

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

**CP No.217/2012
Present : Shri V. P. Singh
Hon'ble Member (J)**

**Shri S. Vijayaraghavan
Hon'ble Member (T)**

In the matter of the Companies Act, 1956

And

In the matter of Section 11A, 235, 397, 398, 399, 402, 406 and 407
of the said Act.

And

In the matter of Hindusthan Malleables & Forgings Limited, having
its Registered Office at Jalannagar, P.O. Bhuli, Dhanbad-828104,
Jharkhand

And

In the matter of:

1. Ashok Kumar Jalan
2. Avinash Jalan
3. Chandrakant Jalan

..... Petitioner No.1

..... Petitioner No.2

..... Petitioner No.3

-Vs-

1. Hindusthan Malleables & Forgings Limited

.....Respondent No.1

2. Dilip Kumar Gopalka

.....Respondent No.2

3. Pradip Kumar Gopalka

..... Respondent No.3

4. Mithilesh Kumar Singh

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| 5. Rakesh Singh | Respondent No.4 |
| | Respondent No.5 |
| 6. Jaideep Kumar Mukherjee |Respondent No.6 |
| 7. Panna Sales Private Limited | Respondent No.7 |
| 8. Chakrapani Trading Private Limited | Respondent No.8 |
| 9. Eastern India Coke Private Limited | Respondent No.9 |
| 10. Nav Prakashan Private Limited | Respondent No.10 |

Present on behalf of the Parties:

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| 1. Mr. Ratnanko Banerjee, Sr. Advocate | |
| 2. Mrs. Lapita Banerjee, Advocate | |
| 3. Mr. Sidhartha Sharma, Advocate | For the Petitioners |
| 4. Mr. Joydeep Dutta, Advocate | |

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| 1. Mr. Sonak Mitra, Advocate | |
| 2. Mr. M. K. Bhandia, PCS | For the Respondents |
| 3. Mr. M. R. Goenka, PCS | |
| 4. Mr. Saheb Ali. PCS | |

DATE OF HEARING : 23/12/2016

O R D E R

S. Vijayaraghavan, Member(T)

The present Company Petition being C.P. 217/2012 is filed by invoking various provisions of the Companies Act, 1956 alleging certain acts of oppression and mismanagement from the part of the respondents as stated

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in the Petition and sought various main and interim reliefs. In the said Petition, the Ld. senior counsel appearing for the Petitioner submitted that Hindusthan Malleables & Forgings Limited (hereinafter referred to as R-1 Company) was incorporated on 24th September, 1955 under the provisions of the Indian Companies Act, 1913 and is an existing company within the meaning of the Companies Act, 1956 having its registered office at Jalannagar, P.O. Bhuli, Dhanbad-828104, Jharkhand. At the time of incorporation of the R-1 company, there were three shareholders each holding 100 issued, subscribed and paid up share capital of the company. The company was set up by one P.R. Janal, since deceased was one of the promoter directors of the R-1 company and contributed about 55% of the funds whereas one Arjun Agarwala, also one of the promoter directors contributed around 38% of the funds to the R-1 company. All the business decisions and the day-to-day management of the company was done by the said P.R. Janal. The production of the company commenced in the year 1960 and over the years the company received various awards, honours and acclaimed for its unparalleled contribution in the field of malleable iron castings.

In or around 1968 the petitioner No.1 being the eldest son of the said P.R. Janal, since deceased, was appointed as a director of the company and in early 1980s the petitioner No.1 became the managing director of the R-1 company and led the company in a very positive direction.

Sometime in early 1980s the said P. R. Janal, since deceased resigned from the Board of Directors and reposed the responsibilities of management and control of the R-1 company entirely on the petitioner no.1 and due to hard work and managerial skills of the petitioner no.1 the company attained number one position in the field of malleable castings of

iron. None of his younger brother Prem Kumar Jalan or R. K. Jalan was involved in the management and control or the business decision of the R-1 company. In or around 1985 one Prem Kumar Jalan being second brother of petitioner no.1 and one Rajendra Kumar Jalan being the younger brother of the petitioner no.1 became directors of the R-1 company.

