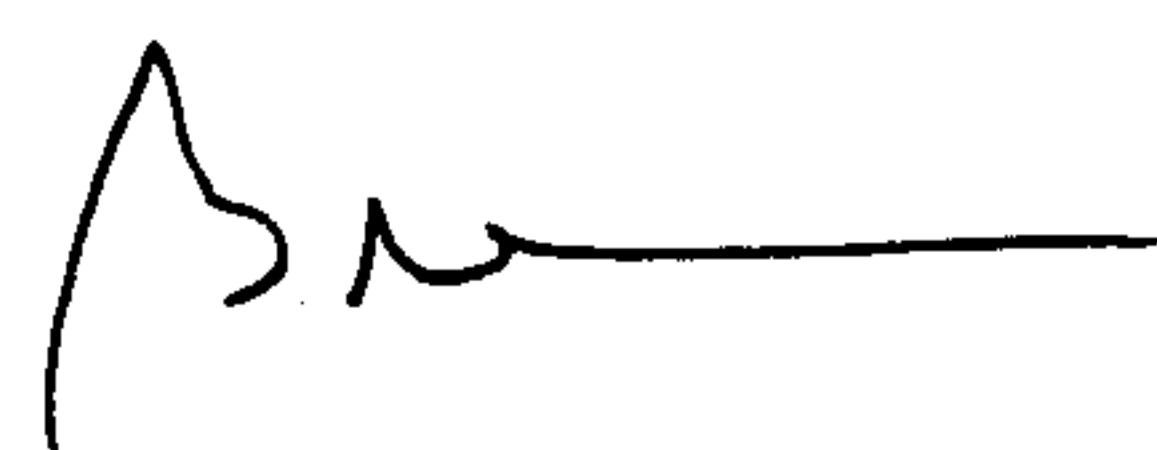
have to be deposited, it is for the Petitioners at least after receiving the amounts to issue a notice to the Respondents No. 2 and 3 calling upon them to state the names of the persons against whom Transfer Deeds have to be executed. It is also for the Petitioners at least to have deposited the Transfer Deeds without filling the name of the transferee. Therefore, there is violation of Paragraph 6 of Consent Terms mentioned at Annexure "A".

46. The next contention advanced by the learned Counsel for the Respondents No. 1 and 3 is that the Petitioners have to withdraw legal cases mentioned in Annexure-2 of Annexure 'A' Consent Terms. It is not even the case of the Petitioners that the cases mentioned in Annexure-2 are withdrawn. It is the version of the Petitioners that they have made efforts to get the legal cases withdrawn by the parties but the persons that filed the cases did not agree for withdrawal because of non-compliance of the promises by the Respondents No. 2 and 3. No material worth mentioning is placed on record to substantiate the said version. The relevant Paragraph in Annexure "A" is Paragraph 14 which reads as follows;

*"14. The Petitioners unconditionally agree to withdraw the legal cases as per Annexure-2."*

There is no mention in Paragraph 12 about making persuasions with the parties. Such statement is there only in Paragraph 15 which deals with complaints. Even to comply with Paragraph 15 of Annexure "A", it appears from the material available on record that Petitioners have not put in any efforts. From the beginning, Petitioners have been disputing the payments made and the time at which they were made. Therefore, violation of Paragraphs No. 14 and 15 of Annexure "A" are also there on the part of the Petitioners.

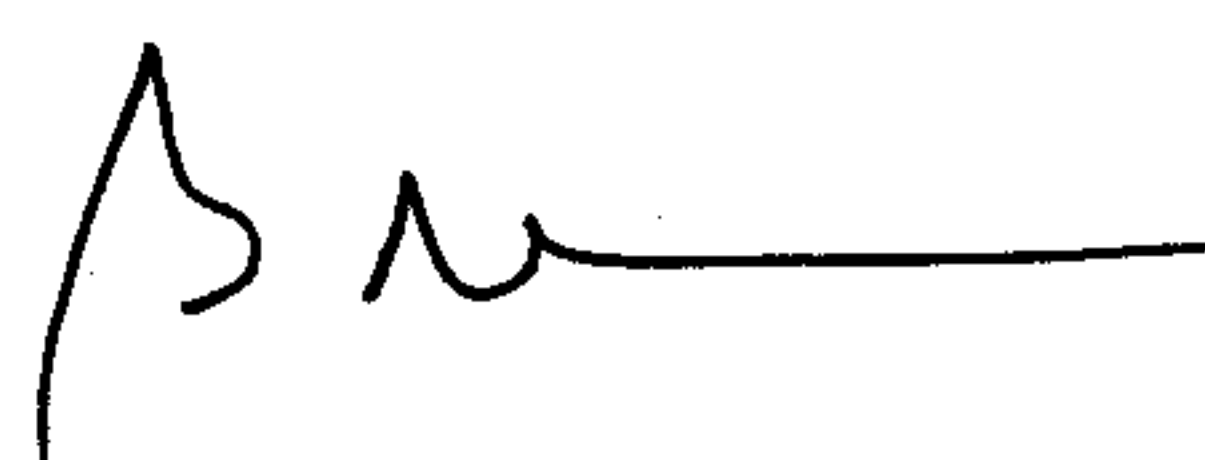
47. Coming to the violations on the part of the Respondents No. 4 to 7, the Respondents No. 4 to 7 in compliance of Clause 6 deposited the share certificates along with duly executed said



