NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. 48/(ND)/2024

IN THE MATTER OF:

1. **Ms. Kanta Agarwala,**
   (Shareholder)
   8a, Queen's Park, Ballygunge,
   Kolkata-700019

2. **Mr. Suresh Kumar Agarwala,**
   (Shareholder)
   8a, Queen's Park, Ballygunge,
   Kolkata-700019 **... Petitioners**

Versus

1. **Exclusive Capital Limited**
   7/17 L.G.F, Near Hauz Khas Metro Station,
   Sarvapriya Vihar, New Delhi -110016

2. **Mr. Satya Prakash Bagla,**
   (Majority Shareholder And Managing Director)
   7/17 L.G.F, Near Hauz Khas Metro Station,
   Sarvapriya Vihar, New Delhi -110016

3. **Mr. Achal Kumar Jindal,**
   (Director)
   7/17 L.G.F, Near Hauz Khas Metro Station,
   Sarvapriya Vihar, New Delhi -110016

4. **Mr. Johnson Kallarachal Abraham,**
   (Director)
   7/17 L.G.F, Near Hauz Khas Metro Station,
   Sarvapriya Vihar, New Delhi -110016

5. **Mr. Rajeev Uberoi,**
   (Independent Director)
   E1/62, Arera Colony, Bhopal–462016

6. **Mr. Krishnama Chary Mudumba,**
   (Independent Director)
   3-7-32, Sree Nilayam, Plot No. 40, Road No. 2,
   Sri Sainagar Colony, Mansurabad,
   B Nagar, Hyderabad–500068

7. Mr. Om Prakash Sambharia,
(Proposed CEO & Whole Time Director)
Rz B 25 3 Street No. 8, Gurudwara Road,
Mahavir Enclave, Palam Village SO,
South West Delhi, Delhi –110045

8. Mr. V.V. Kale,
(Auditor)
16A/20, W.E.A, Main Ajmal Khan Road
Karol Bagh, New Delhi-110005

9. Mr. Harvinder Singh,
(Company Secretary)
B-80, Sharda Puri,
Ramesh Nagar, New Delhi-110045 **... Respondents**

Section: 241-242 of the Companies Act, 2013

Order Delivered on: 15.05.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Sr. Adv. Vikram Nankani, Adv. Sidhant K., Adv. Manyaa Chandok, Adv. Ekssha Kashyap

For the Respondent : Sr. Adv. P. Nagesh, Adv. Harshal Kumar for R-9, Adv. Shivani Jaiswal for R-8, Sr. Adv. Sidharth Luthra, Adv. Dhruv Chawla, Adv. Y. Singh for R-5, Sr. Adv. Sudhir Makkar along with Dhruv Chawla & Y. Singh, Sr. Adv. Saurabh Kirpal, Adv. Raghav Bhatia, Adv. Dhruv C. for R-7, Aadhya S., Sr. Adv. P. Nagesh, Adv. Raghaw Bhatia, Adv. Harshal Kumar, Adv. Shaurya for R-9, Sr. Adv. Abhinav Vashist, Adv. Anant M., Adv. Priyanka D. Varma, Adv. Ritu Bhatia, Adv. Sidharth Das, Adv. Aditya Rathor for R-4, Adv.

Gaurav Mitra, Adv. Sujoy Datta, Adv. Vibhor Kapoor, Asher Revi, Adv. I. Roy Chowdhary for R-2, Sr. Adv. Sidharth Yadav, Adv. Vibhor Kapoor, Adv. Asher Ravi, Adv. Sujoy Datta for R-3

Reportable

ORDER

As has been narrated in the synopsis filed along with the petition, preferred under Section 241 and 242 of the Companies Act read with Section 244 of the Companies Act, 2013, Respondent No.1 formerly registered as UT Leasing Limited, is a public limited company incorporated in terms of the provisions of the Company Act, 1956. The identification No. assigned to the company is U74899DL 1994PLC058369. It has its registered office at 7/17 L.G.F. Near Hauz Khas Metro Station, Sarvapriya Vihar, New Delhi 110016. The company (Respondent No.1) is engaged in Non-Banking Financing Activities and is registered with the Reserve Bank of India (RBI) vide Certification of Registration (CoR) No. B.14.02703. The main objects for which the company (Respondent No.1) was incorporated are to carry on the business of leasing, hiring, letting on hire, leasing and to provide on lease or on deferred payment basis or on any other basis all types of plant, equipment, machinery, vehicles, and real estates and any other movable and immovable properties and assets whether in India or abroad – for industrial, commercial or other uses and to buy, purchase, import, deal, acquire, take on lease or otherwise acquire rights over the said movable and immovable properties, and assets for the aforesaid purpose. The Articles of Association (AoA) of Respondent No. 1 were adopted at the time of its incorporation. Copies of the Memorandum of

Association and AoA of Respondent No.1 are enclosed with the petition as Annexure P-1.

2. The Petitioners have alleged the mismanagement qua the affairs of Respondent No.1 by Respondent Nos.2 to 4. The specific instances of mismanagement enumerated in para 2 (A) to 2 (E) of the synopsis reads thus:-

> *"**A. Illegal conversion of optionally convertible debentures to compulsorily convertible preference shares without approval from the RBI:** Respondent No. 1 had with the expertise of its Independent Directors (that is, Respondent Nos. 5 and 6), raised funds from private investors in the form of Optionally Convertible Debentures (**"OCDs"**). Respondent No. 2, who is also the majority shareholder in Respondent No. 1, caused a toppling of the leverage ratio of Respondent No. 1 beyond 7% (seven percent). The toppling of the leverage ratio beyond 7% (seven percent) was a violation of the threshold mandated in the NBFC Directions, which requires the leverage ratio to be maintained at 7% (seven percent). The Petitioners have now learnt that in an attempt to feign compliance with the NBFC Directions, Respondent No. 2 unilaterally converted the OCDs to Compulsorily Convertible Preference Shares ("**CCPs**"). Such conversion has been done without the approval of the RBI under the NBFC Directions, and as such, has resulted in conferring indirect control over debenture holders inasmuch as holders of OCDs had now becomes holders of CCPS, with voting rights.*
>
> ***B. Causing resignation of key managerial personnel by intimidation and harassment:** The Petitioners have learnt that several key managerial personnel, including Respondent Nos. 7 – 9, had been vocal of their concerns surrounding the manner in which the affairs of Respondent No. 1 were being managed. In retaliation of this, Respondent No. 1 withheld*

salaries payable to them without any cause or justification. The salaries were withheld for over three (3) months, resulting in mass resignations of the key managerial personnel. The Petitioners state that it is incomprehensible that five (5) key managerial personnel, including the Chartered Accountant and Company Secretaries of Respondent No. 1 could have all been incompetent and in possession of "company property" at the same time. Further, given the recommendation for Mr. Sambharia to be appointed as the CEO and WTD and acceptance of the board of such a recommendation (as is evidenced in the board resolution of 23 December 2022 and the Approval Application), it is unbelievable that the salary of Mr. Sambharia was being withheld for reasons of "incompetence".

C. ***Purchase of a luxury car (at an exorbitant rate) with the funds of Respondent No. 1, for the personal use of Respondent No. 2:*** *On 16 December 2022, Respondent No. 2 purchased a Bentley Mulsanne EWB 20MY (the "**Luxury Car**") in the name of Respondent No. 1, using the funds of Respondent No. 1. Despite being second-hand, the Luxury Car was bought at an exorbitant price of INR 9,09,00,000 (Rupees Nine Crores Nine Lakhs) from Luxus Retail Private Limited ("**Luxus**"). Luxus is entirely held and controlled by Respondent No. 2 and Respondent No. 3 is a director of this company. It is submitted that the purchase of the Luxury Car was only a device deployed by Respondent Nos. 2 and 3 to siphon funds from Respondent No. 1, since the address of Respondent No. 1 in the invoice is recorded as the same address as Luxus in Mumbai, and it is a matter of record that the registered address of Respondent No. 1 is in New Delhi and there is no office located in Mumbai. Further, the Luxury Car was purchased at an exorbitant premium of INR 2,95,47,599 (Rupees Two Crores Ninety Five Lakhs Forty Seven Thousand Five Hundred Ninety Nine) from Luxus (which is entirely controlled by Respondent No. 2), with the aim of*

Respondent No. 2 enriching himself by not only paying for the Luxury Car out of Respondent No. 1's funds, but also appropriating the Luxury Car for his own personal use. The board of directors and the shareholders of Respondent No. 1 were never informed of the purchase of this Luxury Car. This was a glaring revelation for the Petitioners since the purchase price of the Luxury Car far exceeds the share capital of Respondent No. 1. This transaction is in the teeth of various provisions of the Act governing related party transactions.

D. Failure to disclose material information to the Board: *Respondent Nos. 2 to 4 have consistently failed to disclose material information to the board particularly in relation to (i) loan defaults by Respondent No. 1; (ii) quarterly financial statements; (iii) accounting of transactions; and (iv) disclosures on related party transactions. The Independent Directors (Respondent Nos. 5 and 6) also sought responses to certain queries. However, the same were not given heed to, and material information about the affairs of Respondent No. 1 remained undisclosed to the entirety of the Board.*

E. Engagement of Respondent Nos. 3 and 4 in other companies, entirely owned and controlled by Respondent No. 2: *Respondent No. 3 is also a director in Luxus, which is wholly owned and controlled by Respondent No. 2. It has come to the knowledge of the Petitioners that despite withdrawing salary from Respondent No. 1, Respondent Nos. 3 and 4 have consistently worked for and engaged in acts to further the interests of parties / companies related to Respondent No. 2."*

3. It is also the case of the Petitioners that the Respondent No.1 failed to comply with/implement the expansion agreement, thus caused grave

prejudice to the Petitioners. The terms of the Expansion Agreement, mentioned in para 3 of the synopsis of filed with the petition reads thus:-

> *"3. Besides this, Respondent No.1 has also failed to comply with the Expansion Agreement, thereby causing grave prejudice to the Petitioners. The Expansion Agreement envisaged the following:*
>
> *(1) Petitioner No. 1 was to infuse an amount of INR 5,00,00,000/- (Rupees Five Crores Only) into Respondent No. 1 in one of more tranches for additional equity in Respondent No. 1;*
>
> *(2) Appointment of Mr. Om Prakash Sambharia (Respondent No. 7), as the Chief Executive Officer and Whole Time Director ("**CEO and WTD**") pursuant to the recommendation of the Nomination and Remuneration Committee of Respondent No. 1."*

4. According to the Petitioners, despite there being approval from RBI as also the recommendation from NRC for the aforementioned infusion of an amount of Rs.5 Crores by the Respondent No.1 and appointment of Mr. Om Prakash Sambharia (Respondent No.7) as Chief Executive Officer and Whole Time Director (CEO and WTD), the Respondent No.1, on instruction from Respondent Nos.2 to 4 failed to give effect to the Expansion Agreement.

5. The further assertion made in the synopsis is that the Respondent Nos. 2 to 4 are not qualified to manage and run day-to-day affairs of the Respondent No.1 and it is for this very reason that the Expansion Agreement contemplated the appointment of Mr. Sambharia as CEO and WTD qua the Respondent No.1, as Mr. Sambharia in his capacity as the business head of Respondent No.1 could take the Respondent No.1 in the right direction and deserve to be given credit for the growth of Respondent No.1 since 2022.

6. The Petitioners have vented their precipitation regarding day-to-day management of the Respondent No.1 by the Respondent Nos.2 to 4, as they believe them to be unqualified directors clothed with their unauthorised and non-compliant tactics resorted to by them to thwart the interests of small shareholders of the Respondent No.1, such as the Petitioners.

7. Besides, according to the Petitioners, the management of day-to-day affairs of Respondent No.1 by unqualified directors, along with the unauthorized and non-compliant tactics being resorted to by them are resulting in thwarting the interest of the shareholders qua the Respondent No.1, such as the Petitioners. The Petitioners also precipitate that it is on account of incompetence of the Respondent Nos.2 to 4 and the obsession of the Respondent to advance his own interest at the cost of the Respondent No.1 company that the expansion plan was halted.

8. The brief details and configuration of the company, such as its Memorandum and Articles of Association, business, share capital and shareholding pattern, the composition of board of directors are mentioned in paras 2 to 5 of the petition, which reads thus:-

> *"**A. Memorandum and Articles of Association***
>
> *2. The main objects for which Respondent No. 1 was incorporated are, to carry on the business of leasing, hiring, letting on hire, leasing and to provide on lease or on deferred payment basis or on any other basis all types of plant, equipment, machinery, vehicles and real estates and any other movable and immovable properties and assets whether in India or abroad – for industrial, commercial or other uses and to buy, purchase, import, deal, acquire, take on lease or otherwise acquire rights over the said*

*movable and immovable properties, and assets for the aforesaid purpose. The Articles of Association ("**AoA**") of Respondent No. 1 was adopted at the time of its incorporation. Copies of the Memorandum of Association and AoA of Respondent No. 1 are annexed hereto as **Annexure P-1.***

B. Business of Respondent No. 1

3. *Respondent No. 1 is a registered NBFC Non-Systematically Important Non-deposit Taking Company and classified as NBFC – Investment and Credit Company with the RBI. It is engaged in the business non-banking financial activities such as credit and loan investment activities.*

C. Share Capital and Shareholding Pattern

4. *As on the date of filing this Petition, the authorized share capital of Respondent No. 1 is INR 340,00,00,000 (Rupees Three Hundred and Forty Crore) divided into 2,50,00,000 (Two Crore Fifty Lakh) equity shares of INR 10/- (Rupees Ten Only) and 31,50,00,00,000 (Thirty One Crore Fifty Lakh) Preference shares of INR 10/- (Rupees Ten Only) each. The issued, subscribed and paid up equity capital of Respondent No. 1 is INR 2,34,65,000 (Rupees Two Crores Thirty Four Lakhs Sixty Five Thousand). The shareholding of Respondent No. 1 as on the date of this Petition is as follows:*

S. No.	Name of Shareholder	No. of Equity Shares	Percentage of Shares
1.	Satya Prakash Bagla	2,111,844	90%
2.	Achal Kumar Jindal	1	0.00004%
3.	Johnson K A	1	0.00004%
4.	Satish Kumar Arora	1	0.00004%
5.	Ashwin Kumar Bhatia	1	0.00004%
6.	Hemant Hans	1	0.00004%
7.	Rajeev Kumar Khare	1	0.00004%
8.	**Kanta Agarwala (Petitioner No. 1)**	**117,325**	**5%**
9.	**Suresh Kumar Agarwala (Petitioner No. 2)**	**117,325**	**5%**
	TOTAL	**2,346,500**	**100%**

D. Board of Directors

*5. As on the date of filing this Petition, the Board of Directors (the "**Board**") of Respondent No. 1 comprise the following:*

S. No.	Name of Director	Designation
1.	Mr. Satya Prakash Bagla	Managing Director
2.	Mr. Achal Kumar Jindal	Director
3.	Mr. Johnson Kallarachal Abraham	Director
4.	Dr. Krishnama Chary Mudumba	Independent Director
5.	Dr. Rajeev Uberoi	Independent Director

9. The particulars of the Petitioners, their locus to file the present petition and the percentage of shares held by them qua the Respondent No.1 are enumerated in para nos. 6 to 9 of the petition. The paras reads thus:-

"6. Petitioner No. 1 is an adult Indian Inhabitant, with her residential address at 8A, Queens Park, Ballygunge Kolkata 700019, who holds 1,17,325 (One Lakh Seventeen Thousand Three Hundred Twenty Five) equity shares having face value of INR 10/- (Rupees Ten Only) in Respondent No. 1. Petitioner No. 1 holds 5% (five percent) of the issued and paid-up capital of Respondent No. 1.

7. Petitioner No. 2 is an adult Indian Inhabitant, with his residential address at 8A, Queens Park, Ballygunge Kolkata 700019, who holds 1,17,325 (One Lakh Seventeen Thousand Three Hundred Twenty Five) equity shares having face value of INR 10/- (Rupees Ten Only) in Respondent No. 1. Petitioner No. 2 also holds 5% (five percent) of the issued and paid-up capital of Respondent No. 1.

*8. The Petitioners together hold 10% (ten percent) of the total issued and paid-up capital of Respondent No. 1. The Petitioners are filing this Petition under Sections 241 and 241 of the Companies Act, 2013 (the "**Act**") against Respondent Nos. 2 to 4 for mismanaging the affairs of Respondent No. 1, and causing grave*

detriment to Respondent No. 1 as well its minority shareholders such as the Petitioners.

9. The Petitioners together hold 10% (ten percent) of the issued, subscribed and paid-up equity share capital of Respondent No. 1. The Petitioners are 2 out of the 3 principal shareholders of Respondent No. 1. As is evident from the shareholding pattern above, the shareholders enlisted at Serial Nos. 2 to 7 own only one (1) equity share each in Respondent No. 1. By virtue of this, the Petitioners meet the threshold prescribed under Section 241 read with Section 244 of the Act and are entitled to maintain this Petition. The Petitioners crave leave to refer to and rely upon the share certificates of the Petitioners, when produced."