Sometime in or around 1990 the other promoter director of the R-1 company, Arjun Agarwala died and his 39.81% shareholdings in the R-1 company was divided as follows:

Sl	Name	No of shares	Percentage
1	Agarwal Prakash	6250	1.56
2	Agarwal Prakash Jai	2500	0.62
3	Nathany Devi Sulochna	40450	10.09
4	Agarwal Prakash Sri	2500	0.62
5	Jhunjhunwala Kr Krishna	3750	0.93
6	Jalan Devi Radha	1000	0.24
7	Nathany Kumar Krishna	625	0.15
8	Nathany Anshuman	750	0.187
9	Jhunjhunwala Kr Sarat	34750	8.67
10	Jhunjhunwala Manisha	1875	0.46
11	Agarwal Basant Kumar	7500	1.87
12	Trustee of Ratandev Trust	5000	1.24
13	Tristee of Motiram Trust	16250	4.05
14	Trustee Agarwala Trust	36250	9.05
	TOTAL	159450	39.81%

After the death of the said R.R. Jalan in or around 1992 the second son of Mr. Prem Kumar Jalan resigned as a director, sold his shares equally to the petitioner no.1 and the younger brother R.K. Jalan and completely separated himself from the R-1 company. After the shares of Prem Kumar

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Jalan was sold to petitioner no.1 and the said R. K. jalan, the shareholding pattern of the Jalan group became as follows:-

Sl	Name	No of shares	Percentage
1	Jalan Rai Prahlad (Late)	14000	3.49
2	Jalan Kumar Ashok (HUF)	22700	5.66
3	Jalan Kumar Ashok	10000	2.49
4	Jalan Avinash	29800	7.45
5	Jalan Chandrakant	29450	7.35
6	Jalan Kumar Bijay	1000	0.24
7	Jalan Kumar Santosh	5000	1.24
8	Jalan Rajendra Kumar	107750	27
	TOTAL	219700	55%

In and around 1993 the petitioner no.2 was appointed as a director of the R-1 company and he became the joint managing director of the company. However, in and around 1999 the petitioner no.2 resigned from the directorship of the R-1 company.

In or around July 29, 1995 the petitioner no.3 was appointed as the director of the R-1 company and helped the petitioner no.1 in the management of the day-to-day functioning of the company till September 22, 2003 when the petitioner nos. 1 and 3 were illegally removed from the board of directors. The particulars of the shareholding of the petitioners in the R-1 company at present are as follows:

Petitioner No.	No of shares	Percentage
Petitioner No.1	32,700	8.15
Petitioner No.2	29,800	7.44
Petitioner No.3	29,450	7.35
TOTAL	91,950	22.95%

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The petitioner has also submitted that Prahalad Rai Jalan, since deceased, the father of the petitioner no.1 also held about 14,000 equity shares in the R-1 company and these shares have not been transmitted to his heirs. There are also other shareholders names shown in the Register of Member of the R-1 company who are deceased and no one can exercise any right in respect of those shares. If such defunct share are not considered or taken into account in the total number of share, the petitioners' shareholding will be in excess of 25% and the petitioners for all practical purposes and in effect are entitled to shares to oppose a special resolution.

It is also alleged that in or around December, 2000 the petitioner no.1 being the then managing director of the company, was abducted from Dhanbad while going to the factory at or around 8-30 a.m. The petitioner no.1 was released after 11 days and decided to shift his base from Dhanbad to Kolkata and accordingly the petitioner no.1 shifted to Kolkata due to regular threats and disturbing calls by the abductors. It is also submitted that taking advantage of this situation, the youngest brother of the petitioner no.1 tried to oust the petitioner no.1 and the petitioner no.3 from the board of directors in 2002 and also sought to induct new people on the board of directors. The said illegal attempts of R. K. Jalan were aborted and the said R. K. Jalan was removed from the board of directors and one K. K. Nathany being the husband of Sulochana Nathany and one Ansuman Nathany being the son of Sulochana Nathany along with second brother of the petitioner no.1 were appointed as directors of the R-1 company.

