

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP 71/2016
(No.45/2011)

Under Sections 397, 398 read with 402 & 403 of the Companies Act, 1956

In the matter of

Gopichand Idandas & 2 others

Vs.

M/s.Heeral Constructions Private Limited & 2 others

Order delivered on 19th of September, 2017

CORAM

CH.MOHD.SHARIEF TARIQ, MEMBER (JUDICIAL)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Petitioner : M/s.R.Murari & Thriyambak J Kannan
For Respondents : M/s.Chandramouli Prabhakar & R.Venkatavaradan

ORDER

Per: S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

The Company is M/s. Heeral Constructions Private Limited,
incorporated as a Private Limited Company under the provisions of
the Companies Act, 1956 (hereinafter referred to as the “Act”)
having its registered office at Gee Gee Minar 23, College Road,

Nungambakkam, Chennai 600 006, Tamil Nadu (hereinafter referred to as “the Company”).

The authorized share capital of the Company is Rs.2,10,00,000/- (Rupees Two Crore Ten Lakhs only) divided into 21,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up capital of the Company is a sum of Rs.1,00,85,200/- (Rupees One Crore Eighty Five Thousand Two Hundred only) divided into 10,08,520 equity shares of Rs.10/- each.

The members of the Board of Directors of the Company are Mr.Gopichand Idandas, Petitioner No.1 herein, Mr. Sunil Gopichand, Petitioner No.2 herein, Mr.Sushil G.Duseja, Petitioner No.4 herein, Mr.Shyam G.Duseja, Respondent No.2 herein, Mr.Godhardhandas Idandas and Mr.G.Haresh Chand who are not parties to the present proceedings.

Thus the Company is comprised of only members of the same family and also the members of the Board of Directors of the Company are also made up only of members of the same family.

Therefore, the Company is a family company as per various judicial

precedents laid down by this Hon'ble Board and also various other High Courts.

The Petitioners, who are 3 in number, amongst 30 shareholders and who collectively hold approximately 70% of the paid-up and subscribed capital of the Company, fulfill the conditions of Section 399(1)(a) of the Act, of being not less than $1/10^{\text{th}}$ of the total number of members of a Company having a share capital and representing not less than 10% of the issued share capital of the Company. The qualifications prescribed under Section 399(1) of the Act, 1956 are therefore fulfilled and the present Petition is maintainable.

Particulars of the Petitioners:

The petitioners are all shareholders of the Company and are residing at 'Kasturi Estate', 7, Second Street, Kasturi Ranga Road, Chennai 600 086, Tamil Nadu, Petitioner No.1 is a subscriber to the Memorandum and Articles of Association of the Company and has been its Managing Director since its incorporation.

Petitioner No.1 holds 5,28,470 equity shares of Rs.10/- each out of the paid up and subscribed capital of the Company.

Petitioner No.1's holding alone constitutes approximately 52.40% of the shareholding in the Company. Petitioner No.2 holds 145,010 equity shares of Rs.10/- each out of the paid-up and subscribed capital of the Company, which constitutes approximately 14.38% of the shareholding in the Company. Petitioner No.3 holds 40,010 equity shares of Rs.10/- each out of the paid-up and subscribed capital of the Company, which constitutes approximately 2.98% of the shareholding in the Company.

Particulars of the Respondents:

Respondent No.2 is Mr.Shyam G. Duseja whose address as on the records of the Company indicate that he is residing at 'Kasturi Estate', 7, Second Street, Kasturi Ranga Road, Chennai 600 086, Tamil Nadu. However, the Petitioners have stated that they reliably know that Respondent No.2 is presently residing at No.167, 2nd Street, Luz Church Road, Mylapore, Chennai 600 004 Tamil Nadu. The petitioners have stated that they know that Respondent No.2 has office at Gee Gee Universal, 8th Floor, McNicholas Road, Chetpet, Chennai 600 031 Tamil Nadu. Respondent No.2 is a Director on the Board of the Company and member of the Company holding 110,010 equity shares of Rs.10/-

each out of the paid up and subscribed capital of the Company, which constitutes approximately 10.91% of the shareholding in the Company.