10. The particulars of the Respondent Nos.2 to 9 as mentioned in para 10 to 16 of the petition are as under:-

"10. Respondent No. 2, an Indian Inhabitant, with his office at office at 7/17 L.G.F, Near Hauz Khas Metro Station, Sarvapriya Vihar, New Delhi 110016, is the Managing Director and majority shareholder holding 21,11,844 (Twenty One Lakhs Eleven Thousand Eight Hundred Forty Four) shares, with a holding of 90% (ninety percent) of the issued and paid-up capital in Respondent No. 1. He took over the promoter of UT Leasing Limited (as Respondent No. 1 then was), pursuant to an RBI approval issued on 8 September 2021.

11. Respondent No. 3, an Indian Inhabitant, with his office at office at 7/17 L.G.F, Near Hauz Khas Metro Station, Sarvapriya Vihar, New Delhi 110016, is a director and holder of one (1) share in Respondent No. 1.

12. Respondent No. 4, an Indian Inhabitant, with his office at office at 7/17 L.G.F, Near Hauz Khas Metro Station, Sarvapriya Vihar, New Delhi 110016, is a director and holder of one (1) share in Respondent No. 1.

13. *Respondent Nos. 5 and 6, Indian Inhabitants, with their address at E1 / 62, Arera Colony, Bhopal – 462 016 and 3-7-32, Sree Nilayam, Plot No. 40, Road No. 2, Sri Sainagar Colony, Mansurabad, B Nagar, Hyderabad – 500 068 respectively, are Independent Directors of Respondent No. 1. Respondent Nos. 5 and 6 were appointed to the board to improve corporate governance, particularly because Respondent No. 1 is a public company.*

14. *Respondent No. 7, Indian Inhabitant, with his address at RZ B 25 3 Street No. 8, Gurudwara Road, Mahavir Enclave, Palam Village SO, South West Delhi, Delhi – 110 045, is the erstwhile Business Head of Respondent No. 1, who was recommended to be appointed as the Chief Executive Officer and Whole Time Director of Respondent No. 1 on account of his qualifications and excellent trajectory in furthering the interests of Respondent No. 1. Respondent No. 7 resigned from his position on account of non-payment of his salary for over three (3) months and harassment over his questioning of the management of Respondent No. 1 by Respondent Nos. 2 to 4.*

15. *Respondent No. 8, Indian Inhabitant, with his office at 16 A/20, W.E.A., Main Ajmal Khan Road, Karol Bagh, New Delhi – 110 005, is the Statutory Auditor of Respondent No. 1.*

16. *Respondent No. 9, Indian Inhabitant, with his address at B-80, Sharda Puri, Ramesh Nagar, New Delhi – 110 045, is the erstwhile Company Secretary of Respondent No. 1. He also resigned from his position on account of non-payment of his salary for over three (3) months and harassment over his questioning of the management of Respondent No. 1 by Respondent Nos. 2 to 4."*

11. The factual position saliently espoused in the petition is:-

I. But for the actions of Respondent Nos.2 to 4, the Respondent No.1 is high-yielding company. In the wake of the decision of the Board to expand the business of Respondent No.1, by way of infusion of funds by the Petitioner No.1, she was to acquire additional equity in the shareholding.

II. The Respondent No.2 has obtained huge sums of money from the Petitioners on one pretext or another. Consistent with his actions of misappropriating the funds received from the Petitioners, the said Respondent is currently misappropriating the funds of Respondent No.1, in an attempt to render the Petitioners' investment qua Respondent No.1, valueless.

III. Respondent Nos.2 to 4 have been responsible for the mismanagement of Respondent No.1. It is for extraneous reasons and with an ulterior motive, i.e., to enrich himself at the cost of Respondent No.1 that the Respondent No.2 mismanaged the affairs of Respondent No.1, thus the management of the said Respondent (the company) needs to be given in able hands and some administrator or other suitable person needs to be appointed to manage and control the affairs of the company.

IV. When with the expertise of its Independent Directors (that is, Respondent Nos.5 and 6), Respondent No.1 raised funds from private investors in the form of Optionally Convertible Debentures ("**OCDs**"), entirely on the basis of their credentials and good standing as Independent Directors and also that of Respondent No.7, Respondent No.2, who is also the majority shareholder Respondent No.1, caused a toppling of the leverage ratio of Respondent No. 1 beyond 7 times

(sic.7%). That was because even though the paid-up share capital qua the Respondent No.1 amounted to INR 2,34,65,000 (Rupees Two Crores Thirty Four Lakhs Sixty Five Thousand Only), the amount raised as debt was INR 315 Crores (Rupees Three Hundred and Fifteen Only). The toppling of the leverage ratio beyond 7 times (sic.7%) was a violation of the threshold mandated in the NBFC (Reserve Bank) Directions, which requires the leverage ratio to be maintained at 7 times (sic.7%).

V. The OCDs could not have been converted into CCPs without prior approval from the RBI under the NBFC (Reserve Bank) Directions. However, as stated above, Respondent No.2 converted the OCDs to CCPS (to comply with the leverage ratio requirements) without prior approval of the RBI, in complete violation of the NBFC (Reserve Bank) Directions. This has resulted in conferring indirect control upon debenture holders, inasmuch as holders of OCDs have now become holders of CCPS, with voting rights.

VI. The Respondent No.1 withheld salaries payable to KMPs without any cause or justification. The salaries were withheld for over three (3) months, resulting in mass resignations by them. Copies of the resignations tendered by Mr. Sambharia, Mr. Ankur Dhandharia, Mr. Harvinder Singh, Ms. Kriti Narula and Mr. M Krishnan are annexed as **Annexure P-7, Annexure P-8, Annexure P-9, Annexure P-10, Annexure P-11** to the petition.

VII. Respondent No.3, on behalf of Respondent No.1, issued identical responses to the resignations tendered by the key managerial

personnel, espousing therein that their incompetence and the possession of company property by them were reasons for withholding their salaries. Copies of the responses given by Respondent No.3 to Mr. Sambharia, Mr. Ankur Dhandharia, Mr. Harvinder Singh, Ms. Kriti Narula and Mr. M Krishnan are annexed to the petition as **Annexure P-12, Annexure P-13, Annexure P-14, Annexure P-15, Annexure P-16**.

VIII. It is incomprehensible that five (5) key managerial personnel, including the Chartered Accountant and Company Secretaries of Respondent No. 1 could have all been incompetent and in possession of "company property" at the same time. Once Mr. Sambharia was recommended to be appointed as the CEO & WTD and in acceptance of such a recommendation (as evidenced by the board resolution of 23 December 2022 and the Approval Application), he was so appointed by the Court, it is unbelievable that the salary of Mr. Sambharia was being withheld for reasons of "incompetence". A copy of the response issued by Mr. Sambharia to the baseless allegations levelled by Respondent No.3 is annexed with the petition as Annexure P-17. The Respondent Nos.1 to 4 succeeded in arm twisting and harassing the key managerial personnel into tendering their resignations, allowing room for Respondent Nos.2 to 4 to exercise unbridled and unquestioned control over the affairs of Respondent No.1.

IX. On 16 December 2022, Respondent No.2 purchased a Bentley Mulsanne EWB 20MY (the "**Luxury Car**") in the name of Respondent No.1, using the funds of Respondent No.1. Despite being second-hand,

the Luxury Car was bought at an exorbitant price of INR 9,09,00,000 (Rupees Nine Crores Nine Lakhs) from Luxus Retail Private Limited ("**Luxus**"). Luxus is entirely held and controlled by Respondent No. 2 and Respondent No.3 as directors of company.

X. The purchase of the Luxury Car is nothing but a device deployed by Respondent Nos.2 and 3 to siphon funds from Respondent No.1, since the address of Respondent No.1 recorded in the invoice is same as that of Luxus in Mumbai. It is matter of record that the registered address of Respondent No.1 is in New Delhi and it has no office located in Mumbai. Therefore, there is no explanation and cannot be an explanation as to why Respondent No.2 bought a Luxury Car in Mumbai, which was delivered to him at the address where Luxus is located. A copy of the invoice dated 16 December 2022 is annexed with the petition as **Annexure P-18.**

XI. The Invoice ex-facie reveals that by purchasing the Luxury Car at a premium of INR 2,95,47,599 (Rupees Two Crores Ninety Five Lakhs Forty Seven Thousand Five Hundred Ninety Nine) from Luxus, (an entity entirely controlled by Respondent No.2), Respondent No.2 enriched himself by not only paying for the Luxury Car out of Respondent No.1's funds, but also appropriating the Luxury Car for his own personal use. There have been no booking expenses towards any driver's salary, petrol, insurance or depreciation for the Car. The funds of Respondent No.1 have been siphoned off for non-business purposes by Respondent Nos.2 to 4. In addition, Respondent Nos.2 and 3 have enriched themselves by pulling the funds out of Respondent

No.1 (on the pretext of the luxury Car) and placing them into the coffers of Luxus, which is entirely controlled by Respondent No.2.

XII. The board of directors and the shareholders of Respondent No.1 were never informed of the purchase of this Luxury Car. This was a glaring revelation for the Petitioners since the purchase price of the Luxury Car far exceeds the share capital of Respondent No.1. This transaction is within the teeth of various provisions of the Act governing related party transactions.

12. The factual conspectus as described in the petition is:-

I. On 8 September 2021, the RBI issued its approval for new promoters to take control of UT Leasing Limited, as Respondent No.1 then was. Pursuant to the approval, Respondent No.2 took over as the new promoter of UT Leasing Limited (now Respondent No.1).

II. Subsequently, on 16 November 2021, UT Leasing Limited was renamed as Respondent No.1. A copy of the Certificate of Incorporation pursuant to change of name of Respondent No.1 is annexed with the petition as **Annexure P-2**. Respondent No.1 commenced operations as a registered Non-Banking Financial Company ("**NBFC**") from 16 December 2021. A copy of the Certificate of Registration of Respondent No. 1 as an NBFC is annexed with the petition as **Annexure P-3**.

III. After Respondent No.1 started operations as a registered NBFC in 2021, it had been growing in size with a proportionate growth in its loan book size. Accordingly, plans were being put in place for the expansion of Respondent No.1. Expansion of Respondent No.1 required funds, for which the management entered into an understanding with Petitioner

No.1. In terms of the agreement between the Petitioners, Respondent No.1 and Respondent No.2, for the expansion of Respondent No.1, Petitioner No.1 was to infuse an amount of INR 5,00,00,000/- (Rupees Five Crores Only) into Respondent No.1, in one or more tranches for additional equity in Respondent No.1 (the "**Expansion Agreement**"). In fact, Respondent No.2 consistently insisted and persuaded Petitioner No. 1 to infuse the additional funds into Respondent No.1.

IV. In addition to the infusion of funds by Petitioner No.1, the Expansion Agreement also envisaged the appointment of Mr. Om Prakash Sambharia (Respondent No.7), as the Chief Executive Officer and Whole Time Director ("**CEO and WTD**"). Mr. Sambharia was the Business Head of Defendant No.1 since 12 December 2022. Owing to his work for Respondent No.1 during his tenure as the Business Head, Respondent No.7 was recommended to be appointed as the CEO and WTD by the Nomination and Remuneration Committee of Respondent No.1.

V. The Expansion Agreement was crystallized and reduced to writing and as a consequence thereof, the board resolution dated 23 December 2022, was passed and an application dated 28 December 2022 for prior approval from the RBI for change in control and management of Respondent No.1 was submitted. A copy of the board resolution dated 23 December 2022 is annexed with the petition as **Annexure P-4** and a copy of the application dated 28 December 2022 (along with its annexures) is annexed thereto as **Annexure P-5.**

VI. The Board had resolved to file the Approval Application to comply with the provisions of the Master Directions - Non-Systemically Important

Non-Deposit taking Company (Reserve Bank), 2016 (the "**NBFC Directions**") which mandates all NBFCs to obtain prior approval of the RBI before giving effect to any measures of acquisition or control that would result in a change in the pattern of shareholding beyond 26% (twenty six percent) or more of the paid-up equity capital of the NBFC. Given that the paid-up equity capital of Respondent No.1 is INR 2,34,65,000 (Rupees Two Crores Thirty Four Lakhs Sixty Five Thousand), that is, 23,46,500 shares having face value of INR 10/- each, the infusion of INR 5,00,00,000 (Rupees Five Crores) by Petitioner No.1 would obviously result in the change in the pattern of shareholding in Respondent No.1 beyond 26% (twenty six percent). The NBFC Directions also require prior approval of the RBI for a change in management resulting in a change in more than 30% (thirty percent) of the directors (excluding Independent Directors). The appointment of Mr. Sambharia could result in change in management of Respondent No.1 beyond 30% (thirty percent) of the directors.

VII. In the Approval Application, it was specifically stated that Respondent No.1 had selected Petitioner No.1 to infuse funds towards the expansion of Respondent No.1 because it is difficult for banks and NBFCs to raise equity from the market, and as such, as investor, Petitioner No.1) was being preferred to fund the expansion plan rather than borrowing from other financial institutions.

VIII. The Approval Application was submitted with all the requisite documents, including:

(1) The source of funds of Petitioner No.1 for acquiring the additional equity in Respondent No.1;

(2) All bank accounts held by the Petitioner No.1;

(3) Details of companies / firms with which Petitioner No.1 is associated.

IX. As a sequel of the above, on 30 May 2023, the RBI issued a letter to Respondent No.2, approving (i) the allotment of 28,83,506 (Twenty Eight Lakh Eighty Three Thousand Five Hundred Six) shares to Petitioner No.1 qua Respondent No.1; and (ii) the appointment of Mr. Sambharia as a director. The RBI Approval was granted on it being satisfied with the capacity of Petitioner No.1 to infuse funds in Respondent No.1. The approval was valid for a period of six (6) months from its date of issue. A copy of the RBI Approval is annexed with the petition as **Annexure P-6**.

X. During the validity of the RBI Approval from 30 May 2023 to 30 November 2023, Respondent Nos. 1 to 4 deliberately failed to give effect to the Expansion Agreement.

XI. The Respondent Nos.2 to 4 are not qualified to manage and run the day-to-day affairs of an NBFC. Respondent No.2 has been in the business of running luxury car dealerships in multiple cities. Respondent No.3 is a non-practicing-chartered accountant and has no prior experience with an NBFC. Similarly, Respondent No.4 also has no prior experience with an NBFC. In fact, it is for this very reason that the Expansion Agreement contemplated the appointment of Mr. Sambharia as the CEO and WTD of Respondent No.1. Mr. Sambharia, in his

capacity as the Business Head of Respondent No.1, taken Respondent No.1 in the right direction and is to be given credit for the growth of Respondent No.1 since 2022.

XII. Respondent No.2 in particular, abusing his position as the Managing Director of Respondent No.1, has acted prejudicially to enrich himself as also the Respondent Nos.3 and 4 at the cost of Respondent No.1 and its shareholders, including the Petitioners.

13. Besides the above, the petition also depicts that Respondent Nos.2 to 4 have consistently failed to disclose material information to the board, particularly in relation to (i) loan defaults by the Respondent No.1; (ii) quarterly financial statement; (iii) accounting of transactions; and (iv) disclosures on related party transactions. In terms of the averments made in the petition, when by an e-mail dated 12.10.2023, the Respondent No.5 who is an Independent Director qua the Corporate Debtor sought to know, (i) the impact on business model of Respondent No.1 since it had acquired many stressed assets with no foreseeability on the servicing of interest, (ii) the mechanism in place to ensure prudential norms, and (iii) the reasons for undertaking related party transactions without approval in terms of the policy action to be taken to reverse such related party transactions, no response could be received by him.

14. The petition also espouses that the documents/information asked for by Respondent No.8 were not made available to him by the Company Secretary of the Respondent No.1 and following the silence from Respondent No.3, the Respondent No.6 and 8 raised issues and concerns regarding non-

disclosure of material information. The averments made in paras 47 to 52 of the petition reads thus:-

"*47. None of the information that was sought by Respondent No. 5 was provided to him or Respondent No. 6.*

48. In addition, by an email dated 24 January 2024, Respondent No. 8 had sought certain important documents from Respondent No. 3 to enable him to finalise the audit report for Respondent No. 1. In the email, Respondent No. 8 requested for the following documents amongst others:

(1) Signed copies of the minutes of previous meetings, for approval of accounts for FY 2022-23;

(2) RBI approval for conversion of OCDs to CCPS;

(3) Management representation letter for confirmation that:

a. Respondent No. 1 is has not accessed public funds during FY 2022-23 and hence there is an exemption from Prudential Norms;

b. There has been compliance of all the requirements with respect to Related Party Transactions for the transactions entered into during FY 2022-23:

Loans and Advances Given	Amount (in Lakhs)
Satya Prakash Bagla	507.30
Sulojay Realty Private Limited	1,289.38

c. The business of asset reconstruction can be done by Respondent No. 1 and confirmation that the provision for the stressed assets is correct.

A copy of the email dated 24 January 2024 is annexed hereto as ***Annexure P-20.***

49. No such documents were provided to Respondent No. 8 either by Respondent No. 3 or the company secretary of Respondent

No. 1. The Petitioners are unaware whether following the resignation of Respondent No. 9, a new company secretary has been appointed for Respondent No. 1.