He also submitted that the petitioner no.1 and 3 were shocked and surprised that without complying with the provisions of the Companies Act, 1956 and without giving due notice to the petitioner nos. 1 and 3, the

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petitioner nos. 1 and 3 were removed by an invalid annual general meeting held on September, 23, 2003. However petitioner no.1 due to psychological and emotional set back could not take immediate steps to resist such illegal and arbitrary removal by the said R K Jalan and the Nathany. The petitioner no. 1 also prevented the petitioner no.3 from taking any steps in that regard. He also submitted that sometimes in or around October, 2003 after the said purported removal of the petitioner no.1 and 3 from the board of directors the said K. K. Nathany, Anshuman Nathany, A. K. Roy and P.K. Jalan also resigned from the board of directors. Nathany group along with youngest brother of the petitioner no.1 sold the entirety of 57% of the shareholding to one Gopalka group. Immediately upon Gopalka Group coming into contract, the petitioner no.3 visited Dhanbad and narrated the entire family history to them and also complained of the illegal removal of the petitioner nos 1 and 3 from the board of directors. The respondent no.2 also visited the petitioner no.1 in Kolkata. It was represented by the Gopalka Group that since the petitioner nos.1 and 3 were not stationed in Dhanbad it would not be possible for the petitioners to look after the day to day administration of the company and the respondent no.2 assured that the interest of the petitioners in the company would be well looked after by the respondent no.2 and his associate. Relying on the said representation, the petitioners believed that their interest will be protected by the Gopalka Group. Furthermore, at the initial stage the petitioners received one or two balance sheets relating to the R-1 company. Thereafter all the notices regarding the shareholders' meeting and the balance sheets were stopped to be delivered on the petitioners. It is also alleged that the respondents completely kept the petitioners' group in dark about the affairs and management of the company. The respondent

nos.2 and 3 are the controlling members of the said Gopalka group. At present the said Gopalka group owns 57% of the shareholding of the company.

It is further submitted that the petitioners have noticed from the balance sheet of the company that liability of the company has been increased and appears to be general decline in the overall financial position of the company. Since the petitioner group has more than 25% of the shareholding in the company and have substantial stake in the company representations of the petitioners group should have been there in the board of directors to provide checks and balance with regard to the management by the company but no steps have been taken by the respondents to induct the petitioners again into the board of directors of the R-1 company. It is submitted by the Ld Senior Counsel that the purported annual general meeting held on September 22, 2003 are null and void for the reasons that

- (i) No Board meeting was held on that date.
- (ii) No notice of such board meeting was given to the petitioner nos. 1 and 3 of Mr. R. K. Jalan and his group.
- (iii) Any removal of the petitioner nos. 1 and 3 from board was with ulterior motive illegal purpose. The said removal of petitioner Nos 1 and 3 from the board and appointment of Respondent Nos. 2 to 6 as directors was contrary to the Articles of Association of the company as well as the provisions of the Companies Act.

Ld Senior Counsel further submitted that the respondents are also siphoning off the funds of the company in the following manner:

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- i) The respondents have started producing ingots which the respondents are selling locally and mostly receiving cash accruals from the sale proceeds.
- ii) No accounts are given and no records are maintained in respect of the huge quantities of ingots that are produced.
- iii) In or around 2004-2005 the respondents have sold one of the company's extremely valuable properties being Ferro-alloy unit without accounting for the same in the balance sheet.
- iv) All of a sudden from the year 2004-2005 the respondents have made an entry with regard to loss in respect of sale of assets of the company to the tune of Rs.82 lakhs approximately without accounting for the same. It is stated that no explanation has been given as to what necessitated the sale of assets. Furthermore no detail has been given as to which assets of the company have been sold and for what price.
- v) The respondents are manipulating the accounts of the company without any approval of the shareholders and are disposing off the assets of the company without apportioning to the shareholders including the petitioners their legitimate dues.
- vi) By reason of such siphoning the company's actual profits have not been shown.