Respondent No.3 is not a shareholder of the Company, but a private trust of which Respondent No.2's wife is the Trustee and to which trust, according to the petitioners, the Respondent No.2 has illegally and without authorization sold the property of the Company.

The petitioner has submitted as follows:

“1. The present Petition was filed under Sections 397/398 read with Sections 402 and 403 of the Companies Act, 1956 due to the oppressive, burdensome, harsh and wrongful conduct of Respondent Nos.2. As is evident from the facts stated below, Respondent No.2 has been acting in a manner which is in direct contravention of the Articles of Association of the Company and also the Act and is oppressive and nothing short of mismanagement, for his own private ends.

2. Petitioner No.1 submitted that, in his capacity as Managing Director of the Company, he was on the lookout for

purchasing a piece of property for being developed by the Company keeping in mind the fact that the Company was engaged in the real estate business.

3. During his search, Petitioner No.1 came across a plot of land admeasuring 11 grounds and 1849 square meters together with residential buildings and superstructures known as “Philroy”, situate at Door No.151, Village Road, Madras 600 034, Tamil Nadu comprised in R.S.No.533/2, Block No.29 Nungambakkam Division (hereinafter referred to as the “**Property**”). The Petitioner learnt that the name was held by the Phil And Mary Clubwala Jadhav Trust (hereinafter referred to as the “**Trust**”).

4. Petitioner No.1 submitted that even though the Trust was the owner of the Property, it was unable to derive any benefit from the same since the following individuals had a right of residence in the property. Mr.K.K.Dastur, Ms.Piki Dastur, Ms.Lakshmi Dastur, Mr.R.K.Dastur, Ms.Mahrukh Dastur, Mr.Ardeshir Dastur and Mr.Maneckshaw Dastur.

5. Petitioner No.1 submitted that by way of an agreement for sale dated November 11, 1993, (hereinafter referred to as the

“**Sale Deed**”) the Trust, represented by its Trustee, Mr.R.K.Dastur and the confirming parties agreed to convey the entire property to the Company, represented by petitioner No.1, for a consideration of Rs.3,41,35,000/- (Rupees three crore forty one lakhs thirty five thousand only). By way of the execution of the sale deed, the confirming parties had agreed to give up all and any rights that they had in the property save the right to receive sale consideration, which was also duly paid and no monies are due to the confirming parties thereafter.

6. Petitioner No.1 submitted that at the time of the execution of the Sale Deed, it was also agreed that the Trust and the Confirming Parties would execute a power of attorney in favour of any of the directors of the Company to enable the Company to mortgage and/or sell parts of the divided or undivided shares of the Property. Consequently, the Trust and the Confirming Parties executed a power of attorney dated October 3, 1994 in favour of Petitioner No.1 and Respondent No.2. Petitioner No.1 submits that Respondent No.2 had been appointed a director on the board of the Company with effect from September 20, 1993.

7. The petitioners submitted that it was always the intention of the Company that the property be developed commercially and sold to various interested parties. Accordingly, the company has sold undivided shares of land to various companies/entities and have also constructed for them office/commercial space in the building. It is however submitted that the Company held the exclusive right over the terrace area of the building and though Petitioner No.1 and Respondent No.2 held the Power of Attorney, the same was restricted to selling undivided shares of land to third parties and did not permit either of them to deal in any manner with the Company's right over the terrace area. This arrangement had been done to facilitate the rentals from the structures in the terrace namely Mobile Phone towers be given to the trust in the name of the daughter of the 2nd respondent who is the grand child of the 1st Petitioner as well. It would further necessarily follow that in keeping with the provisions of the Act and the Articles of Association of the Company, any agreement to be entered into by the Company in respect of the terrace area could only be in pursuance of a decision of the Board of Directors of the Company. Further and at the Board level, the petitioners have two

nominees and the Respondents and their family members have two nominees. Petitioner No.1 as Chairman would have a casting vote in the event of a tie. Therefore no agreement can be entered into except with the consent of the petitioners, who are also the majority shareholders of the Company.