50. *Following the silence from Respondent No. 3, by a string of emails on 5 February 2024, Respondent Nos. 6 and 8 raised issues and concerns regarding material nondisclosures and urged Respondent Nos. 2 to 4 to rectify the issues.*

A copy of email exchange dated 5 February 2024 is annexed hereto as ***Annexure P-21.***

51. *However, till date, none of this information has been provided. In view of the continuous failure of Respondent Nos. 2 to 4 in disclosing material information to the Board, Respondent Nos. 5 and 6 have been constrained to revoke the authorisations granted to Respondent Nos. 2 to 4 to act on behalf of Respondent No. 1.*

52. *By an email dated 5 February 2024, Respondent No. 6 expressed discontent with the failure of the non-independent members of the Board in disclosing material information on account of:*

(1) Failure in apprising Respondent Nos. 5 and 6 of the loan defaults of Respondent No. 1, which they learnt of from other lenders;

(2) Purchase of the Luxury Car at an exorbitant price from Luxus, which is a related party, for non-business purposes;

(3) Failure to appointment of Respondent No. 7 as a Whole Time Director as approved by the RBI.

Accordingly, Respondent No. 8 declared as revoked, all authorisations granted to Respondent Nos. 2 to 4 to act on behalf of Respondent No. 1. A copy of the email dated 6

February 2024, issued by Respondent No. 6 is annexed hereto as ***Annexure P-22.****"*

15. It has also been highlighted in the petition that Respondent No.6 proceeded to inform the banks that the Board of Respondent No.1 had become non-operational. In sum and substance, the plea raised in the petition is that Respondent Nos.2 to 4 are interested in advancing their personal interests and welfare at the cost of the interests and management of the company. To further buttress their stand in this regard, the Petitioners have alleged that Respondent No.3 is also a director in "Luxus", which is a company wholly owned and controlled by Respondent No.2. The Petitioners have also expressed concern about the Respondent No.2 being Managing Director of Exclusive Motors Private Limited which is engaged in the business of dealing in luxury cars.

16. The reply filed on behalf of Respondent No.1 espoused that:-

I. The petition does not satisfy the essentials of a case of operation or mismanagement and has been filed merely as a pressure tactic, with a motive to harass and exploit Respondent No.1.

II. Since the Petitioners hold less than 10% of issued share capital qua the Respondent No.1, the petition is not maintainable.

III. The amount of Rs. 315 Crores was infused into the Respondent No.1 for the purpose of expanding its business activities and was received from investors from October 2021 till March, 2022, and the amount is a long-term borrowing. The Petitioners herein became the shareholders qua the Respondent No.1 only w.e.f. 05.09.2022.

IV. The investments made into Respondent No.1/ECL are solely based on the efforts and business contacts painstakingly maintained by Respondent No.2 as the said Respondent was in contact with High-Net-Worth Individuals (HNI). The mere presence of Respondent Nos.5 to 7 as Independent Directors on the board of Respondent No.1 i.e. ECL herein, had not attracted investors to make investment of such a huge amount of Rs. 315 Crores. The Respondent No.6 became an Independent Director on 15.12.2022 and the Respondent No.7 got appointed in ECL (Respondent No.1) only on 09.12.2022 while the funds were raised between October 2021 and March 2021.

V. Regarding the conversion of the OCDS to CCPS, the Respondent/ECL had obtained a legal opinion from Mr. A Abhinav and Associates (Chronical Advisors) LLP, Company Secretary and when the Company Secretary viewed that OCD allotment made by the Respondent No.1/ECL was not in compliance with the prudential regulations regarding leverage ratio, as the CCPS comes under the definition of owned funds and does not have an impact on leverage ratio, the OCDS might be converted into CCPS.

VI. When the change in shareholding qua a company does not go beyond 26%, the RBI approval is not required at the time of conversion of OCDs to CCPS.

VII. The conversion of OCDs to CCPS was passed vide circular resolution dated 25.08.2022, vide Circular No.07/2022-2023 and was taken note in the board meeting held on 27.09.2022 and was noted in the board meeting held on 27.09.2022.

VIII. It was proposed to take steps in terms of the provision of Section 55 and 62(3) of the Companies Act, 2013, read with Rule 9 of Companies Share Capital and Debenture Rules to allot CCPS to the following extent:-

Series	**Allotment Date**	**Amount**
1	01.11.2021	Rs.50,00,00,000/-
2	21.01.2022	Rs.155,00,00,000/-
3	14.03.2022	Rs.110,00,00,000/-

IX. The Board of Directors accorded permission from Respondent No.1/ECL to revise the terms of the zero percent unsecured series 1, 2 and 3 OCDs of Rs. 3,15,00,00,000/- to be converted into 8% CCPS of the value of Rs. 3,15,00,00,000/- on the following terms and conditions:-

- *"CCPS shall have face value of Rs.10/- each*
- *Number of CCPS to be issued was 31,50,00,000*
- *8% of the non cumulative coupon per annum on each of the Preference Shares by way of dividend from the Company. The holders of Preference Shares shall be entitled to payment of dividend only in an event that dividend is paid to equity shareholders.*
- *As regards to the CCPS, be compulsorily converted into such number of equity shares of Rs.10/- each at the higher of:*
  a. *Fair Market Value as per the applicable provisions or*
  b. *Rs.10/- per equity share (being the face value of the equity shares as on date thereof)*
- *Have voting rights only in respect of certain matters as per the provisions of Section 47(2) of the Act, 2013."*

X. Teesta Retails Private Limited consented on 26.08.2022 for conversion of OCDs to CCPS, thus, Respondent No.1 fully acted in terms of the extant provisions of law.

XI. Though Mr. Rajiv Oberoi/Respondent No.5 who is supporting the Petitioners abstained from voting on the Circular Resolution for conversion, but he never objected to the conversion.

XII. In the board meeting held on 27.09.2022, it was resolved that a special resolution had been passed by the shareholders of the company for a change in conversion terms at the extraordinary general meeting held on 17.09.2022 and the approval of the board was accorded for such a conversion. Mrs. Kanta Agarwal, one of the Petitioners in the petition who had consented to shorter notice to convene the EGM was well aware of the conversion of OCDs to CCPS that was to be approved.

XIII. The Petitioners themselves are lethargic in attending the EGM/AGM qua the Respondent No.1/ECL.

XIV. As has been ruled by Hon'ble Supreme Court in **S.P Jain vs. Kalinga Tubes Limited** the concept of operation involves a burdensome, harsh and wrongful act involving lack of probity or fair dealing with a member in the matter of propriety rights as a shareholder, and mere lack of confidence between the majority and minority shareholders would not be enough to make out a case for operation and mismanagement under the Companies Act. Similarly, in terms of the view taken by Hon'ble Supreme Court in **Needle Industries India Limited vs. Needle Industries Newey (India) Holdings Limited** in (1981 3 SCC 333), an

illegal act will not in and of itself be treated as oppressive, unless it is accompanied by a mala fide intention or the same is otherwise a harsh burdensome and wrongful act.

XV. Following its earlier decision in **Needle Industries India Limited** (ibid), in **V.S. Krishnan vs. Westfort Hi-Tech Hospital Limited** (2008 3 SCC 363), the Hon'ble Supreme Court could view that the test to gauge whether an action is oppressive is not, whether it is illegal but whether it entailed the absence of probity or good conduct or mala fide or is harsh, burdensome, wrong, or for a collateral purpose. In the said judgement, it was further observed that although the ultimate objective of such an action may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-a-vis others.

XVI. If the Petitioners had any grievance or disagreement with the decision of the company, they could espouse the same with the management of the company and should not have straightaway rushed to the Tribunal.

XVII. In the matter of **IFB Agro Industries Limited and Another vs. SICGIL India Limited and Others** in Civil Appeal No. 2030 of 2019**,** the Hon'ble Supreme Court held that the Appellant was not justified in invoking the jurisdiction of Company Law Board under Section 111A of the Act for violation of SEBI Regulations and that the NCLT committed an error in entertaining and allowing the petition filed under Section 111A of the 1956 Act, and therefore, NCLAT was correct in setting aside in NCLT's judgment.

XVIII. In terms of the view taken by Hon'ble Supreme Court in **Ammonia Supplies Corporation vs. Modern Plastic Containers** in AIR 1998 SC 3153, when the claim is based on some seriously disputed rights or title or any fact that may form the foundation of such a claim the Court shall refer such Applicant to the appropriate forum.

XIX. If the Petitioners were concerned with the alleged debts of Respondent Nos. 1 to 4, it was open to them not to purchase the shares of Respondent No.1.

XX. The Petitioners are not expected to be concerned with the resignation of the KMP's qua the Respondent No.1. Nevertheless, the KMP's and other employees in question were not working in line with the business interests of the Respondent No.1 and were absent from duty for innumerable number of days. Besides, they were working from unauthorised places. They also committed breach of confidentiality and privacy.

XXI. Mr. Om Prakash Sambharia, the Respondent No.7 himself tendered his resignation and expressed his inability to be appointed as Whole Time Director and CEO of the Respondent No.1/ECL i.e. the company, due to various other engagements. The Respondent Nos. 5, 6, 8 and 9 could be removed on the ground of fraud, cheating, criminal breach of trust, as also for other reasons.

XXII. The purchase of the Bentley Mulsanne EWB 20MY was made by using the funds of Respondent No.1/ECL on 16.12.2022. The purchase of the car was made solely for official purposes and to attract a great deal of clientele. The object of purchasing the same was to create a brand image

of exclusive group, as one of the companies in the group is an authorised dealer of Bentley cars in India. Several Directors of Respondent No.1 have travelled in the car for official purposes. None of the Directors of the Respondent No.1/ECL ever claimed any refund for petrol and other expenses pertaining to the said car.

XXIII. The company, Luxus Retail Private Limited is a related party company of Respondent No.1/ECL and is held and controlled by the Respondent No.2, and the Respondent No.3 is also a Director in Luxus. The transaction of the purchase of the car is at arm length basis and cannot be considered an undervalued/fraudulent/overvalued transaction. In its meeting dated 27.09.2022, the Board sought to consider and approve for obtaining omnibus approval for related party transactions proposed to be entered into by Respondent No.1/ECL during the financial year 2022-23 onwards and also to consider the quantum of such transactions. It was only after deliberation that the criteria for omnibus approval in respect of transactions of repetitive nature in the past, in pursuance of Rule 6A of the Companies (Meeting of the Board and its Powers) Rules, 2014 were approved by the Board for the Financial Year 2022-23 onwards.

XXIV. The Petitioners are not supposed to know about the internal affairs of the company i.e., whether the information was disclosed to Respondent Nos. 5 to 9 or not.

XXV. The amount of loan advanced to Respondent No.2/ECL has been fully serviced by him with interest and could be fully repaid in full on 15.02.2024 and the loan account stands closed.

XXVI. In terms of the e-mail dated 25.09.2023, sent by Mr. Chary/Respondent No.6 to the Company Secretary of Respondent No.1, the performance valuation of the Members of the Board has been described as those who are highly knowledgeable/experience members and have a good scope for business growth.

XXVII. There is no bar in law, preventing directors in one company from being directors in other companies.

XXVIII. The copy of 'Expansion Agreement', in terms of which, the Petitioners were to invest a sum of Rs. 5 Crores in exchange for equity, could not be enclosed with the petition. In fact, no such 'Expansion Agreement' is in existence.

XXIX. The RBI approval came through on 30.05.2023, approving the allotment of 28,83,506 shares to the Petitioners and the appointment of Respondent No.7 as a director. The Respondent No.1/ECL did not find it appropriate to seek Rs. 5 Crores from the Petitioners considering its huge capital availability and the petty amount of Rs. 5 Crores as alleged by the Petitioner would not move a small stone in the business activities qua the Respondent No.1/ECL.

XXX. The financial position of the Respondent No.1/ECL as per the Audited Balance Sheet, as of 31.03.2022, the profit after tax is Rs. 48,30,000/- as against the profit after tax as on 31.03.2021 being minus Rs. 58,000/-.

17. Respondent Nos.2 and 3 filed a common reply and raised a preliminary objection that the Petitioners do not hold 10% shares qua the Respondent No.1, thus the petition is not maintainable. It is the case of the Respondent

Nos.2 and 3 while calculating the percentage of the shares, the CCPS needs to be taken into account. In the reply filed by them, the Respondent Nos.2 and 3 noted the salient pleas raised by the Petitioners in para 9(a) to (g) thereof and then made their submissions in response thereto. The salient pleas espoused in the reply filed by the said Respondents are:-

I. The Petitioners have suppressed their own miserable failure and inability to infuse funds into Respondent No.1 in the currency of RBI's approval from 30.05.2023 to 30.11.2023. The primary purpose of filing the application for RBI approval was to on board Respondent No.7 as Whole Time Director qua the Respondent No.1 and the approval for allotment of fresh shares to the Petitioners in furtherance of infusion of funds by them was obtained only because taking the approval from RBI time and again is a cumbersome process. The Respondent No.7 who has supported the plea in the petition, is proxy of the Petitioners. It is not so that the approval of RBI for appointment of Respondent No.7 as director qua Respondent No.1 and for allotment of shares to the Petitioners was not implemented deliberately.

II. The Petitioners have suppressed the material fact that they were not members of Respondent No.1 at the time of issuance of OCDs to Teesta Retail Pvt. Ltd. The Petitioners became shareholder only on 05.09.2022 while the issuance of OCDs in favour of Teesta took place from October 2021 to March 2022.

III. Even if the issuance of OCDs led to toppling of leverage ratio, the transaction was in the best interest of the Company and there is no allegation of impropriety concerning the transaction. The issuance was

done at arm's length, in favour of an unrelated third party investor for genuine business purposes and genuine business requirements and in the course of the ordinary business of the Company. Even if there was an infraction of any regulation, the act was unfair to the Company's shareholders.

IV. The Respondent No.6 was became an Independent Director on 15.12.2022 while the Respondent No.7 joined the Respondent on 09.12.2022, which dates are subsequent funds being raised from Teesta Retail Pvt. Ltd.

18. The contents of the reply filed on behalf of Respondent Nos.2 and 3 are more or less repetition of those raised in the reply filed on behalf of Respondent No.1.

19. In the reply filed by him, Respondent No.4 stated that he never acted in a manner that had caused any prejudice to the rights and interests of the Petitioners as shareholders qua Respondent No.1 or even to the interests of Respondent No.1. In his submission, he always performed his fiduciary duty as director of Respondent No.1. In addition to reiterating the pleas raised by Respondent Nos.1 to 3, Respondent No.4 also pleaded that the petition is bad for non-joinder of necessary parties. According to him, the Petitioner ought to have impleaded all the shareholders as parties qua the petition. He also gave a list of all the shareholders in para 8 of the reply, which reads thus:-

> *"8. The frivolity of the Petition is writ on the fact that Petitioners have chosen not to implead all the shareholders of Respondent No 1. The Petition merits to be dismissed for non-joinder of parties as the established principle of law is that selective impleadment of*

parties is fatal to the maintainability of petitions. On this ground alone, the Petition merits to be dismissed. It is submitted that for the sake of convenience of this Hon'ble Tribunal, the shareholding pattern as of the date of filing the instant Petition of the Respondent No.1 including that of the Petitioners is provided below –

SN	NAME	DESIGNATION IN THE RESPONDENT NO.1.	NO. OF EQUITY SHARES	% OF SHARES
1.	Mrs. Kanta Agarwala	Shareholder	1,17,325	5%
2.	Mr. Suresh Kumar Agarwala	Shareholder	1,17,325	5%
3.	Mr. Satya Prakash Bagla/ Respondent No.2.	MD & Majority Shareholder	21,11,844	90%
4.	Mr. Achal Kumar Jindal/Respondent No.3.	Director	1	0.00004%
5.	Mr. Johnson Kallarachal Abraham/Respondent No.4	Director	1	0.00004%
OTHER SHAREHOLDERS WHO ARE NOT PARTIES TO THE PETITION				
6.	Mr. Satish Kumar Arora	Shareholder	1	0.00004%
7.	Mr. Ashwin K Bhatia	Shareholder	1	0.00004%
8.	Mr. Hemant Hans	Shareholder	1	0.00004%
9.	Mr. Rajeev Kumar Khare	Shareholder	1	0.00004%

20. Besides, the plea regarding maintainability of the petition, on the ground that the Petitioners did not satisfy the requirement of Section 244 of the Companies Act, 2013, the Respondent No.4 also raised the plea of delay. According to him, the Petitioner is barred by limitation.