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- vii) It is stated that when the petitioners were in the management and control of the company the company has seen huge expansion and growth and profit till general recession set in the around 1996-1997. Even during the period of recession the company was doing better than most of its competitors in the market.
- viii) The respondent nos. 2 to 6 have now taken over the controlling interest in the company and are now using dubious methods in managing the affairs of the company.
- ix) There is gross irregularities and manipulation in the accounts of the company since 2003-2004. From the said accounts it will appear that the figure in the production and also in the sale of assets of the company have changed since the previous year. The said acts of default amount to gross irregularities and illegal act of defalcation of accounts. The figures in the accounts of the company have been manipulated to the prejudice of the company and its shareholders.
- x) No dividend has been issued to the shareholders of the company since the respondent group came in management and control of the company in October, 2003 and they have failed and neglected to look after the interest of the R-1 company as well as its shareholder.

It is also submitted that the petitioners were shocked and surprised to receive the purported notice dated January 30, 2012. By the said purported notice issued by the respondent no.2 being the managing director of the R-1 company the respondent no.2 evidenced the intention of respondents to

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further Rights Issue of 200250 equity shares of Rs.10 each at a premium of Rs.165 per share aggregating Rs.350,43,750 on Rights basis. The purported Rights Issue is to remain open for a period of 8 days commencing from February 17, 2012 till March 5, 2012. The notice dated January 31, 2012 is illegal, null and void. The respondent no.2 to 6 with a view to siphon off the funds of the company have indulged in the purported Rights issue of 200250 equity shares. The respondent nos.2 to 6 with oblique motive of diluting the shareholding of the petitioner group from 25% to 11% have indulged to unfair and illegal rights issue of 200250 equity shares. It is the intention of the respondents to allocate further shares to their friends, family and associates so that the rights of the petitioners are further diluted and the petitioners have no say in the functioning of the company. Any purported board meeting held for approval of the resolutions for the purported rights issue of 200250 equity shares is illegal, null and void and any resolution passed thereat is illegal, null and void. Any allotment of additional equity shares to any person is illegal, null and void and the petitioners object to the allotment of any additional equity shares to any person/companies. It is also submitted that the rights issue for the purpose of growth and expansion of the company is only a sham since there has been a lock out in the factory since February 15, 2012, the very date when the rights issue are to be opened by the respondents. It is also submitted that no proper board meeting has been held for allowing the said resolution and no notice of board meeting for allotment of the said shares for further rights issue given to the petitioner nos. 1 and 3 and therefore the allotment has been proposed with ulterior purpose and illegal motive of diluting the shareholding of the petitioners. Moreover the right issue is to remain open from 17th February 2012 to March 5, 2012.

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Therefore, such issue and allotment of shares are illegal, null and void and should be cancelled and/or set aside.

In the facts and circumstances, Ld Sr Counsel prayed to this Bench

- a) that the board of directors of the company be superseded and administrator/special officer be appointed to take charge over the management and affairs of the books, papers, records and documents of the company as well as of its assets and properties.
- b) Declaration that any purported rights issue and subsequent allotment between February 17, 2012 and March 5, 2012 is illegal, null and void and if necessary to pass consequential order for rectification of the register of members of the respondent no.1
- c) Declaration that all board meetings held subsequent to September 22, 2003 be declared illegal, null and void.

Ld. Senior Counsel appearing on behalf of the respondents filed the reply to the petition and submitted that the petitioners have come with unclean hands and suppressed material facts before the Hon'ble Board (now Tribunal). The petitioners have suppressed, inter alia, the following acts:

- i) The petitioners had filed a suit in the Court of the First Munsiff at Dhanbad being Title Sheet no. 134 of 2003 inter alia seeking an order of injunction on the Annual General Meeting schedule to be held on 22nd September, 2003.

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- ii) The petitioners have suppressed the fact that the petitioners had withdrawn such suit unconditionally.