8. Respondent No.2 being fully conscious of this position has fraudulently misused the Power of Attorney executed in his favour to unlawfully to give away the terrace rights to a trust, namely the Ankita S.Duseja Trust, being Respondent No.3, formed in the name of his daughter and of which the trustee is his wife, apart from having sold a substantial part of the undivided share of the land to the said trust at a price unrelated to the market value of the land. These actions of the Respondent No.2 in appropriating the monies belonging to the Company recently came to the knowledge of the petitioners when the petitioners on a routine inspection came across the existence of mobile phone towers and huge generators in the terrace and the basement of the property and consequently made an enquiry into how the same were unauthorizedly erected on the terrace and basement of the Property. Such enquiry revealed shocking revelations into the conduct of

Respondent No.2 who has clearly breached his fiduciary duty in relation to the Company and also the other shareholders as well.

9. The Petitioners submitted that as stated earlier, the erstwhile owners of the property, the Trust and the Confirming Parties, had executed the Power of Attorney in favour of the Petitioner No.1 and Respondent No.2. This was primarily done to enable the execution of sale deeds in favour of the prospective buyers of built up space in the Property, whereby sale deeds could be executed in their favour for the sale of undivided shares of the Property and construction agreements could be entered into with them for the construction of space for them on the property. This was the standard practice that was being adopted by all promoters of similar projects and it is for this reason that the Power of Attorney was executed.

10. Respondent No.2 has however, surreptitiously used the Power of Attorney to execute a purported deed of sale dated July 2, 2004 in favour of Respondent No.3, the trustee of which is Respondent No.2's wife, whereby a 6/1100th undivided share of land has been conveyed in favour of Respondent No.3. Such a

purported sale is clearly unlawful and highly prejudicial to the Company's interests as the following narration would reveal.

Firstly, Respondent No.3 never contracted for any built up space in the Property and therefore it would not be entitled to have any undivided share of land conveyed in its favour.

Secondly Respondent No.3 is a Trust created in favour of Respondent No.2's daughter as the name of the trust would itself reveal, she is also the beneficiary of it and the trustee is the wife of Respondent No.2. It is therefore obviously a vehicle for the Respondent No.2's fraudulent activities.

Thirdly, no authorization was obtained from the Board of Directors of the Company for the execution of the purported deed of sale and the Power of Attorney alone would not entitle Respondent No.2 to execute the purported deed of sale dated July 2, 2004 according to his whims and fancies. The Petitioners submit that he would be accountable to the Company for his actions.

Fourthly, the inadequate consideration which Respondent No.2 has received from Respondent No.3 for the alleged sale of the 6/1100th undivided share of land in the Property has not been

accounted for to the Company and has been misappropriated by the Respondent No.2.

Fifthly in terms of Clause 2 (c) of the purported deed of sale dated July 2, 2004, Respondent No.2 has given the purchaser therein, Respondent No.3, the right to use the terrace area of the building for installation of any equipment, or antenna or tower. This is clearly in excess of the authority given to Respondent No.2 and he acted clearly in violation thereof in giving away a valuable right belonging to the Company over the terrace area.

11. The Petitioners have submitted that this purported document, while being void ab initio, non est, amounts to misappropriation of the Company's assets, since it attempts to deal with the Property which belongs to the Company, without any authorization from the Company. The Petitioners further submitted that the effect of this purported deed of sale is against the basic intention of the Company, which is always to retain ownership of the terrace of the Property.