21. The Respondent No.6 (Independent Director) also filed separate reply espousing therein:-

a) Since their appointment, the non-Independent Directors are using the Respondent No.1 for preferential transaction and advance related party loans in egregious violation of applicable law.

b) The affairs of the Respondent No.1 are mismanaged and the illegal removal of Independent Directors and violation of applicable law including the Companies Act, 2013 as also that of the directions passed by RBI are other main instances of mismanagement.

c) The Respondent No.5 who was appointed as Independent Director qua the Respondent No.1 on 13 October, 2021 had made the application to RBI at the time of seeking approval for taking over the Respondent Company (Respondent No.1) by the Respondent No.2.

d) All decisions and transactions qua the Respondent No.1 are undertaken by the non-Independent Directors and it is only Respondent No.2 who had access to the bank accounts of the Respondent No.1 Company.

e) The Independent Directors were not in a position to acquire any knowledge qua the transactions of Respondent No.1 Company as the transactions were mostly undertaken by the Respondent Nos.2 to 4 and were with the related entities or the entities in whom the Respondent No.2 had interest. The Respondent No.6 was often informed of the transactions undertaken by the Respondent Company after the transaction had already been given effect to. However, several concerns regarding the non-Independent Directors came to the notice and knowledge of the Respondent No.6.

f) Vide e-mails dated 12.10.2023, 24.01.2024, 05.02.2024 and 06.02.2024 the Independent Directors had raised various questions and concerns regarding the manner in which the affairs of the Respondent No.1 are being managed by non-Independent Directors, but the non-Independent Directors have not furnished any explanation for such acts, omission and transactions to the Independent Directors, shareholders or even to the Statutory Auditor. The Respondent Nos.2 to 4 have consistently breached their fiduciary duties as directors.

g) The Independent Directors are illegally removed from the Board of Directors of the company.

h) The removal of Respondent No.6 as Independent Director was in violation of Section 169 of the Companies Act and has been done without giving any opportunity of hearing to said Respondent.

i) The Respondent Nos.2 to 4 actively obstructed the AGM from taking place as scheduled, despite a notice being circulated on 28.09.2023. One of the Agenda item for AGM was the appointment of Respondent No.6 for a tenure of 2 years. The non-Independent Directors actively obstructed the AGM so that they could misuse the law and remove Respondent No.6 as an Independent Director of the Respondent Company. The Respondent No.6 was removed from the Board of Directors, only because he raised strong questions about the management of Respondent No.1 Company.

j) It is shocking that one Mr. Yudhvir Singh Jain was appointed as an Independent Director without the recommendation and approval of the

Nomination and Remuneration Committee, as is required under Section 178 of the Companies Act.

k) Certain evaluation forms filled out by Respondent No.6 are being misused by the Non-Independent Directors to assert that Respondent No.6 was contended with the qualifications of Respondent Nos.2 to 4 and was satisfied with their functioning. Nevertheless, a mere evaluation form cannot confer on Respondent Nos.2 to 4 with qualifications they simply do not possess. In any case, the evaluation was done by Respondent No.6 on being misled by Respondent Nos.2 to 4 and upon being shown only what the Respondent Nos.2 to 4 wanted him to see.

l) On 09.04.2024, Respondent No.6 learnt from the reply filed by the Respondent No.1 that the said Respondent had also sought to remove Respondent No.5 by way of purported Resolution dated 15.02.2024. No notice of the meeting was sent to the Independent Directors.

m) Also, the removal of Respondent No.5 was in violation of the provisions of Section 169 of the Companies Act, 2013.

n) The Respondent No.5 has no interest in AHNL either direct or indirect.

o) The Non-Independent Directors forced out key managerial personnel so as to allow the transactions that are unlawful and have illegally withheld their salaries. The vacancies created by the resignation of the key managerial personnel are yet to be filled up. Presently, there are no professionals with banking or finance experience with Respondent No.1 Company.

p) Despite, approval by RBI, the Respondent Nos.2 to 4 evaded the issue of appointment of Respondent No.7 as a Whole Time Director and CEO and ultimately, the said Respondent was forced to leave the Respondent No.1 Company.

q) As many as 5 employees of the Respondent No.1 Company collectively resigned, citing non-payment of salary for past 3 months as cause for resignation. The employees held crucial roles in the Company and were Business Head, Company Secretary and Accounts Officer.

r) When the former employees approached the Respondent No.6 regarding the illegal transactions undertaken by the Non-Independent Directors in the name of Respondent Company, it was an eye-opener for the said Respondent, who had been kept in dark by the Non-Independent Directors. When the former employees failed to act as per the instructions of the Non-Independent Directors, their salaries were withheld, and they were threatened to be removed.

s) Section 203 of the Companies Act requires that a company shall always have on its roll, key managerial personnel including a chief financial officer, company secretary, to manage the affairs of the company and ensure compliance with statutory provisions. But after the mass resignation of 5 employees (supra) the Respondent Company could take no steps to fill up the vacancy. Clearly, the Respondent Nos.2 to 4 are not interested in complying with the mandate of law.

t) The Respondent Company was required to appoint a Chief Financial Officer (CFO) since the middle of FY 2022-23, which was not done. A CFO was finally appointed by the Respondent Company in May 2023,

however, on account of the failure of Respondent Nos.2 to 4 to provide him with the requisite financials information, he also resigned in October 2023. As such, till date, the Respondent Company has been functioning without a CFO as well as other key managerial personnel. This shows that Respondent Nos.2 to 4 have gone to great extent to retain complete control over the Respondent Company and not be answerable to any person, or shareholder.

u) The Respondent No.6 could know about underhanded actions by Respondent Nos.2 to 4 from the ex-employees of the Respondent Company, including Respondent Nos.7 and 9. It was only then that the Petitioners reached out the Respondent No.1 to enquire about the status of infusion of further funds by Petitioner No.1 in the Respondent Company as approved by the RBI. The Independent-Directors have nothing to gain from colluding with the Petitioners or the ex-employees of the Respondent Company, while the Non-Independent Directors have a lot to gain from remaining in control over the affairs of the Respondent Company.

v) The principal acts of mismanagement of affairs of Respondent No.1 such as:- (i) non-compliance with the Companies Act and RBI Directions; (ii) acquiring bad debts/loans without any business plan or recovery over the last two years as also in violation of Master Directions 2021; (iii) availing loans to acquire loans/stressed assets of related parties; (iv) suspicious loans granted without diligence or documentations at low rates to benefit related parties; and (v) undertaking day to day functioning of the Respondent Company

through Respondent No.3, a non-executive director, are clear from the record of the Company.

22. The aforementioned instances of mismanagement, alleged by Respondent No.6 could be elaborated by him in paras 43 to 72 of the reply, which reads thus:-

> ***"A. Non-Compliance And Violations under the Companies Act and RBI Directions***
>
> *43. That the Respondent Company under the control and mismanagement of Respondent Nos. 2 to 4 is liable for the numerous other violations and non-compliances as follows:*
>
> *(a) <u>Non-implementation of the Respondent Company's Credit Policy</u> – The RBI by Master Circular RBI/201516/23 DNBR (PD) CC.No.044/03.10.119 /201516 dated 1 July 2015, has advised NBFCs including the Respondent Company to formulate a loan/ credit policy and implement it. A credit policy is required to lay down guiding principles regarding the formulation of various loans offered by Respondent Company, the terms and conditions governing accounts, and other terms & conditions applicable to loans. While the credit policy of the Respondent Company had been drafted and there was a strong push from the employees to implement such a policy, there was a pushback on its implementation from Respondent Nos. 2 to 4. Respondent Nos. 2 to 4 impeded the draft credit policy from being presented to the board and as such, it was never implemented. In absence of any credit policy, Respondent Nos. 2 to 4 have a free reign to grant loans at non-uniform interest rates, waive or impose any penal charges, and liabilities as they deem fit. This is contrary to the very foundation of an NBFC-ICC and eliminates transparency in*

respect of the functions of the Respondent Company. The routine practices concerning the business of the Respondent Company were not in line with prudent / standard market practices.

*A copy of the draft credit policy prepared by the employees of the Respondent Company is annexed hereto as "**Annexure R-6**".*

(b) *Illegally converting Optionally Convertible Debentures ("**OCDs**") of INR 315 Crore into Compulsorily Convertible Preference Shares ("**CCPS**"), without RBI approval. This is clearly in violation of the NBFC Directions 2016.*

(c) *Non-compliance with Guidelines on Liquidity Risk Management Framework and improper functioning of Asset-liability Management Committee – Regulation 15 of the NBFC Directions 2016 stipulate that an NBFC with asset size of more than INR 100 Crore shall adhere to the Liquidity Risk Management ("**LRM**") Guidelines. These LRM Guidelines inter alia require appointment of a Chief Risk Officer, formulation of Asset-Liability Management Committee ("**ALCO**"), to ensure proper management controls in place, to prevent exposure to the NBFC. Upon the conversion of OCDs to CCPS, the asset size of the Respondent Company exceeded INR 100 Crore thereby requiring compliance with the LRM Guidelines. While the LRM Guidelines were approved and implemented on paper by the Respondent Company, they have not been implemented in practice in accordance with law by the Respondent Company. This has exposed the Respondent Company to serious risk. Till date:*

(i) *No expert / professional to advise on risk management has been appointed, even though the Respondent*

Company is being run by persons with no experience whatsoever with banking;

(ii) Despite formation of a risk management committee being formed, no meetings have taken place after two initial meetings;

(iii) There is no risk management system in place.

(d) Failure to submit supervisory returns to RBI - Master Direction (Filing of Supervisory Returns) Directions, 2024 requires all supervised entities including NBFCs to inter alia file supervisory returns. To the knowledge of the Answering Respondent, the Respondent Company has failed to file the applicable returns under these Directions.

(e) Failure to conduct Annual General Meeting on or before 30 September 2023 in accordance with Section 96 of the Companies Act, despite issuance of a notice to the directors and members.

B. Acquisition of bad debts / loans without any business plan or recovery over the last two (2) years and in violation of Master Directions, 2021

44. That as set out in the Memorandum of Association of the Respondent Company [Annexure P1 / Pg. 42 / Petition / Vol. 2] the main objects to be pursued by the Respondent Company are to carry on all or any of the business of leasing, hiring, letting on hire, leasing and to provide on lease or on deferred payment basis or on any other basis all types of plant, equipment, machinery, vehicles, and real estates and any other movable and immovable properties and assets. In fact, even in business plan submitted by the Respondent Company in its application dated 5 June 2021, to the RBI for approval, the Respondent Company had represented that products it would offer would include loans for cars, commercial vehicles and construction equipment, lease and finance options for vehicles etc.

45. *That however, quite contrary to the main business objectives, the Answering Respondent has learnt that the Respondent Company has for the last three years been heavily invested in acquiring bad loans without any plan as to the end goal from acquiring such bad loans. It is also reflective of the lack of experience of Respondent Nos. 2 to 4, who have no experience whatsoever with running the business of an NBFC. The Answering Respondent has on several occasions raised concerns about the acquisition of such bad loans but have never received a response from Respondent Nos. 2 to 4.*

46. *That from the documents brought to the attention of the Answering Respondent by the lender to the Respondent Company, namely, Clover Media Private Limited ("**Clover**"), the Answering Respondent has learnt of at least on such bad loan of AHNL. It is unclear how this loan acquisitions would monetarily incentivise the Respondent Company.*

47. *That the Answering Respondent reiterates that the Respondent Company is not in the business of acquiring bad debt and NPAs. However, the Non-Independent Directors, with no experience or banking expertise whatsoever, have used the Respondent Company to carry out actions beyond the scope of its business objectives, only causing a loss to the Respondent Company and benefit its related parties.*

48. *That apart from being contrary to the main business objectives of the Respondent Company, the acquisition of bad loans were in violation of the Master Directions, 2021 by which NBFCs are permitted to acquire stressed loans, however only subject to fulfilment of certain conditions. These conditions were never complied with.*

C. Availing loans to acquire debts/ stressed assets of related parties

49. *That as stated above, Answering Respondent has been approached by lenders of the Respondent Company, informing them about the loans taken by the Company and the fact that the Company has defaulted on these loans. It is pertinent to note that the Non-Independent Directors have never even informed the Answering Respondent regarding such substantial loans taken by the Respondent Company.*

50. *That from the information gathered, it has come to the notice of the Answering Respondent that the Respondent Company has availed the following loans:*

    *(1) A loan amounting to a total of INR 23,55,00,000 (Rupees Twenty Three Crores Fifty Five Lakhs) in several tranches from Evaan Holdings Pvt. Ltd. ("**Evaan**"); and*

    (2) A loan amounting to INR 60,00,00,000 (Rupees Sixty Crores) from Clover.

51. *That the Respondent Company availed of the amounts under the respective loan arrangements on 14 December 2022, i.e., the Respondent Company received an amount of INR 7,50,00,000 (Rupees Seven Crores Fifty Lakhs) from Evaan and an amount of INR 60,00,00,000 (Rupees Sixty Crores) from Clover;*

52. *That so far as the loan received from Clover is concerned, it appears from the terms of the loan agreement that the end use of the funds was to acquire the AHNL loan from its existing lenders. It is evident from the documents filed on record and those shared by the lenders, loan from Clover was to acquire a bad loan, which is not contemplated in the business model of the Respondent Company.*

    *Copies of the correspondence between Clover and Respondent No. 3 as shared with the Independent Directors are annexed collectively as "**Annexure R-7**".*

53. *That the Answering Respondent has been given to understand that the Respondent Company has defaulted on these loans. The Respondent Company till date owes an amount of INR 2,97,86,632 (Rupees Two Crores Ninety Seven Lakhs Eighty Six Thousand Six Hundred Thirty Two) and is in default of its repayment obligations to Evaan.*

54. *That the Respondent Company has also defaulted on the loan availed of it from Clover, and the Answering Respondent understands that Clover has exercised certain rights of assignment under the loan agreement. Such a default has resulted in severe monetary loss to the Respondent Company, an NBFC.*

55. *That Clover has also informed the Answering Respondent that after paying the interest liability to Clover, the Respondent Company defaulted in the repayment of the principal sum under the loan. Owing to this default by the Respondent Company, Clover exercised its rights under Clause 3.3 of the loan agreement, to invoke its security and the debt owed by AHNL stands substituted to an entity named VSJ Investments Pvt. Ltd. ("**VSJ**"). Following this, the Answering Respondent was informed that in February 2024, Respondent No. 2 addressed a letter to Clover making an incredible assertion that the loan agreement executed between the Respondent Company and Clover was allegedly "forged and fabricated" and did not exist. These correspondences were made available to the Answering Respondent and Respondent No.5 by the lenders, VSJ and Clover since Respondent No. 2 began denying the existence of the loan agreement. As such, they were constrained to approach the independent directors of the Respondent Company.*

56. *That this is a clear example of the dishonest and brazen nature of the actions taken by Respondent Nos. 2 to 4. Having caused a*

loss to the Respondent Company, an NBFC, by defaulting on the loan taken from Clover, Respondent No. 2 attempted to wash away all liability by denying the very existence of the loan agreement which he himself authorised execution of.

D. Granting unsecured loans to related parties and undertaking preferential transactions for the benefit or related entities

57. *That the Statutory Auditor by his communications dated 24 January 2024 and 5 February 2024, has highlighted various unsecured loans of INR 18,00,00,000 (Rupees Eighteen Crores) granted by the Respondent Company during FY 2022-23, the details of which are :*

Name of Related Party	Amount of unsecured loan granted by the Respondent Company (Approx.)
Satya Prakash Bagla (Respondent No.2)	INR 5,07,30,000/-
Sulojay Realty Private Limited	INR 12,89,38,000/-

58. *That upon this being flagged by the Statutory Auditor, the Respondent Company reviewed the financial statements of the Respondent Company. This confirmed that the substantial funds of the Respondent Company have not only been used to acquire bad debts, but also to undertake preferential transactions with related entities.*

59. *That of these amounts, as of 31 March 2023, the outstanding amount owed by Sulojay Realty Private Limited with interest is INR 9,74,24,419 (Rupees Nine Crore Seventy Four Lakhs Twenty Four Thousand Four Hundred Nineteen) and the outstanding amount owed by Respondent No. 2 is INR 1,52,38,755 (Rupees One Crore Fifty Two Thousand Thirty Eight Thousand Seven Fifty Five).*

60. *That these loans have been granted without any prior authorisation of, or intimation to, the Independent Directors or other members of the Respondent Company. This is also in absence of any Board Resolution required under Section 179 of the Companies Act to grant such loans. These loans have been granted in a cavalier manner without any documentation.*

61. *That the Statutory Auditor in his communications, also informed that the Respondent Company purchased a second-hand, Bentley car for an exorbitant price of upwards of INR 9 Crores, from Luxus Retail Private Limited. The Bentley has been purchased at a premium of INR 2,95,47,599/-. Notably, Luxus is managed by, and controlled under, the directorship of Respondent Nos. 2 and 3. Luxus is therefore a related party as defined under Section 2(76) of the Companies Act. Notably, it is inconceivable that an NBFC would for any purposes of business, require a luxury car. It is evident that the luxury car was purchased solely for the enjoyment of Respondent No. 2, using the funds of the Respondent Company. The luxury car has merely been bought in the name of the Respondent Company and neither has the luxury car ever been seen nor any receipts, charges or expenses towards the car ever been presented to the Respondent Company for clearance. It is apprehended that the car may have even been sold in an underhanded manner by Respondent Nos. 2 to 4.*

62. *That the Answering Respondent states that the invoices provided by the Respondent Company in relation to the purchase price of a Bentley Mulsanne further the case of the Answering Respondent and not the Non-Independent Respondents. When reviewed, it is clear from the invoice annexed as Annexure 11 / Counter filed by Respondent No. 1, that a brand new Bentley Mulsanne is priced at a base price of INR 6,47,69,056 (Rupees Six Crores Forty Seven Lakhs Sixty Nine Thousand Fifty Six). It*

is incomprehensible that a used Bentley Mulsanne would be priced at a base price of INR 6,82,10,726 (Rupees Six Crores Eighty Two Lakhs Ten Thousand Seven Twenty Six), i.e. almost INR 34 lakhs over the price of a new Bentley Mulsanne. The Answering Respondent submits that it is clear that Respondent No. 2 furthered his own interests at the cost of the Respondent Company.

