

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

T.C.P No.75/(MAH)/2010  
CA No. 226 of 2011 MKS

CORAM:

Present: SHRI M. K. SHRAWAT  
MEMBER (J)

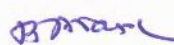
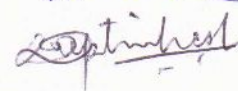
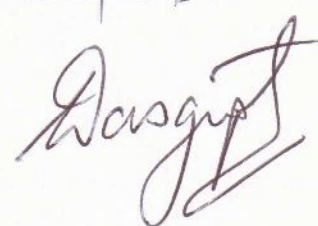
ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 24.08.2016

NAME OF THE PARTIES: Mrs. Indira Jayantilal Vikamsey & Anr.

V/s.

M/s. Pla Electro Appliances Pvt. Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 397/398 of the Companies Act 1956  
and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
1	B. B. Parekh Dr. Deepthi M	Advocate for Petitioner	 
2.	Zal T Anandhujina	Advocate for Respondents	
3.	Arun Dasgupta		

**Order**

**C.A. No. 226 of 2011**

**IN**

**T.C.P. No. 75/397-398/CLB/MAH/2010**

1. Ld. counsel from the side of petitioner as well as from the side of respondent are present.
2. In respect of CA 226/2011 an argument has been raised by the Ld. Counsel Mr. B.B. Parekh that the respondent company has siphoned a sum of Rs.6,31,210/- under the guise of remuneration to the Directors. He has also pleaded that the petitioner, being a minority shareholder, had been oppressed detrimental to the

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interest of the petitioner. According to the argument the funds were siphoned during the accounting period from 31/3/2007 to 31/03/2009. He has also pleaded that in the subsequent years, as well heavy remuneration was paid to the Directors; as against that; no dividend had been declared. Vide a separate written submission Ld. Advocate has placed on record a case laws viz., Oxford Benefit Building and Investment Society (Chancery Division Vol XXXV-Pg 502).

3. From the side of Respondent; Ld. Advocate has vehemently denied the impugned allegation of siphoning of money in the guise of remuneration to Directors. He has referred the affidavit/reply of one of director Mr. Tarak N. Shah for the reason that the Directors are highly qualified and experienced electronic engineers, therefore, the remuneration received by them was neither excessive nor unreasonable. It has also been pointed out that by the efforts of the directors the turnover, as also the profits, have gone up in the past years.
4. Heard both the sides at some length. Prima facie at this juncture no interim order as demanded in impugned application (CA 226/2011) is legally justifiable. The first reason is that the CP in question (TCP 75/2010) is already under consideration and yet to be decided wherein some of the allied issues can be decided/answered.
5. The seemed reason is that on due examination of the accounts of the relevant period it is not apparently visible that the remuneration was excessive. The turnover/profitability has stated to be gone up during that period. Otherwise also the allegation is not well supported by any evidence that what amount could be reasonable and if compare that amount by what amount the payment made was excessive. As a result, the allegation as raised in the application remain uncorroborated.
6. The case law supra, has been perused by me which is distinguishable on facts and law. The business of said company was lending money to builders. Articles of Association had provided that no dividend should be payable except out of "realized profit" and that no remuneration should be paid to the directors until a dividend 7% had been paid to the shareholders. On the contrary, no such clauses/condition in the case in hand had been placed for my consideration. In the cited decision a breach of trust was established because the payment was

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had been paid to the shareholders. On the contrary, no such clauses/condition in the case in hand had been placed for my consideration. In the cited decision a breach of trust was established because the payment was made in contradiction of the clause of Article of Association, as against that, no evidence of that nature is relied upon in the instant case. It is hereby clarified before we part with, that other issues and question of siphoning of the funds shall remain open to be decided at the time of disposal of C.P. 75/2010.

7. As a result, CA 226/2011 is hereby dismissed. Let the CP be fixed for hearing on 22/09/2016. Date of next hearing is duly communicated to the parties.

Dated: 24.08.2016

**sd/-**

Shri M.K. Shrawat  
Member (Judicial)