12. The petitioners have submitted that in furtherance of such dubious sale, Respondent No.2 has been instrumental in

diverting the receipts from such transactions into his personal account. It is submitted that the mechanism adopted by Respondent No.2 in this regard has obviously been;

In the first instance to give away the terrace rights to Respondent No.3, of which his daughter is the beneficiary;

Thereafter use Respondent No.3 to enter into agreements with various mobile phone operators and other companies/entities for permitting them to put up mobile phone towers and generators in the terrace area and/or basement area for which space appears to have been illegally leased/licensed out to them.

And thereafter appropriate the lease rentals/license fees collected from such mobile phone operators and companies which have put up such generators.

13. Thus, a valuable right of the Company has been taken away by Respondent No.2 through such devious method. It is submitted that since the Company had the right over the terrace area which no Director, on his own volition could have given away, the Company was entitled to exploit the same by leasing out/licensing out space therein and receiving lease rentals or license

fee's there from. However by the undervalued sale as set out above, such revenues have been lost by the Company and misappropriated by Respondent No.2 for his personal gains.

14. The petitioners have submitted that this scheme of Respondent No.2 was made more evident when the Company recently received a Tax Deduction Certificate from M/s.Apollo Health Street Limited, Hyderabad for an amount of Rs.1,820/- (Rupees One Thousand Eight Hundred Twenty only) being deducted for payments made to the Company.

15. The Petitioners have submitted the following: "that they are not aware of any contract which has been authorized by the Board of Directors of the Company for entering into an agreement with M/s.Apollo Health Street Limited, Hyderabad. It is therefore evident that Respondent No.2, a director of the Company, who owes a fiduciary duty to the Company and also to the shareholders, has been receiving monies, which monies belong to the Company but has been appropriating the same for his own personal benefit. It was submitted that being a director of a Company, Respondent No.2 has a fiduciary duty to act for the benefit of the Company and also the fiduciary duty not to appropriate monies of the Company

which are paid to him in his capacity as a director of the company. However, it is clear from the above that Respondent No.2 has acted in gross violation of his fiduciary duties to the Company and acted only for his own personal benefit in a manner which has caused loss to the Company”.

16. The Petitioners were unaware and have been completely in the dark on this issue of the leases or licenses which Respondent No.2 has entered into in this manner. The Petitioners are equally unaware of the revenues that the Company has lost and Respondent No.2 has illegally earned through this process. As a matter of fact, the Petitioners apprehend that Respondent No.2 may have executed many more of such purported sale deeds to various entities for his own personal benefit to the detriment of the Company. It is therefore imperative that Respondent No.2 be directed to state on oath the details of such transactions as well as the rentals earned there from right from the inception and also be directed to restore such funds to the Company.

17. Petitioner No.1, in his capacity of Managing Director of the Company, in the interest of protecting the welfare and also the rights of the Company (and its shareholders) addressed a letter

dated March 17, 2011 to Respondent No.2 recording his actions of misappropriation of funds and also illegally leasing/licensing the property which belonged to the Company without the consent of the Board of Directors of the Company. By the said letter Petitioner No.1 further called upon Respondent No.2 to account for all the monies, which belonged to the Company which he had misappropriated. The letter went on to state that in the event that the same is not responded to, petitioner No.1 would be constrained to take steps for safeguarding the interests of the Company. Petitioner No.1 submits that till date the said letter has not been responded to by Respondent No.2.

18. This being so, Petitioner No.1, in his capacity of Managing Director of the Company addressed a notice to M/s.Apollo Health Street Limited, Hyderabad dated May 6, 2011. In the said notice, Petitioner No.1 called upon M/s.Apollo Health Street Limited, Hyderabad to inform Petitioner No.1 of the details with respect to whom M/s.Apollo Health Street Limited, Hyderabad had been dealing with in the Company and any agreements, contracts, memorandums etc. that M/s.Apollo Health

Street Limited, Hyderabad may have entered into with the Company.