63. *That as set out above, no consent of the Board of Directors has been sought for purchase of this car. The purchase is clearly in violation of Section 188 of the Companies Act, which prohibits any purchase of goods from related parties in absence of a resolution of the Board of Directors approving such transaction. Further, as explained above, the purchase of this car does not fall within the omnibus approval. In any event, the car has never been in the possession of nor even seen by anyone belonging to the Respondent Company. It appears to have been registered in Mumbai, Maharashtra where the Respondent Company has no office. It is clear that the car has been appropriated by Respondent No. 2 for his personal use and the Answering Respondent verily believes that it has been sold by Respondent No. 2 for cash.*

64. *That it is clear from position set out above that by undertaking these unapproved related party transactions, Respondent Nos. 2 and 3 have misused the funds of the Respondent Company to gain undue advantage not only to themselves but also for the benefit of their related entities. This is also a breach the fiduciary duty of Respondent Nos. 2 and 3 under Sections 166(5). It also amounts to a violation of the stipulation under Section 185 of the Companies Act, that restricts grant of loans to directors or their related entities. In accordance with Section 166, Respondent Nos. 2 and 3 are liable to forthwith pay the undue gains to the extent of INR 18 Crores to the Respondent Company.*

65. *That despite raising the issue of related party transaction and explanation sought by the Answering Respondent and the Statutory Auditor, no reply has been furnished any explanation or produced any documents showing compliance with the statutory mandate for undertaking these transactions. It is for the first time in the reply filed by Respondent Nos. 1 to 4, that they have sought to justify these transactions by virtue of an 'Omnibus Approval' of the Board of Directors (Annexure R25 / Counter filed on behalf of Respondent Nos. 2 and 3 / Vol. 2).*

66. *That the Answering Respondent states that it is apparent on its face, that the loan granted to Sulojay Realty Pvt. Ltd. (of INR. 12,89,38,000/-) exceeds the threshold of INR 10 Crore prescribed in the omnibus approval. Even otherwise, the Non-Independent Directors' reliance on the omnibus approval is a red-herring inasmuch as the approval was subject inter alia to the following conditions: (i) disclosure to the audit committee of the relationship with the Respondent Company / Director / Relatives; (ii) quarterly review of transactions entered into using the omnibus approval. The Answering Respondent states that none of this was complied with by the Non-Independent Directors. Neither were the interests disclosed by Respondent No. 2 nor was there a quarterly review of these transactions.*

67. *That it is therefore clear that the funds of the Respondent Company are being prejudicially misused, mismanaged and even siphoned off, by Respondent Nos. 2 to 4. In these circumstances, it is imperative that an administrator be appointed to take over the affairs of the Respondent Company during the pendency of the Petition.*

E. ***Undertaking day to day functioning of the Respondent Company through Respondent No.3, a non-executive director***

68. *That in order to ensure that the affairs of the Respondent Company are within the control of Respondent Nos. 2 and 3 alone, the authorisation to do all acts on behalf of the Respondent Company has been vested in Respondent No.3, a Non-Executive Director, who acts at all times at the behest of Respondent No. 2, the Managing Director of the Respondent Company.*

69. *That as a Non-Executive Director, the role of Respondent No.3 is limited to overseeing executive activity. Such non-executive directors do not play any role in the daily management of the Respondent Company and have limited liability in respect of the affairs of the Respondent Company. It is for this reason that all illegal transactions of the Respondent Company, whether concerning acceptance of public deposits, lending loans to related companies, and acquiring bad debts at the behest of related companies, have been executed by Respondent No. 3. It is suspect that despite being the Managing Director of the Respondent Company, Respondent No. 2 finds no mention in a single piece of paperwork concerning the Respondent Company. Similarly, Respondent No. 4, who is actually the executive director of the Respondent Company, has neither signed a single piece of paper concerning the Respondent Company nor does his name find a mention anywhere in the Respondent Company papers.*

70. *That pertinently, as already stated earlier, Respondent No. 3 (despite being a Non-Executive Director) has been carrying out substantial and crucial day-to-day functions of the Respondent Company including executing loan agreements with borrowers, issuing sanction letters, and all related documentation. Particularly, as evident from the Petition, Respondent No.3 has executed the following crucial documents on behalf of the Respondent Company:*

(1) *Board Resolution dated 23 December 2022 where the Respondent Company resolved to apply to RBI for:*

(a) *Change in control and management of the Respondent Company owing to proposed infusion of equity by the Petitioners;*

(b) *Change in directorship beyond 30% due to proposed appointment of Mr. Om Prakash Sambharia (Respondent No.7) as Whole Time Director;*

(2) *Application to RBI dated 28 December 2022 in terms of the Board Resolution dated 23 December 2022;*

(3) *Response emails to key managerial personnel who resigned from the Respondent Company, alleging lapses on part of these employees, which ought to be within the knowledge of the Whole Time Directors alone.*

71. *That in addition, Respondent No.3 has acquired bad loans without any experience whatsoever with business dealings of this nature, without any approval, discussion, guidance and supervision of the board and its qualified independent directors is extremely alarming and a definitive cause calling upon the indulgence of this Hon'ble Tribunal.*

72. *That this is clearly in violation of the scheme of the Companies Act and the limited role of Respondent No.3 as a Non-Executive Director. It is extremely suspect that despite having a Managing Director and an executive director, the Respondent Company is under the control of a non-executive director. It is the concerted and calculated decision of Respondent Nos. 2 to 4 to execute all critical actions of the Respondent Company through Respondent No.3, in a deceptive manner to evade liability and mislead Independent Directors, shareholders and other members of the Respondent Company."*

23. Alleging specifically that the Respondent Nos.2 to 4 have acted in a manner prejudicial to the interest of the company and the shareholders, the Respondent No.6 (Independent Directors) made concluding submissions in his reply. The paras 73 to 76 of the reply filed by him reads thus:-

> *"73. That it is clear that, in complete disregard of the various statutory mandates, the Non-Independent Directors are conducting the affairs of the Respondent Company for their personal benefit, and to undertake related party transactions without corporate approvals and without disclosure of interest. In fact, Respondent No.2 is managing and operating all his associate companies from the same registered address as that of the Respondent Company. Respondent Nos. 2 to 4 are undertaking transactions without any requisite approvals, or transparency with the shareholders or the Answering Respondent.*
>
> *74. That clearly, Respondent Nos. 2 to 4 have undertaken various acts which are in violation of the Companies Act, and they ought to be suspended forthwith by this Hon'ble Tribunal. Respondent Nos. 2 to 4 have:*
>
> *(1) Not acted in good faith to promote the objects of the Respondent Company for the benefit of its members as a whole and in the best interests of the Respondent Company, as required to under Section 166 (2) of the Companies Act, 2013;*
>
> *(2) Involved themselves in situations in which such directors have a direct interest that conflicts with the Respondent Company's interest in blatant disregard of Section 166(4) of the Companies Act, 2013;*

(3) Achieved undue gain or advantage for themselves and partners or associates in breach of Section 166(5) of the Companies Act, 2013

75. That for the reasons set out above, the Answering Respondent states that the affairs of the Respondent Company are being run in a prejudicial manner and being mismanaged by Respondent Nos. 2 to 4. As such, the Answering Respondent prays for the appointment of a forensic auditor and for the appointment of a receiver / administrator to take over the affairs of the Respondent Company during the pendency of the Petition.

76. That the Answering Respondent also prays that basis the findings of a forensic auditor, it would be appropriate for Respondent Nos. 2 to 4 to be held to be jointly and severally liable to pay an amount to the Respondent Company equivalent to the undue gains made on account of transactions that were undertaken to achieve undue gains for themselves and their associates in accordance with Section 166(5) of the Companies Act, 2013."

24. Also, Respondent No.7 filed his separate reply, espousing therein:_

a) He joined Respondent No.1 on 12.12.2022 and at the time of his joining, the key persons managing the affairs of Respondent No.1 and non-independent board of directors, did not have the requisite background in the banking industry to conduct the affairs of Respondent No.1 effectively. It is for this reason that Respondent No.7 was employed initially as Business Head and was thereafter appointed as a Whole Time Director.

b) Before joining Respondent No.1 Company, he (Respondent No.7) had worked in various capacities, with Bank of Baroda.

c) All transactions qua Respondent No.1, were in fact authorised undertaken by Respondent Nos.2 and 3 and there was absolute control of the said Respondents on the bank account and record of Respondent No.1 Company. The said Respondents intended to run Respondent No.1 opaquely, by excluding all such parties who have actual experience in the field, including the Independent Directors i.e. Respondent Nos.5 and 6.

d) When, he (Respondent No.7) flagged various illegalities and non-compliances and questionable transactions before Respondent Nos.1 to 4, fearing exposure of their illegal activities, the Respondent Nos.2 to 4 obstructed his appointment as a Whole Time Director qua the Respondent No.1 and coerced him to resign from Respondent No.1.

e) Almost immediately since joining Respondent No.1 in December 2022, Respondent No.7 noticed several unexplained and unusual transactions that had been undertaken by Respondent No.1. Various loans had been disbursed without proper documentation. It was a regular practice of Respondent Nos.2 and 3 to first undertake illegal and questionable transactions and then disclose the same to the employees for creating back-dated paperwork.

25. In para 10 of the reply filed by him, Respondent No.7 has enumerated the instances of mismanagement of the affairs qua Respondent No.1 at the hands of Respondent Nos.2 to 4. The para reads thus:-

"10. That Respondent No.1, in the hands of Respondent Nos. 2 to 4, is being mismanaged which is evident from the following :

i. Grant of suspicious loans including to and for the benefit of related related parties, on preferential terms.

ii. Illegal issuance of OCDs and subsequent conversion into CCPS.

iii. Usage of funds raised through OCDs/ CCPS for financing/ acquiring bad loans conservatively estimated at INR 200 Crores without board approved policy

iv. Suspicious transactions with the Petitioners including related parties at the cost of loss/risk to Respondent No.1 and its creditors

v. Issuing directions to employees, including the Answering Respondent, to not operate or work from the office of Respondent No.1 owing to hefty cash transactions and raids by government departments

vi. Non-executive director, Respondent No.3 is at the forefront of the illegal transactions of Respondent No.2

vii. Respondent No.1 is a regular defaulter in loans owed to creditors, including Clover Media Private Limited

viii. All transactions undertaken by Respondent No. 1 were undertaken at rates way below the standard interest rate of 14% - 15% usually charged by NBFCs;

ix. Complete disregard of corporate governance principles, statutory and regulatory stipulations. This includes failure to follow mandate of KYC, nonregistration on the Vahan Portal, failure to furnish credit information among others."

26. Further, in paras 11 to 57, the Respondent No.7 has elaborated the instances of the mismanagement mentioned by him in para 10 of his reply. The paras reads thus:-

"I. Grant of suspicious loans

11. *Respondent No. 1 disbursed several suspicious loans, especially between January 2022 and August 2023. When the Answering Respondent joined Respondent No.1, he reviewed the business transactions of Respondent No.1. The transactions below stood out to the Answering Respondent on account of them remaining unpaid and raising grave suspicion:*

S. No.	Account Name and Purpose	Loan Amount	Loan Disbursed to	Remarks
1.	Laxmipati Management Services Pvt. Ltd ("**Laxmipati**") Loan for purchase of a luxury car from EMPL.	3,00,00,000	Exclusive Motors Private Limited ("**EMPL**")	(1) Loan was taken in the name of Laximpati, however, proceeds of INR 3 Crores were disbursed to EMPL on 7 January 2022 purportedly for purchase of a car. (2) There was infact no purchase of any car, nor was any hypothecation created in favour of Respondent No.1. (3) Curiously, after a period of 1.5 years, EMPL deposited a sum of INR 3,12,36,209 purportedly to settle the dues of Laxmipati. (4) Notably, with this payment there was a loss of over INR 50 Lacs, which would ordinarily be payable as interest as per market standards.
2.	Jayant Mirani Loan for purchase of a luxury car from EMPL	2,05,00,000	Jayant Mirani	(1) Prior loan of INR 3 Crores already availed by Jayant Mirani from Bank of Baroda for purchase of the car. Car is already mortgaged to Bank of Baroda (2) Additional loan granted by Respondent No.1 in respect of the same car at a depressed rate of interest of 8%. No hypothecation on car or any security for such loan, favour of Respondent No.1. (3) It appears that this transaction was entered into to settle dues owed by Respondent No.2. It also appears that this transaction is based on an inflated invoice for the car to be purchased. (4) Notably no interest was charged on the sum of INR 1 Crore, while the remaining sum of INR 1.5 Crore and interest thereon was never paid. Inexplicably, no steps were taken to recover these amounts. (5) It has been informed by Respondent Nos. 2 and 3 that the remaining amount was received by Respondent No.2 in cash or by other means.
3.	Luxus Retail Private Limited ("**Luxus**")	14,00,00,000	Luxus	(1) Loan granted to Luxus at menial rate of interest of 7%. INR 5 Crores was disbursed on 10 March 2022 and a further sum of INR 9 Crores was disbursed on 19 April 2022. (2) No loan documents executed and no hypothecation in favour of Respondent No.1. (3) Ultimately only a sum of INR 5 Crores was repaid by Luxus on 31 March 2022. The remaining INR 9 Crores was sought to be settled, much later in December 2022,

				against the purported purchase of a second-hand luxury car by Respondent No.1. Notably, no interest was paid on this loan by Luxus, causing a substantial loss to Respondent No.1.
4.	Purchase of a second hand Bentley Bentayga from EMPL	6,71,00,000	EMPL	(1) Respondent No.1 remitted an aggregate amount of INR 6.71 Crores on 19 July 2023 and 1 August 2023 to EMPL. (2) This was purportedly towards the purchase of another luxury car by Respondent No.1 for which no approvals were taken. (3) There are no documentations with respect to this transaction in the records of the Company and none of the former employees including the Answering Respondent have ever even seen the car or if it actually exists

12. Each of these transactions is explained below.

(1) <u>Laxmipati Management Services Pvt. Ltd.</u>

12.1 A loan was availed by Laxmipati for an amount of INR 3 Crores purportedly for the purpose of buying a car. However, on 7 January 2022, proceeds were disbursed to EMPL. No payment was received from Laxmipati towards repayment of this loan.

12.2 The stated purpose of the loan was the purchase of a car. However, no such car was purchased or registered in the name of Laxmipati, nor was any hypothecation created in favour of Respondent No.1.

12.3 Surprisingly, on 31 July 2023, Respondent No. 1 received a sum of Rs. 3,12,36,209 (Rupees Three Crores Twelve Lakhs Thirty Six Thousand Two Hundred Nine) from EMPL, purportedly as full and final settlement and closure of the loan advanced to Laxmipati. It is clear from the transaction as set out above that there was a substantial loss of over over INR 50 Lacs to Respondent No.1 on account of loss of interest. It is also clear that this transaction was executed only for the purpose of siphoning funds from Respondent No.1 into EMPL by circumventing various requirements governing related party transactions.

12.4 Generally when loans are disbursed, the repayment has to be made by the borrower, which in this case is Laxmipati. The Answering Respondent found it extremely suspicious that a loan owed by Laxmipati, was purportedly paid off by EMPL with partial interest, an entity wholly owned and controlled by Respondent No. 2.

12.5 It also bears mentioning that it is a matter of public record that Laxmipati is owned and controlled by one Mr. Ajay Mittal who has several cases against him in respect of his involvement bank frauds. It is also reported that Mr. Mittal is currently in custody of law enforcement agencies.

(2) <u>Jayant Mirani</u>

12.6 Respondent No. 1 granted a loan of Rs. 2.05 Crores to Mr. Jayant Mirani for purchase of a Bentley Benteyga from EMPL. The purported purchase price of the car was INR 5.05 Crores.

12.7 This loan was granted despite the fact that Mr. Jayant Mirani had already secured a prior loan of INR 3 Cr. from Bank of Baroda in respect of such purchase. As security for the loan, the Bentley Benteyga was mortgaged to Bank of Baroda. Therefore, no security in the form of hypothecation of the car, could be created in favour of Respondent No.1 in relation to this loan. It is suspicious that Respondent No.1 agreed to finance the purchase of the same car along with Bank of Baroda without any agreement with, or consent of, Bank of Baroda.

12.8 It is clear from the transaction set out above that this transaction was entered into, only to settle the obligations of Respondent No.2. It also appears that an inflated invoice was used to justify the grant of this loan, despite a prior loan availed from Bank of Baroda.