Transfer Deeds by the Bench Officer along with TP No. 61-J of 2016 (CA No. 12 of 2015 Old) dated 20<sup>th</sup> January, 2015. Therefore, there was no violation of Clause 6. Respondents No. 4 to 7 also resigned as 'Directors' and thereby complied with Clause 1 of the Consent Terms but no case has been made out by the Respondents No. 4 to 7 to invoke the forfeiture clause, but at the same time Respondents No. 2 and 3 failed to perform their obligations as per Paragraph No. 5 of the terms and conditions mentioned in Annexure "B" and the Affidavits given by them, and thereby Respondents No. 2 and 3 are not entitled for transfer of the shares of Respondents No. 4 to 7.

48. The object of Consent Terms:

A combined reading of Consent Terms, Annexures "A" and "B" goes to show that the management of the affairs of the Company shall be placed either in the hands of Respondents No. 2, 3 and Dr. Sunil Rajan or in the hands of the Petitioners No. 2 to 4. Even before the Consent Terms were filed before the Court, Dr. Sunil Rajan withdrew from the settlement and choose not to sign the Consent Terms. In order to achieve the said object, it can only be said that the Consent Terms as mentioned in Annexures "A" and "B" would go together as part of the settlement. In case if it is held that Respondents No. 2 and 3 failed to follow the Consent Terms; and if it is further held that the Petitioners are entitled to purchase the shares of Respondents No. 2 and 3; and further held that Respondents No. 2 and 3 are entitled for the shares of Respondents No. 4 to 7, then the situation would be that the Respondents No. 2 and 3 would be selling their shares to Petitioners and, at the same time, purchasing the shares of Respondents No. 4 to 7. This contingency has not been visualized in framing two sets of Consent Terms in the form of Annexures "A" and "B". No doubt, this Tribunal cannot modify or interfere with the Consent Terms, but at the same time when this Tribunal is called upon to interpret the Consent Terms, it should be interpreted in a harmonious way in order to further the object of settlement. It is not contemplated in Consent Terms, Annexures "A"

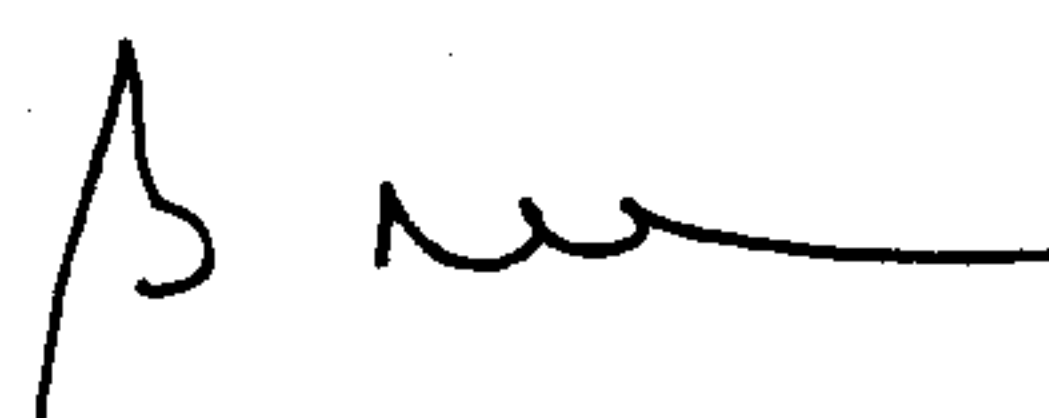




and "B" as to what should happen in case of failure of observance of Consent Terms in Annexure "B" except stating that Respondents No. 4 to 7 are entitled for their shares. In case of succeeding of Respondents No. 4 to 7, Respondents No. 2 and 3 will go out of the Company. In case if Respondents No. 2 and 3 succeed as against the Petitioners and they fail as against Respondents No. 4 to 7, Petitioners will go out of the Company, and it is Respondents No. 2 and 3 and Respondents No. 4 to 7 who will remain in the Company. During the pendency of these Applications, Dr. Sunil Rajan offered to sell his shares also, but it does not come within the purview of the Consent Terms. Therefore, this Tribunal refrain itself to act on such request. Further, the Consent Terms also cover the litigations filed by third parties. It is pertinent to mention that the 3<sup>rd</sup> parties who filed the cases are not parties to the settlement. Therefore, it is a case where Respondents No. 2 and 3 in the first instance and Petitioners in the second instance failed to perform in accordance with the Consent Terms. Respondents No. 4 to 7 had not made out a case to invoke the forfeiture clause. Here, it is pertinent to refer to Paragraph 19 of Consent Terms in Annexure "A", which reads as follows;