It is also submitted by the Ld Sr Counsel for the Respondents that contrary to the contention of the petitioners that the company was meant to be run on partnership principles, it was never run on partnership principles at any point of time. During the time when the petitioner no.1 was the managing director of the company, the petitioner no.1 did not take the legal heir of Late Arjun Agarwalla after his death on the board of directors of the company. The petitioners did not allow the legal heirs of Late Arjun Agarwalla to participate in the management of the company in spite of the Arjun Agarwalla having 39.81% of the shares in the company. The petitioners did not allow their younger brother, Shri R. K. Jalan, to participate in the active management of the company in spite of the fact that R. K. Jalan group had 27% voting power in the company. In the year 2002 when Shri R. K. Jalan group withdraw their support from the petitioners, support was taken by the petitioners from the Nathany's. Nathany's were admitted into the board of directors of the company. However, the petitioner could not maintain cordial relationship with the Nathany's and ultimately, the petitioners were removed as directors by the Nathany group and the R. K. Jalan group. It is also denied that the removal of the petitioner no.1 in 2003 was illegal, as alleged or at all. The petitioner no.1 had instituted a suit purporting to restrain the holding of the Annual General Meeting where he was removed as a director which he had later withdrawn. The institution of such suit has been suppressed by the petitioner no.1 in the proceedings. It is denied that the petitioner no.3 was illegally removed from the board on or about 22nd September, 2003. Again the petitioner no.3 had instituted proceedings with

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regard to his directorship which he has suppressed in the instant proceedings. Both the petitioner nos. 1 and 3 have been validly removed as members of the board of directors in 2003. Such removal has not been upset by any court of law at any point of time. None of the petitioners including nos.1 and 3, had complained contemporaneously about such removal excepting trying to challenge the Annual General Meeting where they were removed. It is also submitted that the petitioner nos. 1 and 3 were present in the Annual General Meeting of the company held on 22nd September, 2003 (wrongly typed as 23rd September, 2003) by proxy which was submitted at the registered office of the R-1 company under the signature of the petitioner nos. 1 and 2 on 18th September, 2003 and by the petitioner no. 3 on 15th September, 2003. When the special notice dated 4th September, 2003 was taken up for consideration in the Annual General Meeting on 22nd September, 2003, poll was demanded and taken. The resolution for removal of the petitioner no.1 from the office of the managing director of the company was put to vote and carried by majority votes. Similarly, poll was demanded and taken on the resolution for removal of the petitioner no.3 as a director of the company and the said resolution as carried by majority votes. To corroborate this claim, attendance sheet of the AGM, minutes of the AGM and the poll papers with regard thereto are submitted by way of Annexure R-2. Ld Sr. Counsel for the Respondents further denied that the shareholding of the petitioners will be in excess of 25% or that the petitioners or any of them in effect or are entitled to 25% shares or such shares so as to oppose a special resolution, as alleged or at all. It is denied that the petitioners are entitled to 22.95% of the total issued, paid-up and subscribed share capital of the R-1 company or that the petitioners are entitled to apply under Sections 397 or

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398 of the Companies Act, 1956 in accordance with Section 399 of the Act or under Section 235 of the Act otherwise or at all. It is also denied that the removal of the petitioner no.1 or 3 was without any valid notice or without holding any board meeting or in violation of any provisions of the Companies Act, 1956 as alleged or at all. It is submitted that the respondent no.2 and his group as on 31/03/2012 hold 68.85% of the shareholding of the company taking into account the shares allotted pursuant to the Right issue. The shareholding of the respondent no.2 and his group in the company are as follows as on 31/03/2012.