12.9 Curiously, out of the loan amount of INR 2.05 Crores, INR 1 Crore carried no interest. Further, INR 1.05 Crores along with

interest thereon, was never repaid. Further, no steps were taken to recover the outstanding due. Therefore it is clear that Respondent No.1 has incurred a substantial loss arising from loss of both principal and interest, from this transaction.

12.10 The Answering Respondent continuously raised questions and concerns regarding this transaction and the requirement to initiate recovery proceedings. In response, Respondent No.3 informed the Answering Respondent that all transactions are to be carried out without questioning and that this particular transaction is being handled by Respondent No.2. The Answering Respondent was further told that its role is limited to lending credibility to Respondent No.1 for regulatory and other purposes and therefore the Answering Respondent should desist from asking any questions in relation to transactions being handled by Respondent No.2.

(3) <u>Luxus Retail Pvt. Ltd.</u>

12.11 Luxus is an entity owned and controlled by Respondent Nos. 2 and 3, and is therefore a related party of Respondent No.1. An aggregate sum of INR 14 Crores was advanced to Luxus as a loan on 10 March 2022 and 19 April 2022. The interest rate charges on this loan was a meagre 7% which is less than half of the market rate at the relevant time. No documentation was ever executed in relation to this loan, nor was any security created in favour of Respondent No.1.

12.12 Luxus repaid a sum of INR 5 Crores only on 31 March 2022. The remaining principal amount of INR 9 Crores was sought to be settled much later in December 2022 against the purported purchase of a second-hand luxury car by Respondent No.1. Respondent No.1 was deprived from using these funds or earning any interest thereon since Luxus failed to pay interest on these amounts.

12.13 In addition, a bare perusal of the invoice recording this purchase of second-hand luxury car, shows a substantial premium earned by Luxus of approx. INR 3 Crores. This transaction was entered for the reason that Luxus was reportedly a loss making entity, whose losses were sought to be offset by Respondent No.2 at the cost of Respondent No.1.

12.14 It is also vital to mention that the car was purchased and registered in Mumbai, where Respondent No.1 has no offices or employees or operations. The Answering Respondent and other former employees continuously asked questions about the whereabouts of the said car. These questions remained unanswered and were responded to by Respondent No.3 in his usual manner strictly asking us not to question transactions handled by Respondent No.2. In fact later, Respondent No.3 told the Answering Respondent that this car was sold for cash by Respondent No.2 and therefore is of no concern to the Answering Respondent anymore.

(4) <u>Purchase of another Bentley Bentayga by Respondent No.1 from EMPL</u>

12.15 Respondent No.1 remitted an aggregate amount of INR 6.71 Crores on 19 July 2023 and 1 August 2023 to EMPL. At the risk of repetition, it is stated that EMPL is owned and controlled by Respondent Nos. 2 and 3. This was purportedly towards the purchase of another luxury car by Respondent No.1 for which no approvals were taken. There are no documentations with respect to this transaction in the records of the Company and none of the former employees including the Answering Respondent have ever even seen the car or if it actually exists.

13. It is clear that the only entities that have benefitted from these transactions are EMPL (Exclusive Motors Pvt. Ltd.) and Luxus. Respondent No. 2 is also the Managing Director of EMPL and

Luxus. It is evident from the transactions referred to above, these related entities are only the beneficiaries, at the cost of loss to Respondent No. 1.

14. *Clearly, the activities of Respondent No.1 and EMPL are being conducted by Respondent Nos. 2 and 3 to suit their convenience and to siphon off money as and when necessary. Low interest loans are regularly granted by Respondent No.1 to third parties for purchasing cars from EMPL, without any security in favour of Respondent No.1. It is evident beyond doubt that Respondent No. 2 is engaged in using, buying and selling of luxury cars for cash transactions / money laundering activities, with the aim of furthering the business interests of EMPL and Luxus.*

15. *Till his last working day at Respondent No. 1, the Answering Respondent has not been provided with any response as to where the cars purportedly bought by Respondent No. 1 are. Other than Respondent Nos. 2 to 4, perhaps no one else in Respondent No. 1 is privy to the whereabouts of either the Bentley Mulsanne bought in December 2022 or the Bentley Bentayga purportedly bought in July 2023. The only explanation for this at the time was that Respondent No. 2 was committing fraud habitually. The apprehensions of the Answering Respondent were confirmed, when upon enquiring about these transactions and the whereabouts of the cars, Respondent No. 3 told the Answering Respondent that the transactions for the cars had been undertaken in cash and that the Answering Respondent ought not to pay attention to the accounts for this reason.*

16. *The Answering Respondent states that it is imperative to direct production of the bank account statement, relevant ledgers and underlying documents executed by Respondent No.1 in respect of these transactions.*

II. Illegal issuance of OCDs and subsequent conversion into CCPS

*17. That Respondent No.1 had issued Optionally Convertible Debentures ("**OCDs**") of INR 315 Crores during the period October 2021 to March 2022. These OCDs were issued in violation of various RBI Regulations including but not limited to Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 ("**NBFC Master Directions 2016**"). Notably, at the time of issuance of the OCDs, the paid up capital was INR 2,34,65,000. Apart from being in violation of NBFC Master Directions 2016, issuance of OCDs was unsustainable, violates prudent business practices.*

*A copy of the NBFC Master Directions 2016 is annexed herewith as **Annexure R2**.*

18. Apart from the toppling of the leverage ratio, as an experienced professional, the Answering Respondent states that Respondent No. 1 acted entirely inappropriately in accepting the proceeds of the OCDs into the account of Respondent No. 1. According to Rule 42(6) of the Companies (Share Capital and Debentures) Rules, 2014, any proceeds received from the issuance of debentures must be received in an entirely different account.

19. In order to overcome the violations as a result of the issuance of OCDs, these OCDs were converted to CCPS by Board Resolution dated 27 September 2022. This conversion was also without the approval of the RBI and therefore yet again in violation of NBFC Master Directions 2016.

III. Usage of funds raised through OCDs/ CCPS for financing/ acquiring bad loans conservatively estimated at INR 200 Crores without board approved policy

*20. Upon a perusal of the records of the Company, the Answering Respondent has been able to gather the intent and design behind the issuance of Optionally Convertible Debentures ("**OCDs**") of INR 315 Crores by Respondent No.1. As stated above, Respondent Nos. 2 to 4 were only interested in carrying out the business of Respondent No.1 to their personal benefit and that of their related entities. This is particularly true for Respondent No.2, who regularly partook in illegal transactions and then sought to cover them using the front of Respondent No.1.*

21. Respondent No.2 reportedly had taken various cash loans and conducted underhand transactions in his personal capacity. In order to offset his obligations, Respondent No.2 raised a debt of INR 315 Crores in the form of issuance of OCDs. The proceeds of the OCDs were used to repay the creditors of Respondent No.2 in the form of acquisition of dubious stressed assets and security receipts.

22. That particularly, the OCDs were issued to finance the undervalued personal purchases of Respondent No.2 in real estate. It is relevant to note that Respondent No.2 has purchased a property at Friends Colony West, New Delhi from UVARC for a heavily discounted rate of INR 80 Crores, which is otherwise valued at INR 180 Crores. It is inconceivable and incomprehensible that UVARC would sell a luxury property in such a prime location at a loss of more than INR 100 Crore.

23. When the Answering Respondent enquired about these transactions, Respondent No.3 informed that UVRAC and the Respondent No.2 had many underlying personal dealings and

transactions. To finance the purchase of the property at Friends Colony West, Respondent No.2 required funds. It is for this reason that the OCDs were issued by Respondent No.1. To the shock of the Answering Respondent, Respondent No.3 informed him that from the funds of the OCDs about INR 100 Crores were disbursed to UVARC and its related companies including Hawk Capital, Sanmati Trading and Investment, from Respondent No.1. It is in this manner that Respondent No.2 is using Respondent No.1 to pay off his personal debts and finance his personal purchases.

24. *That the other transactions in which Respondent Nos. 1 to 4 have used the funds received from issuance of OCDs are below:*

*(1) That part of the funds received from issuance of OCDs were used for the illegal purchase of security receipts. An NBFC to be classified as a Qualified Investment Buyer ("**QIB**") and permitted to deal in security receipts, requires a minimum asset size of Rs. 500,00,00,000 (Rupees 500 Crores) or more and Capital to Risk – weighted Assets Ratio (CRAR) of 10%. Without having the requisite asset size at the time of issuance of OCDs worth INR 315,00,00,000 (Rupees Three Hundred and Fifteen Crore), Respondent No.1 subscribed to loan accounts that amounted to securities receipts with those funds. The purpose of conversion of OCD to CCPS was not just to correct the leverage ratio but to increase the equity for expanding the net owned funds. These include purchasing loans in the nature of security receipts worth INR 60.35 Crore from Leading Hotels Limited. This could not have been done by Respondent No. 1 as NBFCs that do not qualify as a QIB cannot and are not legally allowed to purchase securities receipts. The Answering Respondent states that the funds received from the OCD subscribers were thus utilised towards acquiring loans that Respondent*

No. 1 could not have legally acquired. This is a serious exposure for the OCD Holders (who are now CCPS holders) and since the proceeds of the OCDs were utilised towards illegal acquisition of loan assets.

(2) *That in addition, Respondent No.1 also used the OCDs funds to acquire nonperforming assets and working in the guise of an asset reconstruction company, which is outside the purview of an NBFC. Pursuant to the Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021, bearing reference RBI/DOR/2021-22/86 DOR.STR.REC.51/21.04.048/2021-22 dated September 24, 2021 ("**RBI Exposure Guidelines 2021**"), NBFCs are only permitted to acquire stresses loans subject to the fulfilment of certain conditions, i.e., put in place a comprehensive board approved policy for transfer and acquisition of loan exposures under the RBI Exposure Guidelines 2021. Loans such as Hindustan National Glass & Industries Ltd., Shree Ram Urban Infrastructure Ltd., Asian Hotels (North) Limited have been acquired at the behest of related parties, without complying with the RBI Exposure Guidelines 2021. The Answering Respondent raised this issue with Respondent Nos. 2 to 4 on several occasions, but no heed was paid to him by them.*

*A copy of the RBI Exposure Guidelines 2021 is annexed herewith as **Annexure R3**.*

IV Suspicious transactions with the Petitioners including related parties at the cost of loss/risk to Respondent No.1 and its creditors

25. *It is not disputed that the Petitioners and Respondent No.1 agreed to expand the Company by infusion of equity of INR 5 Crores against issuance of equity shares. This expansion was in*

fact designed and contemplated by Respondent No. 2 and has been reduced in writing in the Board Resolution dated 23 December 2022 [Annexure P4, Volume 1, Petition].

26. *When the Answering Respondent questioned this sudden infusion of equity, Respondent No.3 explained that the Petitioners and Respondent No.2 are close relatives. Respondent No.2 is under the enormous debt of the Petitioners, who have lent him substantial sum of money in their personal capacity. The Answering Respondent was informed by Respondent No.3 that Respondent No.2 had portrayed to the Petitioners that Respondent No.1 is a highly profitable company run by highly experiences banking personnel, including the Answering Respondent. Respondent No.2 of offered to sell the Respondent No.1 Company to the Petitioners, as a means to offset the debt owed by him. Respondent No.2 undertook to even step down from the board of Respondent No.1.*

27. *It is for this reason that a token money of INR 5 Crores was sought to be infused as equity by the Petitioners, to formally make them members and beneficiaries of the profits of Respondent No.1. In furtherance of this design, Respondent No.2 even caused Respondent No.1 to apply to the Reserve Bank of India seeking approval for infusion of such equity in favour of the Petitioners.*

28. *It became clear to the Answering Respondent that this transaction under the purported 'Expansion Agreement' was nothing but a means to reduce the personal debt owed by Respondent No.2 to the Petitioners.*

29. *Besides this, Respondent No.2 has also caused Respondent No.1 to issue unsecured loans to Respondent No. 2 itself and to Sulojay Realty Pvt. Ltd., ("**Sulojay**") (a company entirely controlled and managed by Respondent No. 2). Notably, these*

transactions were carried out in the absence of any authorization from the board of directors.

30. *The Answering Respondent has noticed that Respondent Nos. 2 and 3 have sought to place reliance on an 'omnibus approval' of related party transactions (Annexure 25 / Counter filed by Respondent Nos. 2 and 3 / Vol. 2) to justify the loans granted to Respondent No. 2 and Sulojay. Respondent Nos. 2 and are clearly attempting to mislead the Hon'ble Tribunal inasmuch as even the omnibus approval requires a disclosure of the relationship between the director and the related party as well as a quarterly review of the actual transactions entered into under the aegis of the omnibus approval. None of these disclosures and reviews were undertaken by Respondent Nos. 2 to 4. It is for this reason that the Independent Directors had in their emails to Respondent Nos. 2 to 4 asked for details of the transactions.*

31. *It is imperative to note that in December 2022, Respondent No.1 purchased the debt owed by Asian Hotels (North) Limited ("**AHNL**") to IndusInd Bank at an amount of Rs. 98 Crores. Shortly thereafter, Respondent No. 1 entered into a One Time Settlement Agreement, to settle the outstanding amount at Rs. 96.25 crores, which was to be paid by AHNL to Respondent No. 1 by 30 September 2024. In effect, for a loan acquired by Respondent No. 1 in 2022 for Rs. 98 crores, Respondent No. 1 settled the debt after almost a year and a half at Rs. 96.25 crores without accounting for the time value of money, resulting in substantial loss of interest income to the tune of over INR 15 Crores. There is no reasonable explanation for acquisition of the loan in the first place and settling the same shortly thereafter at a substantial loss. Accordingly, it is clear that it is in fact Respondent No. 2 that holds an interest in AHNL and may have*

been motivated by such an interest to settle the debt owed to Respondent No. 1 by AHNL.

32. *It is therefore clear that all transactions undertaken by Respondent No.1 are for the sole benefit of Respondent No.2 and his related parties. Respondent No.2 has no interest in running Respondent No.1 as an NBFC and ensuring its compliance with law. Respondent No.1 has become a front for Respondent No.2 to undertake all illegal, related party transactions for tax evasion, money laundering and siphoning off funds owed to bonafide creditors.*

V. Issuing directions to employees, including the Answering Respondent, to not operate or work from the office of Respondent No.1 owing to hefty cash transactions and raids by government departments

33. *The Answering Respondent states that the office premises, i.e., the registered office of Respondent No.1, at 7/17 L.G.F, Near Hauz Khas Metro Station, Sarvpriya Vihar New Delhi 110016. Luxus and Exclusive Motors are also registered with the same office address. This was hardly office premises but were a physical location for Respondent Nos. 2 to 4, to carry out all their ancillary activities. Since his joining in December 2022, the Answering Respondent witnessed several cash transactions taking place in the so-called office of Respondent No. 1. The Answering Respondent also noted that stamps of companies other than Respondent No.1 Company including that of Bentley UK were stored and used by Respondent Nos. 2 to 4. There was constant inflow of persons getting in and out of the premises carrying out substantial cash transactions and unauthorised use of stamps of other companies.*

34. *It is also a matter of public record that various agencies have raised the office premises, whereafter the employees were asked not to operate from the office premises.*

35. *It is for this reason that Respondent Nos. 2 to 4 had issued strict instructions to all employees, including the Answering Respondent, to not work from the office of Respondent No.1. Respondent Nos. 1 to 4 are now twisting facts to blame the employees including the Answering Respondent that they 'were absent for innumerable number of days', when it was Respondent No. 3 that instructed the employees, including the Answering Respondent to refrain from coming into the office premises. The following instances regarding the illegal activities concerning the office premise of Respondent No.1, demonstrate and fructify, beyond doubt, the truth in the submissions of the Answering Respondent :*

(a) <u>Particular instances of unexplained cash transactions at the office of Respondent No.1</u>

*(i) The Answering Respondent has discovered that one of the employees of EMPL, one Mr. Geoffrey Thomas Brooks ("**Mr. Brooks**"), resided on the second floor of the office premises of Respondent No. 1 with this family. Mr. Brooks habitually created problems in the office premises. The Answering Respondent was informed by the former employees of Respondent No.1 and Respondent No.3 himself, that Mr. Brooks was in fact even caught by police official for carrying a huge sum of cash, for Respondent No.2 in November 2019 at the Delhi Airport. The Respondent No.3 further informed the Answering Respondent that Mr. Brooks, during the interrogation by the Income Tax department, justified the possession of cash as repayment received from debtors of*

Respondent No.1, Asian Agro Industries Limited and MK Overseas Pvt. Ltd. Mr. Brooks also boasted in front the employees of Respondent No.1, regarding this incident. He mentioned forging the blank pages signed by these borrowers to justify receipt of money from these borrowers, when in fact these borrowers were unaware that in the accounts of Respondent No.1 their loan is repaid.