*"19. In the event of Petitioners and their nominees failing to purchase the shares from the Respondents, within a period of six (6) months from the date of failure of Respondents to complete their acquisition within six (6) months of the date of the Order of the Honorable Member, they shall forthwith resign as Directors of Respondent No.1 Company to be replaced by an independent committee of management to be appointed by the Honorable Company Law Board."*

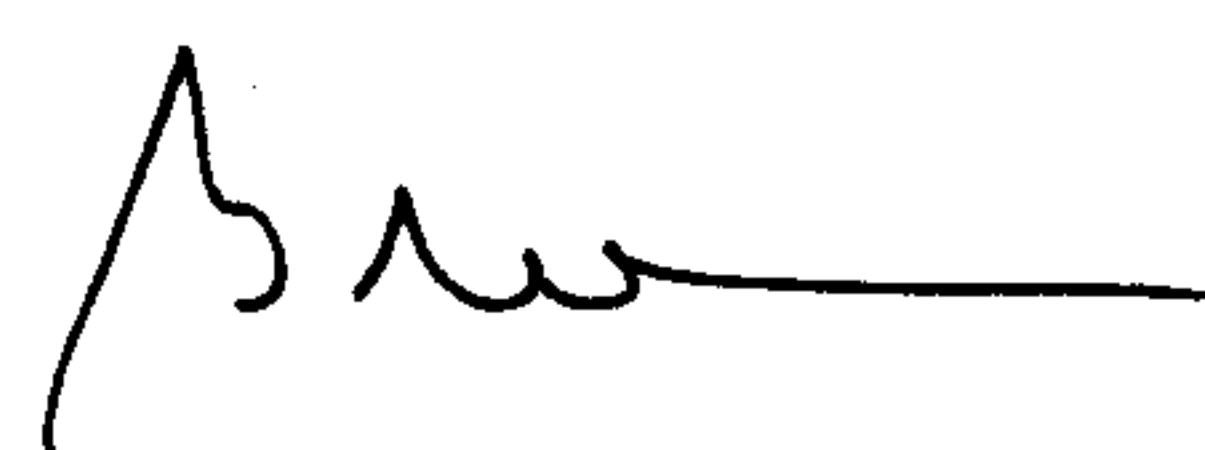
In order to implement this, there must be issuance of a default notice. The Petitioners shall pay back the entire amount received by them from Respondents No. 2 and 3 towards sale consideration of shares, and Petitioners No. 2 to 4 by following the Paragraphs 18 and 19 of the Consent Terms in Annexure "A" shall purchase the shares of the





Respondents No. 2 and 3. No doubt, the Petitioners filed TP No. 61-C of 2016 (CA No. 108 of 2015 Old), but they have not deposited the entire amount received by them towards sales of shares. The statements of accounts filed by them do not even reveal that they are having funds in their Bank accounts equal to the amounts they have received from the Respondents No. 2 and 3 towards sale consideration of the shares. Therefore, it is a case where the situation has not reached to the stage that the Petitioners No. 2 to 4 can be called upon to purchase the shares of Respondents No. 2 and 3. Even assuming that such a situation has arisen, from the material on record the Petitioners have not complied with the condition of Paragraph No.19. It is pertinent to mention here, that Dr. Sunil Rajan filed winding-up petition before the Hon'ble High Court of Madhya Pradesh, Indore Bench, vide Com.P. No.24 of 2016. In that petition, Counsel for Respondents sought time on 27.2.2017 to file their reply. Therefore, it is clear that the winding-up petition filed by Dr. Sunil Rajan is pending before the Hon'ble High Court of Madhya Pradesh, Indore Bench. Therefore, a situation had arisen that an Independent Committee of Management has to be appointed as provided in Paragraph 19 of Consent Terms Annexure "A".