Sl	Name of the Respondents	No of shares	Percentage
1	Panna Sales Private Ltd	320855	58.57
2	Chakrapani Trading Private Ltd	30250	5.52
3	Eastern India Coke Co. Pvt Ltd	15000	2.74
4	Nav Prakashan Private Ltd	11000	2.01
5	Dilip Kumar Gopalka	15	0.002
6	Rakesh Singh	15	0.002
7	Jaideep Kumar Mukherjee	15	0.002

Ld Sr Counsel for the respondents further denied that the respondents or any of them have siphoned off any funds of the company in the manner, as alleged or otherwise. It is submitted that the production of ingots had stopped since 1st October, 2010 due to low profitability in MS ingots. The installed capacity and equipments are now being utilized towards steel foundry which has good demand in the market. The balance sheet of the company as on 31st March 2011 contains details about the quantity of ingots produced and sold during the year and there is no sale locally for cash. All sale proceeds of MS ingots have been received by the company by account

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payee cheques and/or draft or through bank transfers. He also denied that the ferro silicon unit of the company was sold without accounting for the same in the balance sheet of the company. The ferro silicon plant was installed in 1995-1996 and remained in operation only for four years till 1999-2000. Thereafter, the said ferro silicon plant was closed by the petitioners and had remained closed continuously up to four years due to high production cost and other technical problems in the said plant. The idle plant was further getting deteriorated. Hence, the board of directors in their meeting held on 3rd February, 2004 and 20th April, 2004 decided to dispose off the said ferro silicon plant since it was not economically viable to run and operate such plant under the given circumstances. The aforesaid transaction is duly reflected in the audited balance sheet of the company for the year 2004-2005 which was approved by the shareholders at the Annual General Meeting of the company held on 27th September, 2004.

Ld Sr Counsel submitted that there is no basis for the petitioners to object to the rights issue. The rights offer is extended to every shareholder of the company in equal manner and equal proportion. There cannot be any reduction in the shareholding if the petitioners subscribe to their right entitlement. The company had announced the issue of shares on rights basis in order to finance the enhancement in production capacity of casting and to renovate the old plant and machineries. It is also denied that the intention of the respondents is to allocate further shares to their friends or family or associates or to dilute the rights of the petitioners. The petitioners are only assuming reduction of their shareholding since they are no more interested in the affairs of the company and are trying to create unnecessary

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September, 2003 and withdrawal application as well as some of the orders passed therein.

To counter the supplementary affidavit dated 04/12/2012 of the respondents, the petitioners have filed reply on 17th January, 2013 wherein the petitioners repeated and reiterated the statements made at paragraph 5 of the rejoinder in connection with the institution and withdrawal of the title suit no. 134 of 2003. It is also submitted that from the annexures in the supplementary affidavit filed by the respondents, it is clear that the suit was instituted for obtaining reliefs which are entirely distinct from the reliefs obtained in the instant Company Petition being no. 217 of 2012.

Head the Ld Counsels for both the sides thoroughly.

We have gone through the instant Company Petition being C.P. No.217 of 2012, reply, rejoinder, supplementary affidavits, reply to the supplementary affidavits and the written notes.

According to the petitioners, the petitioner nos. 1 and 3 were illegally removed as Directors of the company on September 22, 2003, even though the petitioner nos. 1,2 and 3 had a shareholding of 22.95% of total shares including defunct shares. They had a shareholding in excess of 25% and the respondent nos. 2 to 10 hold approximately 57.4% of shareholding in the company as on 22.09.2003. The petitioners have contended that there was no valid notice for the AGM and there was no valid meeting of the Board of Directors. The petitioners have also contended that the removal of petitioner nos. 1 and 3 during 2003 and appointment of respondent nos. 2 to 6 as directors was done against the Articles of Association and the provisions of Companies Act, 1956.



trouble and harassment for the respondents in the management and affairs of the company. The Ld Sr Counsel submitted that the said petition is speculative, harassing, vexatious, made with an ulterior motive and for collateral purposes and should be dismissed.