*(ii) Summons were issued to Respondent No.2 during investigation by the Income Tax ("**IT**") Department against an Asset Reconstruction Company ("**ARC**"), with whom RespondentnNo.2 had extensive dealing. The investigation in this regard commenced sometime in October 2022, by the IT Department. During the investigation, the IT Department uncovered various unexplained cash transactions with Respondent No. 2, and other transactions with Respondent No.1. For this reason, in the first quarter of 2023, Respondent No.1 was summoned by the IT Department calling upon to explain these transactions. Respondent No.2 personally went to the IT Department for recording his statement in respect of his dealings with the said ARC. The records of the IT Department will demonstrate the nature of these illegal cash transactions. The Answering Respondent was strictly directed not to ask any questions in related to these matters and were never involved in preparing any document in relation thereto.*

(b) <u>Raid by the Directorate of Revenue Intelligence, Delhi Zonal Unit ("DRI") on 19 and 20 October 2022</u> *– The Answering Respondent was given to understand by*

the employees of Respondent No.1 and by Respondent No.3 himself that DRI, during its raid at the office of Respondent No.1, examined the mobile phone of Respondent No. 3 (the non-executive director of Respondent No. 1 and director and CFO of EMPL). It is on account of this DRI raid that Respondent No. 3 categorically directed the employees of Respondent No. 1, including the Answering Respondent to remain absent from the office premises. Although the Answering Respondent joined Respondent No. 1 after the raid was conducted, the investigation against EMPL was ongoing and was therefore brought to the knowledge of the Answering Respondent. Infact, upon receipt of the Show Cause cum Demand Notice from the DRI, Respondent No. 3 had anticipated another raid or some form of action from the DRI and specifically instructed the employees, including the Answering Respondent to remain absent from office.

A copy of the Show Cause cum Demand Notice dated 4 August 2023 issued by the DRI is annexed hereto as ***Annexure R4.***

(c) ***Criminal cases against EMPL operating from the same office premises as Respondent No.1*** *– The Answering Respondent states that the DRI raid may have been the consequence of criminal cases registered against EMPL by State Bank of India ("**SBI**") in Pune, Maharashtra. In a Criminal Complaint dated 13 July 2021, SBI levelled allegations of cheating, forgery, criminal conspiracy and criminal misconduct against EMPL. Based on this Complaint a FIR dated 25 January 2023 was also registered by the CBI. In the FIR, SBI detailed how the tax invoices raised by EMPL were inflated.*

A copy of the FIR dated 25 January 2023 is annexed hereto as ***Annexure R5***

36. *All the facts set out above can be easily verified from the records of the government departments and law enforcement agencies including the Income Tax Department and the Directorate of Revenue Intelligence.*

VI. Non-executive director, Respondent No.3 is at the forefront of the illegal transactions of Respondent No.2

37. *The Answering Respondent did not find it surprising that the DRI and other departments examined the mobile phone of Respondent No. 3 during raids and interrogations, because despite being the non-executive director of Respondent No. 1, Respondent No. 3 executed all documents on behalf of Respondent No.1 and was the face of all decisions of the Company. In fact it is Respondent No.3 who telephonically issued instructions to the employees of Respondent No. 1 to carry out questionable actions. During his tenure as the Business Head of Respondent No. 1, the Answering Respondent was not even given viewing rights of the books of Respondent No. 1. All transactions were carried out by Respondent Nos. 2 to 4 either in cash, or by Respondent No. 3 at the behest of Respondent No. 2.*

38. *During the employment of the Answering Respondent with Respondent No.1, Respondent No.3 would, many times, boast about siphoning funds from big companies and cheating them. Respondent No.3 even referred to the modus operandi adopted by them using EMPL, by entering into purchase and sale transactions in relation to various luxury cars and siphoning funds under the garb of forfeiting advance payments. In fact, in one instance cited by Respondent No.3, where 95% of the total purchase consideration was paid for a luxury car, no order was*

*placed by EMPL on the manufacturer, and the monies paid by one Deccan Chronicle Holdings Limited ("**DCHL**") was forfeited. Thereafter, these funds was directly transferred Respondent No.2's personal account, in violation of various applicable norms.*

39. *It is clear that Respondent No. 2 was essentially running a money laundering operation and was doing so comfortably, without putting his name on any document or transaction and causing a non-executive director, Respondent No. 3 to do all such illegal deeds.*

40. *The Answering Respondent states that it is his disinclination to blindly do / perform acts as directed by Respondent No. 3, that invited the displeasure of Respondent Nos. 2 to 4 towards him.*

VII. Respondent No.1 is a regular defaulter in loans owed to creditors, including Clover Media Private Limited

41. *In addition to granting loans to related parties at nominal interest rates, the illegal business conducted by Respondent Nos.1 to 4 also included acquiring stressed assets at the behest of related companies. One such stressed asset was debt owed by Asian Hotels (North) Limited to IndusInd Bank Ltd. ("**AHNL Debt**"). This debt was a non-performing asset and at the time of such acquisition by Respondent No.1. Therefore the bonafide of the entire transaction, to start with, is suspect and questionable.*

42. *Notably, to acquire the AHNL Debt, Respondent No.1 availed a loan from one Clover Media Private Limited ("**CMPL**") for INR 60 Crores. While Respondent Nos. 1 to 4 have not denied the loan of INR 60 Crores obtained from CMPL, Respondent Nos. 1 to 4 have denied execution of the loan agreement with CMPL on 14 December 2022 ("**CMPL Agreement**"). It is averred that CMPL Agreement was executed by Respondent No.9 without any authorisation, with the use of stolen stamp paper and seal of Respondent No.1.*

43. *These assertions are inconceivable because the CMPL Agreement was executed by Respondent No. 9 on the instructions of Respondent No.3 along with due authorisation of Respondent No.1, the proof of which is with Respondent Nos. 1 to 4. In fact, in the documents annexed by Respondent No.1, there are emails dated 22 December 2023, 27 December 2023, 28 December 2023, 30 December 2023 exchanged between Respondent No.3 and CMPL, stating that they have acted upon the terms of the CMPL Agreement, by paying the interest accumulated on the principal loan. In fact, Respondent No.3 sought extension of such CMPL Agreement in terms of the definition of 'Maturity Date' defined under Clause 1.1 read with Clause 7 of the CMPL Agreement.*

A copy of the emails dated 22 December 2023, 27 December 2023, 28 December 2023, 30 December 2023 exchanged between Respondent No.3 and CMPL are annexed hereto collectively as ***Annexure R6 (Colly)****.*

44. *When the Answering Respondent along with the ex-employees raised issues of mismanagement of Respondent No.1 by Respondent Nos. 2 to 4 before the Independent Directors, the loan with CMPL was also discussed. The Answering Respondent was informed that CMPL had in fact approached the Independent Directors regarding the repeated default in repayment of the loan to CMPL. The Independent Directors were informed by CMPL that the original Assignment Agreement with IndusInd Bank and other documents of Respondent No.1, were with CMPL. This is in fact in accordance with Clause 3 of the CMPL Agreement. This is evident from the emails dated 22 November 2023, 8 December 2023, 13 December 2023 between Respondent No.3 and CMPL, copies of which were shared by CMPL with the Independent Directors, and consequently with the Answering Respondent.*

A copy of the emails dated 22 November 2023, 8 December 2023, 13 December 2023 exchanged between Respondent No.3 and CMPL are annexed hereto collectively as ***Annexure R7 (Colly)****.*

45. *It is therefore clear that Respondent Nos. 1 to 3 have not only duly executed, but also acted upon the CMPL Agreement. It is only after the default of Respondent No.1 in its repayment obligations and the consequential series of events which have led to takeover of the AHNL Debt by a third party, that Respondent Nos. 1 to 4 have now sought to resile from the CMPL Agreement.*

46. *It is suspicious that the issue regarding illegal execution of CMPL Agreement, purported theft of stamp paper etc by Respondent No.9 is raised only for the first time in the Criminal Complaint dated 29 February 2024, filed a day after this Petition is filed on 28 February 2024.*

47. *The allegations of illegal execution are an afterthought and an attempt to mislead this Hon'ble Tribunal. In any event, Respondent Nos. 2 and 3 have in their Reply admitted the disbursement of the loan and their liability to repay. It is the admitted position of Respondent Nos. 1 to 4 that the loan to CMPL has not been repaid as per the terms of the CMPL Agreement.*

48. *There is another reason why such assertions urged by Respondent Nos. 1 to 4, against alleged illegal execution of the CMPL Agreement by Respondent No.9, are misconceived and misleading. Respondent Nos. 2 and 3 aver that similar to the CMPL Agreement, in October 2023, Respondent No. 9 executed a purported assignment agreement ("****Assignment Agreement****") with Standard Capital Markets Limited ("****SCML****") without any authorisation or instruction of Respondent No.1. It is the case of Respondent Nos.2 and 3 that by such Assignment Agreement, Respondent No.1 illegal sought to assign the debt of AHNL to*

SCML. Upon realising such illegal execution of the Assignment Agreement, a subsequent agreement is executed in November 2023 for cancellation of the Assignment Agreement. This fictious story woven by Respondent Nos. 2 and 3 is ex-facie false and replete with unexplained gaps, only to mislead this Hon'ble Tribunal. These are detailed below:

(a) No action is taken against such alleged illegal conduct of Respondent No.9

(b) Cancellation Agreement is also executed by Respondent No. 9, despite the fact that there other signatories authorised to sign such agreements on behalf of Respondent No.1, including Respondent No.3 himself;

(c) Respondent Nos. 2 to 3 have also not placed on any board resolution of Respondent No.1 authorising Respondent No.9 to execute the Cancellation Agreement

(d) Cancellation Agreement does not even remotely note that the Assignment Agreement with SCML was executed without valid authorisation and is therefore invalid. Cancellation Agreement notes the inability of the parties to consummate the terms agreed in the Assignment Agreement, as the reason for cancellation.

49. It is therefore clear that the allegations raised against Respondent No.9 are only an afterthought, as a means to resile from their obligations under the CMPL Agreement and evade the questions raised on the mismanagement of Respondent No.1 by Respondent Nos. 2 to 4.

50. Besides the foregoing violations, the Answering Respondent also recollects that in terms of the loan availed from CMPL, Respondent No. 1 was to provide as security, post-dated cheques to CMPL, in the amount equivalent to the loan amount of about INR 60 crores. The Answering Respondent states that such a

post-dated cheque was prepared by Respondent No. 3 but was never presented to CMPL. In fact, Respondent Nos. 2 to 4, never informed the board about, i) the loan taken from CMPL; ii) Respondent No.1's failure to comply with the terms of the loan agreement, including providing post-dated cheques as security for the loan and paying the monies (cut back) received from Asian Hotels (North) Limited to CMPL. To the recollection of the Answering Respondent, the latter was an event of default under the loan agreement.

51. *As stated earlier, the Answering Respondent was never accorded with the viewing rights in relation to the operation of the bank accounts of Respondent No. 1 by Respondent Nos. 2 to 4, therefore the end use of the funds were only within the knowledge of Respondent Nos. 2 to 4. The Answering Respondent and other employees only had limited access to trial balances of Respondent No.1, due to which all the transactions undertaken by Respondent Nos. 2 to 4 have come to their knowledge. Since all requests for information on the end use of funds were ignored by Respondent Nos. 2 to 4, the Answering Respondent informed the independent directors of loans availed of by ECL from CMPL and EHPL. The Answering Respondent did so prior to his resignation, in the best interests of Respondent No. 1. Notably, while refuting the allegations raised by Respondent No. 3, the Answering Respondent in his email dated 31 January 2024 reiterated the fact that he never had the requisite viewing rights to the bank accounts of Respondent No. 1. The Answering Respondent states that the bank accounts of Respondent No. 1 were and have always been in the control of Respondent No. 2. Occasionally, access to the bank accounts and authorisation to operate the bank accounts was granted to Respondent No. 3 by Respondent No. 2.*

52. *It was also a routine practice for the employees to be informed of transactions undertaken by Respondent No. 1 after these transactions were already executed or acted upon by Respondent Nos. 2 to 4. After executing such transactions, were the employees called upon to create back-dated paper work and documents. Most of the times, these transactions were not even disclosed to the board of directors, let alone seek their approval.*

VIII. Transactions undertaken by Respondent No. 1 were considerably below the interest rate charged by NBFCs

53. *The Answering Respondent states that it is a well-known market fact that NBFCs operate transactions and deals at the very least at 14% to 15% interest. However, none of the deals undertaken by Respondent No. 1 were anywhere close to this interest rate. In fact, to the recollection of the Answering Respondent, as many as 17 loans have been granted by Respondent No.1 at the rate of interest of 8% or less over a period of less than 2 years. Most importantly, this rate was lower than the market lending rate (MCLR rate) as well as below the cost of funds for Respondent No. 1. In fact, the maximum interest charged on any loan by Respondent No.1 is 9%.*

54. *It is evident that Respondent No. 2 was engaging in back-door transactions and dealing in cash. For instance, the loan granted to Mr. Mirani (as discussed above), was partly interest free for Rs. 1,00,00,000, so long as it was repaid by around June 2022. Following that, on the remaining Rs. 1,05,00,000, interest was payable merely at around 9%. As explained above, no further amounts were recovered from Mr. Mirani at the interest rate of 9%. Several such loans at average interest rate of 7% were issued by Respondent No. 1 to various persons and entities. To the recollection of the Answering Respondent, Luxus Retail Pvt. Ltd., one of the entities owned and controlled by Respondent No. 2, from which entity Respondent No. 1 purchased a Bentley*

Mulsanne, had also been granted a loan of around 14 Crores at 7% interest rate. To the Answering Respondent's knowledge, only the principal was recovered by Respondent No. 1.

55. *As set out above, there is no business or banking sense in the transactions undertaken by Respondent No.1 on the instructions of Respondent Nos. 2 to 4. Notably, the Answering Respondent even brought clientele to Respondent Nos. 2 to 4, with proposals of yielding higher returns for Respondent No.1. However, Respondent Nos. 2 to 4 never agreed to execute any transactions with such clients. Respondent Nos. 2 to 4 always maintained that funds of Respondent No.1 will be used only to undertake transactions for their personal benefit and for their related parties.*

56. *In the experience of the Answering Respondent, the actions of Respondent No. 1 would have certainly resulted in a capital erosion of at-least a minimum of Rs. 100,00,00,000 (Rupees Hundred Crores).*

IX. Complete disregard of corporate governance principles, statutory and regulatory stipulations. This includes failure to follow mandate of KYC, non-registration on the Vahan Portal, failure to furnish credit information among others

57. *In addition to the illegalities described above, the mismanagement of Respondent No.1 by Respondent Nos. 2 to 4 is also event from the foregoing non-compliances and violations:*

    (a) Failure to follow the KYC mandate at the time of granting any loan to maintain confidentiality regarding the related party transactions

    *(b) Failure to adopt and put in practice Liquidity Risk Management ("**LRM**") Guidelines and appoint Chief Risk Officer required under the NBFC Directions 2016*

(c) *Failure to carry out the functions of the Asset -Liability Management Committee of Respondent No.1*

(d) *Failure to implement and follow the credit risk policy mandated by RBI under Master Circular RBI/201516/23 DBNR (PD) CC No. 044/03.10119/201516 ("**RBI Master Circular 2015**")*

(e) *Failure to register Respondent No.1 on the Vahan Portal*

*A copy of the RBI Master Circular 2015 is annexed hereto as **Annexure R8**"*

27. In the reply filed by him, Respondent No.8 i.e. the Managing Partner of V.V. Kale & Company, the Statutory Auditor qua Respondent No.1 has averred:-

I. The Audit Committee Meeting for discussion regarding the account of Respondent No.1 for FY 2022-23 was held on September 28, 2023. He attended the meeting, but was told to leave the meeting, post conclusion of discussion on the financials. Being not part of the board meeting, he (Respondent No.8) does not know whether the board approved the accounts or not. Subsequently, he was given by Respondent No.3 the copies of Financial Statements, signed by Respondent Nos.2, 3 and 9 as also by the CFO of Respondent No.1. As can be seen from the averments made in his reply, the Respondent No.8 has broadly tried to justify that his approach towards the Respondent Nos. 1 to 6 was cooperative and it is wrong to state that he had shown to any non-cooperation. The paras 4 to 12 of the reply filed on behalf of the Respondent No.8 reads thus:-

"4. Respondent No. 8 was thereafter hand delivered by Respondent No. 3 the copies of financial statements in

their office signed by Respondent No. 2, 3, 9 and also the CFO of Respondent No.1.

5. *Respondent No. 8 in good faith signed these financial statements (the audit was conducted diligently considering all relevant issues and information furnished to us) on being informed that these financial statements were duly approved in the board meeting of Respondent No. 1.*

6. *On January 23, 2024 Respondent No. 3 had called Respondent No. 8 to their office to discuss certain points for closure of the Audit Reports meant for reporting to RBI. During the meeting Respondent No. 3 disclosed certain emails which were sent by Respondent No. 5 to Respondent No. 3 wherein Respondent No. 5 had requested clarity on certain aspects covering the financial statements for FY 2022-23 . Respondent No. 8 was not privy to this communication prior to January 23, 2024*

7. *Thereafter on January 23, 2024, Respondent No. 3 scheduled a telephonic call with Respondent No. 5 to discuss the queries raised by Respondent No. 5. During the telephonic call, Respondent No. 5 reiterated his claims about lack of timely response from Respondent No. 1 and also categorically mentioned that the minutes of Audit Committee / Board Meeting have not been signed and that the financial statements for FY 2022-23 have not been approved. (The same was again m1ntioned by Respondent No. 6 in their email dated February 05, 2024)*

8. *Respondent No. 5 also mentioned that ROC Filing of these financial statements should not be done till all*

pending issues are resolved. Respondent No. 5 also directed Respondent No. 8 to seek clarifications from Respondent No. 1 regarding Related Party Transactions, Conversion of OCD into CCPS and Compliance to Prudential Norms by Respondent No. 1.