49. The material on record show, the Medical Professionals with a noble object incorporated the 1<sup>st</sup> Respondent Company to run a Hospital. Unfortunately disputes arose among the shareholders. In spite of the best efforts made by the Hon'ble Mediator and in spite of Settlement Terms reached, parties to the Terms could not adhere to the terms of settlement. Therefore, the parties have no option either to decide their disputes in the winding-up petition or to go for an independent Committee of Management as stated in Paragraph 19 of the Consent Terms, Annexure "A" or to have another settlement among all the shareholders of the Company. This Tribunal has no authority to direct the parties to have a fresh settlement by setting aside the Consent Terms which were approved by the Company Law Board by its order dated 15.12.2014. Therefore, this Tribunal can



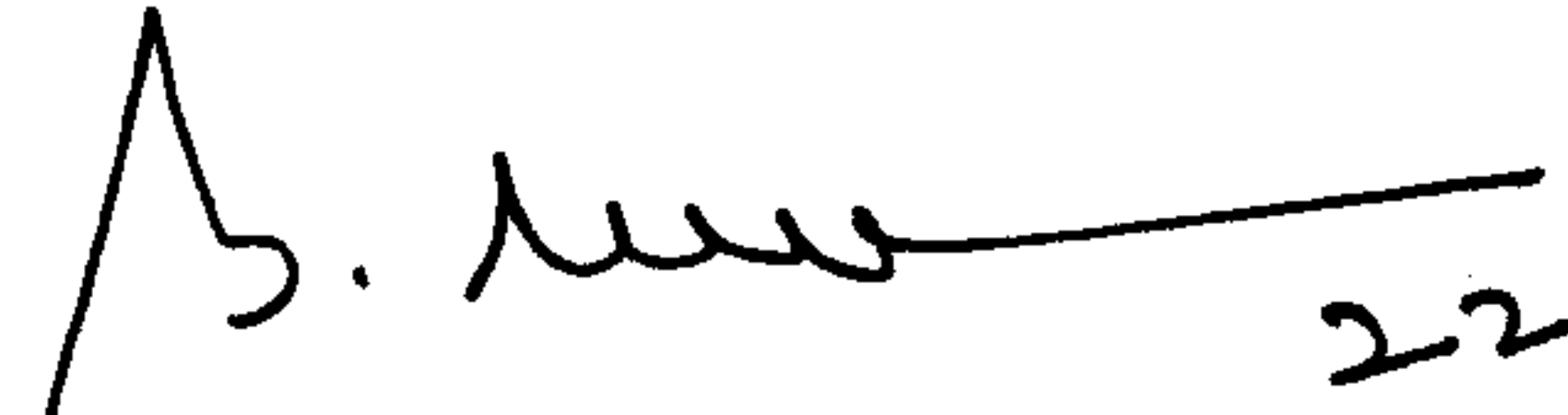
only suggest the parties to have a fresh settlement in the interests of all stakeholders of the Company and the Company at large.

50. Therefore, this Tribunal is suggesting the parties to the proceeding to go for fresh settlement and complete the process of settlement within three months if they choose to do so and report the same to this Tribunal. In case no settlement could be reached between all the parties to the proceeding within 3 (three) months, the Petitioners No. 2 to 4 and others shall deposit the entire amount received by them towards consideration of their shares by way of Demand Draft drawn in favour of 1<sup>st</sup> Respondent Company before the Registry of this Tribunal on or before 13.07.2017. Respondents No. 4 to 7 shall also deposit the entire amount received by them towards sale consideration of their shares by way of Demand Draft in favour of 1<sup>st</sup> Respondent Company, before the Registry of this Tribunal on or before 13.07.2017. In case no settlement is reached between the parties, this Tribunal, after 13.7.2017, would appoint an independent Committee of Management to manage the affairs of the 1<sup>st</sup> Respondent Company which will supersede the Board of Directors, past and present, subject to orders, if any, in Comp. Petition No. 24 of 2016 on the file of Hon'ble High Court of Madhya Pradesh, Indore Bench. The Managing Committee shall take charge of the entire assets and liabilities of 1<sup>st</sup> Respondent Company. This Tribunal, while appointing the Managing Committee, will give appropriate directions to the Managing Committee in respect of professional charges and in respect of the amounts, if any, deposited by the Petitioners and Respondents No. 4 to 7, pursuant to this order and relating to default, if any, made in making deposit by Petitioners No. 2 to 4 and others, and Respondents No. 4 to 7 as ordered above. This Tribunal will also name the Chairman of the Managing Committee and directions will be given to the Chairman so named to constitute the Board of Directors. The interim order dated 10.12.2015 passed by Company Law Board in T.P. No.61-C of 2016 (C.A. No.108 of 2015) shall continue till the Independent Committee of Management to be appointed by this Tribunal take charge of the



affairs of 1<sup>st</sup> Respondent Company or until further orders whichever is earlier.

51. All these Applications are disposed of accordingly. Parties to these proceedings shall bear their own costs.

  
22.03.2017  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

Pronounced by me in open court on this  
22<sup>nd</sup> day of March, 2017.

RMR, PS.