19. It was submitted that not only M/s.Apollo Health Street Limited, Hyderabad did not even respond to the said letter, they have not even acknowledged the same. Being left with no option, the Company has caused a legal notice to be sent to M/s.Apollo Health Street Limited, a copy of which shall be relied upon when produced.

20. The petitioners submitted that being in the management of the Company, Respondent No.2 is guilty of having mismanaged the affairs of the Company by misappropriating monies which are due to the Company for which Respondent No.2 must be held accountable. Further, even though Petitioner No.1 is a majority shareholder, the conduct of Respondent No.2 is oppressive towards the other shareholders of the Company in as much as, Respondent No.2 has sought to illegally cause a loss to the Company while at the same time, illegally cause an unlawful gain for himself. It is stated that if Respondent No.2 had properly accounted for the monies that he misappropriated, the Company could have been in a better position to utilize the funds in a manner

it deemed fit. However, owing to the acts of Respondent No.2, this has not been possible.

The petitioner vide para 8 of the Petition has **prayed for the following reliefs:**

- Pass appropriate orders and directions to the effect that Respondent No.2 is in breach of his fiduciary duties towards the Company and the shareholders for misappropriating the property which belonged to the Company and also for misappropriating the funds that rightfully belonged to the Company;
- Pass appropriate orders and directions to the effect that owing to the breach of his fiduciary duties towards the Company, Respondent No.2 is no longer fit to be a director of the Company and forthwith cease to be a director of the Company;
- Direct an investigation to be carried out with respect to the revenues which have been siphoned out by Respondent No.2;
- Consequently pass appropriate orders and directions to the effect that Respondent No.2 to restore all such

monies of Company which had misappropriated to the Company;

In the **counter**, filed by the 2nd respondent he has stated that the petitioners are holding more than 75% of the shareholding of the Company and are also its Directors. In the preliminary objections it has been stated by them that the only complaint raised by the petitioners is regarding the sale of undivided share of land in July 2004 in favour of the 3rd respondent, and the right given to the 3rd respondent to use the terrace area of the building. R2 has submitted that neither the sale of undivided share of land nor giving a right over the terrace area can be made a subject matter in a petition under Section 397 and 398 of the Companies Act 1956. Even if it is assumed that the allegations are true, the 2nd respondent has submitted that the petitioners had full knowledge about the sale of undivided share of land and the right to use the terrace area in favour of the 3rd respondent. R2 has contended that it is a past concluded transaction which had not been challenged at the relevant point of time by the petitioners and has submitted that the adjudication of the petition is beyond the jurisdiction of the CLB (NCLT) for granting reliefs for oppression or mismanagement. The

respondent No.2 has further stated that appropriate forum is only the civil courts and have contended that the petitioners have failed to explain as to how they had been unaware of the sale or the right over the terrace area being transferred.

The R2 vide para 4 of the counter has stated that the sale of undivided share and transfer of rights over terrace area cannot be by any stretch up imagination be considered as an oppression of such a nature that it is just and equitable to wind up the Company.

Vide para 5 of the counter, the 2nd respondent has quoted the averment of petitioners in para 7.2 of the petition.

“The petitioners however, reserve the right to take any and all actions in appropriate Courts against Respondent No.2 and Respondent No.3, or any other individual who may have conspired with Respondent No.2, including criminal complaints and also civil suits to restrain any such illegal further illegal actions of Respondent No.2 and also, if needed to have the purported agreement dated July 2, 2004 declared as void ab initio.”

Vide para 7, the respondents have contended that no complaints involving mismanagement of the Company has been

sought to be raised in the Company Petition. Petitioners are in the management of the Company and are completely in charge of the day today affairs of the Company. R2 has also contended that the sale of undivided share of land in favour of the 3rd Respondent has been duly accounted for in the books of the Company. R2 has contended that he still continues in the Board of Directors and the majority shareholders/directors have not initiated any action against him for the alleged misuse of his position as a Director in the R1 Company.