In the rejoinder dated August 27, 2012, filed on behalf of the petitioners, at para-5 it is submitted that there was no occasion of mentioning Title Suit No.134 of 2003 filed before the Munsiff at Dhanbad since the said Suit was withdrawn and the cause of action in the said Suit was different from the cause of action of the Company Petition No.217 of 2012. It is also submitted that inasmuch as there was a change in management of the company in the AGM of September 22, 2003 and the petitioner nos. 1 and 3 were removed as directors of the company the petitioner no.1 was advised that entire suit has become infructuous and therefore there was no purpose in pursuing the same. Only upon such advice the said suit was withdrawn by the petitioner and the same was not mentioned in connection with the petition. The petitioners have all along stated that the petitioner no.1 was in complete management and control of the company. Therefore, the question of inducting any heir or Arjun Agarwalla to the board did not and could not arise. The petitioners denied and disputed the facts submitted by the respondents in their reply to the petition, save what are matters of record, and therefore it is almost the repetition of the main company petition.

A supplementary affidavit on behalf of the respondents dated 04/12/2012 is filed annexing the copy of the plaint of the suit filed in the Court of the First Munsiff at Dhanbad being Title Sheet no.134 of 2003 inter alia seeking an order of injunction of the AGM scheduled to be held on 22nd

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The respondents have stated that the petitioners had filed a Civil Suit in the Court of First Munsiff at Dhanbad (Title Suit no.143 of 2003) seeking an order of injunction on the AGM to be held on 22.9.2003. They had subsequently withdrawn the suit.

The respondents in addition have contended that the petition is *ex facie* barred by limitation as the limited reliefs pertaining to the year 2003 are being sought to be questioned in the year 2012, after a lapse of 9 years. The AGM was held and as Managing Director, the petitioner had issued the notice for the AGM on 22.09.2003. The petitioners had also exercised their voting rights with respect to resolution for their removal as directors. The Attendance-sheet and the proxy forms have also revealed that the petitioners had exercised right of voting and that a poll was conducted wherein 71.10% of votes were polled in favour of the Resolution for removal of petitioner nos. 1 and 3 with 28.90% of voters voting against the Resolution.

Even though the Civil Suit or its dismissal may not have any bearing on a petition under section 397 and 398 of the Companies Act, 1956, the fact that the petitioners were aware of the AGM and have been removed as directors by the majority of the shareholders shows that there is no substance in the contention of the petitioners that AGM was held without valid notice and valid board resolution especially since they had also participated in the meeting through their proxies. Hence, the contention of the petitioners on this account is not maintainable.

The other main contention of the petitioners is regarding the issue of right basis shares. The petitioners have contended that the companies proposal for rights issue on January 30, 2012 was done without any requirement for expansion and renovation of the plant as there was allegedly general decline on the profits of the company. The petitioners have also contended that the rights issue was done with a

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view to dilute the shareholding of the petitioners. The petitioners have also contended that the rights issue was against the provisions of Articles of Association and the Companies Act, 1956. The respondents have denied all the contentions of the petitioners and have stated that the rights issue was resorted to for the renovation of the plant and machinery and to enhance the production capacity of the company. They have further stated that under Article 7 of the Articles of Association of the company, the Board of Directors is empowered to issue and allot further shares including shares on right basis.

Under the Rights issue, the petitioners had also an option to subscribe to the rights issue at the price of Rs.165/- and to retain their percentage of shareholding in the company. Due to their non-exercise of this option, the shareholding percentage has been reduced. Hence, this reason cannot be adduced to contend that the rights issue was solely done in order to reduce their shareholding. It has been held by the Hon'ble High court of Calcutta in Jaladhar Chakraborty & ors Vs. Power Tools appliances Co. Ltd (C.P No.497 of 1990) that if the petitioners cannot avail of rights offer by reason of any financial constraints or otherwise this would not be held as a ground of oppression. Hence, the contention of the petitioners on this issue is also considered as untenable.

The petitioners have also sought other reliefs like appointing Administrator or Special Officer for the Respondent-1 company, Inspectors to go through the accounts of the company and orders for declaring all board meetings held subsequent to 22nd September, 2003 and a similar injunction restraining the respondents; they have also sought for a scheme for management and control of the affairs of the company and for running operations thereof and have also sought for the removal of respondent nos. 2 to 6 from the Board of Directors. They have also alleged that there has been a siphoning off the funds by the respondents and that the ferro alloy plant of the company was sold around 2003-05 without

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accounting for the same in the balance-sheet and all on a sudden, the company has made an entry with regard to their loss in respect of sale of assets of the company to the extent of Rs.82 lakhs approximately without accounting for the same.

The respondents have stated that the ferro silicon plant was installed in 1995-1996 and remained in operation only for 4 years till 1999-2000. Thereafter the silicon plant was closed by the petitioners themselves at the relevant point of time due to high production cost and other technical problems. Since the idle plant was getting depreciated over a period of time, the Board of Directors held meetings on 03.02.2004 and 20.04.2004 and decided to dispose of the said ferro silicon plant as economically unviable. The respondents have stated that the transaction is duly reflected in the audited balance-sheet of the company for the year 2004-05 duly approved by the shareholders at the AGM. They have also enclosed a copy of the Audited Annual accounts of the company for the year 2004-05. They have also denied that they have been disposing off the assets of the company without shareholders' approval and they have also denied that there is any siphoning or alleged siphoning of the company's profits.

The petitioners have not specifically denied the fact that the unit was shut down when the petitioners were in the Board of Directors but have stated that the reason for selling the unit as a non-operational one is false, incorrect and misleading.

In view of the discussions above, pleadings and arguments on behalf of both the parties, it is considered that the sale of the ferro silicon plant by itself may not constitute an act of mismanagement under section 397 and 398 of the Companies Act.

The petitioners have also alleged that no notice of meetings or balance-sheets have been sent to them from 2004 onwards. However, the respondents have

denied this in toto and have also enclosed proof of despatch in the enclosures to their reply. Similarly, other contentions of the petitioners have also been denied or rejected by the respondents.

Another allegation is that the respondents are allegedly producing MS ingots and selling them locally for cash without accounting the same in the Company's books of accounts has also been denied. The respondents have denied and have stated that the company had stopped production of ingots since 1st of October, 2010 due to low margin in MS ingots and that the installed capacity and the equipments are being used for the steel foundry which had demand in the market and they have stated that all the payments from the sale proceeds are through account payee cheques/drafts/bank transfers only and there is no cash transaction as alleged by the petitioners.

Regarding non-declaration of dividend by the company, the respondents have stated that no dividends have been paid since 1996-97 when the company was under the management of the petitioners and that the declaration of dividend is the prerogative of the Board of Directors of the company, taking into account the best interest of the company. In the citation referred to above it has also been enunciated that "Since no dividend has been declared when the petitioners were themselves in Management they cannot allege this as an act of Mismanagement." Held, that the averment as to oppression and mismanagement, on the ground of non-declaration of dividends, is also not tenable.

The petitioners have suddenly have sought for an alternative relief by way of buying back the shares of the petitioners in the company. They have stated that a Valuer may be appointed by the Tribunal for assessing the value of the shares of the company with a proviso that the floor price of the valuation may be fixed at Rs.165/- (the price of a share vide the Rights issue of 2004) or the value as ascertained through the exercise of valuation whichever is higher. The respondents

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have stated that this is an attempt of the petitioners to force the respondents to buy back their shares at a high value and hence the petition should be dismissed as it has been instituted for a collateral purpose. There cannot be a floor value in any valuation exercise, that too a price that was fixed for right shares way back in 2002. A prayer for obtaining a higher value for their shares cannot be made as a ground for a petition under Sec.397/398. Hence, this contention by the petitioner is also not maintainable. However, there can be no bar for the parties to arrive at a negotiated price, if the petitioners decide to exit from the company.

Having gone through the pleadings in detail and having heard the arguments of the Id. Counsels for the parties, it is considered that the grounds for alleged mismanagement and oppression as contended by the petitioners have not been substantiated and hence the petition is hereby dismissed.

There will be no order as to costs.


(Vijai Pratap Singh)
Member(J)


(S. Vijayaraghavan)
Member (T)

Signed on this 24th day of January, 2017.