The 2nd Respondent has contended that even if the guideline value is on a higher side the sale of undivided share in the land was done at a proportional rate equivalent to the amount paid for the purpose of land from the original owner and stamp duty for registration for the same would be paid by the purchasers as per the guideline value and this practice has been adopted for all the sale agreements executed for the projects of the 1st respondent Company. The R2 has also stated that occupants/owners of the respective buildings would come together to form an association to take care of the maintenance and other issues in the projects. However, in the present project of the 1st Respondent company no

such association was formed and the 1st respondent as developer takes care of maintenance and other related services. The buildings for which the occupants would pay monthly sum towards this projects. The 1st respondent company was taking care of these expenses ever since the buildings has been constructed and the amount so collected or kept in a separate bank account of the 1st Respondent company with Indian Overseas Bank Nungambakkam Branch, Chennai.

Vide para 18 the Respondents have submitted that the Company has sold plots/units to the other family members, in the same manner as it has been done in the instant petition and have been accounted for in the books of R1 Company.

This arrangement had been done to facilitate the rentals from the structures in the terrace namely Mobile Phone towers be given to the trust in the name of the daughter of the 2nd respondent who is also the grand child of the 1st petitioner as well.

It has also been stated that the petitioners have signed the Balance Sheet for that year and have also filed the returns. Further the R2 has stated that even in 2009, P1 has sold a property in the

same building in the 10th floor and was well aware of the transfer of the Terrace and the sale to the 3rd Respondent.

Vide para 19, R2 has contended that the disputes came out in open after 2006 due to the autocratic nature of the P1 as P1 took complete control of the R1 Company and had refused to permit any other member of the family from participating in the affairs of the R1 Company. The R2 has stated that apart from operating the Nungambakkam Branch, IOB on account for maintenance he had not been involved in any other affairs of the Company.

Vide para 20 of the counter the R2 has listed the alleged acts of the petitioners which has caused huge loss to the R2 as a shareholder for their own benefit.

The allegations made by R2 include the following:

The P1 has compromised his position as the Managing Director of the Company to route monies to the operations of other Companies run by him viz., Gee Gee Granites Ltd., Duseja Developers Pvt. Ltd. etc. It has now come to light that the 1st petitioner has been diverting the new projects of the 1st Respondent

Company to M/s.Duseja Developers Pvt. Ltd., a company held by his family members.

The petitioners are guilty of underselling a flat in the same building.

The 1st petitioner's son, Mr.Sushil, the 3rd petitioner has been carrying on his real estate brokerage business by accounting the expenses to the books of the 1st Respondent Company. Further the 3rd Petitioner uses the office and other infrastructure of the 1st Respondent Company for his business.

The 1st Respondent Company had paid huge consideration by entering into a Developer's Agreement for a prime property located on Anna Salai. The 1st petitioner in order to deprive the 1st Respondent Company the benefits of such development and income arising there from, formed a subsidiary by name, M/s.Blue Pearl Developers Pvt. Limited and assigned all the rights to the subsidiary. After achieving this, the 1st petitioner had hived off the subsidiary for a paltry consideration.

Since 2006, the petitioners have refused to divulge any details or records of the Company and have not bothered to call for

any General meetings. In fact just after the above CP was filed the petitioners had called for a board meeting which was attended by the 2nd Respondent. In the minutes of that meeting too, the petitioners wanted to record facts contrary to what had transpired and the same was objected to by the 2nd respondent.”

In the **rejoinder**, the petitioners have repeated the allegations made in the petition and have reiterated that R2 sold a portion of the property surreptitiously, the undivided share of land which was sold did not correspond to any built up area, portion that was sold was the terrace area which was never intended to be sold and most importantly, and the sale proceeds have not been credited to the accounts of the Company and such sale proceeds are in any event inadequate.

In addition they have stated that the bank account at the IOB Nungambakkam Branch is operated by the R2 only and P1 is not in any way involved in the operation of the said account.

Heard the arguments and perused the pleadings.

It is clear that the R1 Company is a family concern which has been run on informal basis and for the benefit of the shareholders

(who are all family members and relatives). The petitioners has stated that the R2 has misused the power of attorney available with him to deprive the R1 Company and the petitioners have stated that the purchase consideration was not credited to the bank account of the R1 Company. However, except for the Profit and Loss account and balance sheet for the financial year 2005-2006 no other statements containing facts like statement of bank accounts, Board Resolutions, Annual Returns for the subsequent periods etc. have been produced neither by the petitioners nor by the respondents. As against the issues raised by the petitioners against R2 a series of allegations against P1 have been made by the R2. The petitioners undoubtedly are the majority shareholders and also have representation in the Board. They could have taken up the issue in the Board Meeting or could have even removed R2 as a Director of the Company. For reasons best known to the petitioners, R2 has continued to be a Director in the Board till date. On these grounds alone the company Petition is liable to be dismissed. We support our view with ruling given in *Anupamarani Satpal Sharm Vs. Anand Steel works Private Ltd.* 2006, Comp Cas 285 CLB, wherein it was held that 'if alternate remedies i.e. convening of

EOGM/ Board Meetings are available to look in the affairs of the company pertaining to the matter complained of and the same have not been availed, the Company Petition under Sections 397 and 398 of the Companies Act, 1956 cannot be entertained. It gives rise to the suspicion that what has sought to be raised under Sec.397 and 398 of the Companies Act 1956 is nothing but a dispute among the Board of Directors. Apparently the affairs of the R1 Company has been conducted in an opaque manner.

The Petitioners have challenged single/isolated past concluded transaction, that took place on 2nd July, 2004, of which he had the knowledge, as it is admitted fact that during 2009, the Petitioner sold properties in the same building in 10th Floor, so was aware of structure on the terrace, and have filed the Petition after the lapse of around 7 years from the date of the transaction in question. Therefore, a single/isolated past concluded transaction cannot be a base for seeking relief under Sections 397 and 398 of the Companies Act, 1956 as has been held in *S.P. Jain Vs. Kalinga Tubes Ltd.*, SCR (2) 720; and *Raghunath Swarup Mathur & Ors., Vs. Har Swarup Mathur*, 1970, 40 Comp case 282 All.

The respondent No.2 has prayed for dismissing the petition with exemplary costs.

In Needle Industries (India) Limited Vs. Needle Industries Nevey (India) Holdings Limited - (1981) 3 Supreme Court Cases 333.

It has been held by the Hon'ble Supreme Court that under Section 397 of the Companies Act 1956 that when the conduct of both the group of members not being above board, the claim of equity by the aggrieved group cannot be sustained. It is clear from the pleadings that both the parties have not diverged all the relevant information and as such the petitioners are not entitled to a relief under Section 397.

In M.S.D.C. Radharamanan Vs. M.S.D.Chandrasekara Raja - Case No.Appeal (Civil) 2006 of 2008

*The Hon'ble Supreme Court has observed that
"The court may also refuse to grant relief where the petitioner does not come to court with clean hands which may lead to a conclusion that the harm inflicted upon him was not unfair and that the relief granted should be restricted."*

This has also been reiterated by the Hon'ble Supreme Court

in

Hanuman Prasad Bagri Vs. Bagress Cereals Pvt. Ltd. - (2001) 4 Supreme Court Cases 420

Wherein it has been held that the petitioners must make out a case for winding up of the Company on just and equitable grounds. Otherwise, no relief can be granted.

In view of this, the Tribunal is of the opinion that the petitioners are not entitled for any relief under Section 397 & 398 of the Companies Act, 1956 and the **TCP 71/2016 (Company Petition No.45 of 2011) stands dismissed.**

There will no order as to costs.

S. Vijayaraghavan

(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)

CH. MOHD. SHARIEF TARIQ

(CH.MOHD.SHARIEF TARIQ)
MEMBER (JUDICIAL)

/pb/