9. *Respondent No. 8 requested for clarification / information on various comments made by Independent Directors (during telephonic call on January 23, 2024 with Respondent No. 3 and Respondent No. 5) seeking the following information*

   i. *Signed copies of board meeting minutes for approval of accounts for FY 2022-23 [Email Dated. January 24, 2024 Annexure P 20 of the Petition, @{Pg. 245]*

   ii. *Management Representation Jette (supported with Independent Opinion Letter) confirming that Respondent No. I is not accessing public funds and Respondent No. 1 is permitted to carry on the business as an asset reconstruction company and further provisioning for stressed assets. [Email Dated January 24, 2024, Annexure P 20 of the Petition, @Pg. 245]*

   iii. *Compliance documents for certificate related party transactions executed in FY 2022-2023*
      - *Loan and advances given to Respondent No. 2 of Rs. 5,07,30,000*
      - *Loan and advances given to Sulojay Realty Pvt. Ltd (an entity owned and controlled by Respondent No. 2) of Rs, 12,89,38,000 [Email Dated January 24, 2024 Annexure P 20 of the Petition, @Pg. 245]*

10. *There were further emails on February 01, 2024 & February 05, 2024 from Respondent No. 5 and Respondent to 6 mentioning the above issues and also that the accounts for FY 2022-23 have not been approved by the Independent Directors. Also, Respondent No.6 directed Respondent No. 8 to again revisit the mentioned areas in detail. Accordingly, Respondent No. 8 sent email to Respondent No. 3 seeking clarification on Reasonableness of valuation of the car, the purpose of its purchase / usage and the relevant Board/ Audit Committee Meeting where this transaction was discussed and approved. [Email Dated February 06, 2024 Annexure P22 of the Petition, @Pg.247].*

11. *On February 28, 2024, Respondent No. 8 also sent a reminder email to the Company requesting clarification.*

12. *That the requests for clarification made in the email dated January 24, 2024, February 01, 2024, February 05, 20f 4 and February 28, 2024 was not complied with and no documents or explanation in relation to these clarification requests has been furnished to us."*

28. The stand taken by Respondent No.9 i.e. the Company Secretary in his reply is that:-

A. He (Respondent No.9) had extensive experience of working as a Company Secretary especially in the Non-Banking Financial sector, prior to joining the Respondent No.1 Company. He served as a Company Secretary for another NBFC for a period of 6 years, with an unblemished record, and received great appreciation and great recognition for his performance from the previous employees. Initially, when he joined the

Respondent Company in October 2022, he had no reasons to suspect the management, thus followed its instructions, but subsequently, he realised the design of the said Respondents to use Respondent No.1 as a means to siphon off funds and undertake illegal laundering transactions.

B. Clearly, Respondent No.1 Company was only being run in the best interest of Respondent Nos.2 to 4 at the whims of Respondent No.2 without paying any heed whatsoever to the concerns of its employees and stakeholders.

C. Even though he attempted to perform his duties as the Company Secretary to the best of his abilities, but the Respondent Nos.2, 3 and 4 blatantly executed the questionable transactions and caused delay in the process of finalising the minutes of the meeting and also ignored the compliances of extant provisions of the Companies Act and other Regulations.

D. There was complete lack of transparency between him and the Non-Independent Directors.

29. In a way, Respondent No.9 i.e. the Company Secretary also alleged that the affairs of Respondent No.1 Company are mismanaged and these are Respondent Nos.2 to 4 who are responsible for the same. The assertions made in paras 13 to 43 of the reply filed by Respondent No.9 reads thus:-

> *"13. The Answering Respondent became aware that Respondent No.1 was being used as a device to siphon funds into companies owned and controlled by Respondent Nos. 2 and 3. Various transactions were executed without any legitimate business*

purpose, due diligence or proper documentation, only to further this objective.

14. *These transactions pertain to purchase of 'luxury cars' from one Exclusive Motors Pvt. Ltd. ("**EMPL**"), a company wholly owned and controlled by Respondent No. 2 and in which Respondent No. 3 is a director and CFO. The Answering Respondent is recollects such transactions with (1) Laxmipati Management Services Pvt. Ltd.; (2) Jayant Mirani; (3) Luxus Retail Pvt. Ltd. ("**Luxus**"). It is a matter of record that Luxus is wholly owned and controlled by Respondent No. 2.*

15. *The trend in these transactions mentioned above, are easily conceivable when one pays attention to it. At the outset, loans would be granted under the garb of 'purchase of luxury car' from EMPL. However, the advances towards these loans would be disbursed for the benefit of EMPL, instead of in favour of the entity who applied for the loan. When the Answering Respondent approached Respondent Nos. 2 to 4 regarding issuance of notices sought to these entities seek repayment, Respondent Nos. 2 to 4 insisted that no notice or communication seeking repayment in these transactions be issued. It was for this reason that most repayments were made to be made in cash. The Answering Respondent discovered that these transactions were riddled with infractions like (1) lack of security interest in favour of Respondent No. 1; (2) levying of menial interests; (3) cash transactions; (4) lack of documentation, etc. It was clear that these loans were essentially a means used by Respondent No. 2 to siphon off the funds of Respondent No. 1 to EMPL, much to the loss of Respondent No. 1. As stated above, there was a complete lack of transparency between the board and the employees.*

16. *In addition to the dubious grant of loans as stated above, Respondent No. 2 in order to acquire the stressed loans, sought to infuse funds into Respondent No. 1 by raising debts in the form*

*of Optionally Convertible Debentures ("**OCDs**"). However, since raising the debt caused violation of the applicable NBFC Directions, these OCDs were then illegally converted into Compulsorily Convertible Preference Shares ("**CCPS**") in absence of the requisite approval of RBI. These infused funds (now in the form of CCPS) were then used to acquire the stressed assets and bad loans of parties related to Respondent No. 2. These bad loans were purchased in complete violation of applicable NBFC norms.*

17. *It is stated that even the alleged 'Expansion Agreement' relied upon by the Petitioner is only a front to offset the personal obligation between Respondent No. 2 and the Petitioners. It is stated that Respondent No. 2 and the Petitioners are in fact relatives of each other. It was known to the employees of Respondent No. 1 that Respondent No. 2 had entered into this alleged agreement as a means to repay the debt which he owed to the Petitioners in his personal capacity.*

18. *Besides using Respondent No. 1 as a front for providing financial benefits to his other parties, Respondent No. 2 also used the funds and capital of the company to his personal advantage and gain. This included issuance of unsecured loans to himself and his controlled entities. It also included the using the funds of Respondent No. 1 to purchase immoveable property in posh and high end areas, specifically in Friends Colony West, New Delhi. It came to knowledge of the Answering Respondent that Respondent No. 2 purchased the immovable property from UVRAC for a token sum of INR 80 Crores, despite the fact that the market value of that property is more than INR 180 Crores. The Answering Respondent discovered that the remaining sale consideration was paid off using funds of Respondent No. 1 by issuance of unsecured, low interest loans in favour of UVRAC*

and other entities related to it and purchasing its stressed assets and security receipts.

Re: Use of office premises by Respondent Nos. 2 to 4 for illegal transactions

19. *As set out above, the assertion of Respondent Nos. 1 and 4 that the ex-employees including the Answering Respondent remaining absent for numerous days from the office is false to their knowledge. The Answering Respondent remained absent from the office on the express instructions of Respondent No. 3. The office of Respondent No. 1 was practically non-functional for the purpose of an NBFC. That is because Respondent No. 2 carried most of his business in Hyatt Regency Delhi for his influential clientele. The registered office premises of Respondent No. 1 were in fact, also the office premises of Exclusive Motors Private Limited, an entity owned and controlled by Respondent No. 2. The premises itself are owned by Respondent No. 2 and no rent for it is paid by Respondent No. 1.*

20. *The employees of Respondent No. 1 were often expressly asked to work remotely or from other locations so as to insulate Respondent Nos. 2 and 3 from exposure at the time of carrying out illegal cash transactions and laundering money using one shell company to another. The fraudulent actions of Respondent Nos. 1 to 4 often resulted in raids by the DRI, Income Tax Departments, CBI and other official agencies. In fact, Respondent Nos. 2 and 3 have personally been summoned by these departments and called upon to give statements. Even for this reason, Respondent No. 3 directed the Answering Respondent along with other employees to remain absent from the office premises. Therefore, the assertion that the Answering Respondent took unexplained leaves and remained absent from office is contrary to Respondent No.3's own directions to operation from remote or other locations.*

21. *It is stated that, one month into withholding the salaries of the former employees, even the access to the company email ID was revoked by October 2023. Therefore, the receipt of email dated 7 November 2023 annexed by Respondent No. 1 [Annexure 6 / Vol. 2 / @pg. 142-143] is categorically denied. In fact as stated above, on the very same day, Respondent No. 3 sent, one Sunil Kumar to the Answering Respondents' residence to harass and pressurise him into doing the dirty work on behalf of Respondent No. 1.*

Re: All actions of the Answering Respondent are on the express instructions and authorisations of Respondent Nos. 1 to 4

22. *At the outset, it is stated that all actions taken by the Answering Respondent with respect to Respondent No. 1, including execution of any documents in respect of Clover Media Pvt. Ltd. ("**Clover Media**") or Standard Capital Markets Limited ("**Standard Capital**") were executed under instructions, directions and authorisation of Respondent Nos. 1 to 4, particularly Respondent No.3.. Pertinently, the Inter-Corporate Loan agreement dated 14 December 2022 between Respondent No. 1 and Clover Media ("**ICD Agreement**") (Annexure R19 / Counter affidavit filed by Respondent Nos. 2 and 3 / Vol. 2) was signed by the Answering Respondent on the express instructions of Respondent No. 3. This was executed after Respondent No.3 himself executed the letter, undertaking, promissory note concerning this Inter Corporate Deposit of INR 60 Crores from Clover Media. Respondent No.1 even passed a board resolution in favour of the Answering Respondent to execute this ICD Agreement. In fact, it is in pursuance of this Board Resolution that Respondent No.3 gave the Answering Respondent the stamp paper and the Company stamp for executing the ICD Agreement.*

23. It is expressly denied that the Answering Respondent has unilaterally and without proper authorisation, executed the ICD Agreement using stolen stamp papers and seal. It has come as an utter shock to the Answering Respondent that Respondent Nos. 1 to 4 have completely resiled from their position and have sought to accuse the Answering Respondent for illegal execution of the ICD Agreement among others. The Answering Respondent is shocked to learn about the filing of an alleged criminal complaint against him before the Economic Offences Wing.

24. It is imperative to note that the Answering Respondent questioned Respondent No. 3 on being asked to sign the ICD Agreement but Respondent No. 3 continued to pressurise the Answering Respondent to sign the same. The Answering Respondent signed and stamped the ICD Agreement under the instructions of Respondent No. 3 and did not peruse its contents.

*25. Notably, the Answering Respondent faced a similar issue in October and November 2023 regarding execution of an Assignment Agreement with one Standard Capital. for assigning the debt of Asian Hotels (North) Limited ("**AHNL Debt**") for a sum of INR 67.50 Crores. Notably, this debt was purchased by Respondent No.1 for a sum of INR 98 Crores from IndusInd Bank, using the funds received from Clover Media. When the Answering Respondent highlighted the illegality underlying and obvious loss to Respondent No.1, from this transaction, he was coerced by Respondent Nos. 1 to 4 to yet again execute this Assignment Agreement. Be that as it may, the Answering Respondent signed the agreement in protest and under coercion. When Respondent No.1 was unable to implement this transaction, the Answering Respondent was again coerced to execute an agreement cancelling the previous Assignment Agreement.*

26. Notably, this was all done during the time that the Answering Respondent was vocal regarding illegal withholding of his salary

and his email access was withdrawn by Respondent Nos. 1 to 4, that is, September 2023 onwards. In fact, as stated above, Respondent Nos. 1 to 4 even sent Mr. Sunil to the Answering Respondent's house to coerce him into complying with the directions of Respondent Nos. 1 to 4.

27. *In a desperate attempt to protect his family, the Answering Respondent executed such cancellation of the Assignment Agreement in October 2023 under coercion ("**Cancellation Agreement**").*

28. *In any event, the false narrative fabricated by Respondent Nos. 2 and 4, regarding the assignment with Standard Capital, is illogical and evidently, concocted to further their interests. It is inconceivable why Respondent Nos. 1 to 4 would call upon the Answering Respondent to execute the Cancellation Agreement, when as per Respondent Nos. 2 and 4, the Answering Respondent did not have the authorisation to execute the underlying Assignment Agreement. Respondent Nos. 1 to 4 have also failed to place on record any authorisation purportedly executed in favour of Respondent No.1 to execute the Cancellation Agreement. There is clear inconsistency in the baseless accusations of Respondent Nos. 1 to 4 against the Answering Respondent. Even a plain reading of the Cancellation Agreement does not even remotely suggest lack of authorisation of the Answering Respondent to execute the Assignment Agreement, as the reason for cancellation.*

29. *Upon a perusal of the documents filed by Respondent Nos. 1 to 4, the Answering Respondent has uncovered the reason for such malafide, misconceived and blatantly false allegations and accusations levelled against him.*

    (i) Respondent No.1 admittedly defaulted in its repayment obligations under the ICD Agreement.

(ii) *Thereafter, an email dated 28 December 2023 [Annexure 10, Vol. 2, @Pg. 209] is issued by Respondent No. 3, acknowledging the debt under the ICD Agreement and confirming the payment of interest. To top it off, Respondent No. 3 in the email further requests Clover Media to extend the tenure of payment under the ICD Agreement.*

(iii) *Owing to non-payment, Clover Media assigns the ICD Agreement to a third entity, VSJ Investments Private Limited ("**VSJ**"). This is informed to Respondent No.1 by letter dated 5 February 2024.*

(iv) *On the same day, VSJ informs Respondent No.1 that it has taken over the AHNL Debt in terms of the ICD Agreement.*

30. *To resile from their obligations and to defeat the takeover of the AHNL Debt by VSJ, Respondent No.1 has fabricated this narrative to falsely implicate the ICD Agreement and re-write the terms of the loan. It is for this reason that Respondent Nos. 2 to 3 have deliberately concealed the Board Resolution issued by Respondent No. 1 in favour of the Answering Respondent, for the purpose of executing the ICD Agreement.*

31. *It is to support this assertion that for the first time by a response to this Petition, another false accusation is levelled on Respondent No.1 regarding the alleged illegal execution of the Assignment Agreement with Standard Capital and thereafter the execution of the Cancellation Agreement. In fact, the alleged illegal execution of the Assignment Agreement also does not find any mention in the Criminal Complaint against the Answering Respondent dated 29 February 2024.*

32. *It is extremely suspect that the complaint was filed by Respondent No. 1 a day after the Petition was filed by the Petitioners. It is stated that that even prior to his resignation from Respondent No. 1, the Answering Respondent had not been*

going into the office premises of Respondent No. 1 on account of express instructions from Respondent No. 3. Respondent No. 3 had directed all employees to keep away from the office premises on account of ongoing raids and investigations by the Department of Revenue Intelligence against EMPL. Therefore, the question of the Answering Respondent stealing documents, stamp paper etc. does not arise. Moreover, the documents pertaining to Clover Media were never in the possession of Respondent No. 1. The original documents pertaining to the loan were duly sent to Clover Media, as a part of the obligation stipulated under Clause 3 of the ICD Agreement itself. Therefore, it is illogical and impossible for the Answering Respondent to have stolen any documents whatsoever from Respondent No. 1.

33. *It is evident from the conduct of Respondent Nos. 1 and 3, that a false narrative is being created to implicate the Answering Respondent in order to further the interests of Respondent No. 1. The ICD Agreement, Assignment Agreement and the Cancellation Agreement were executed with the consent, and in the knowledge, of Respondents Nos. 1 to 4. Turning the Answering Respondent into a scapegoat in this entire ordeal allows Respondent No. 1 to wriggle out of the obligations to Clover Media in the ICD Agreement.*

Re: Cavalier delay in finalising and executing the minute of meetings

34. *While the Answering Respondent would duly circulate the transcribed minutes of meeting for approval within the prescribed time of 15 days, Respondent Nos. 2 to 4 would time and again, carelessly delay in finalizing the minutes. Such a callous delay is in gross violation of Section 118 of the Companies Act, 2013. In fact, this delay is reflected in Annexure P20 and P21 wherein Respondent No. 8 has consistently reiterated his request for the finalised copies of minutes for*

approving the accounts for FY 2022-23. Not only was there a delay in approving the minutes of meetings, but also there were consistent attempts to manipulate the minutes of the meetings. Respondent Nos. 2 to 4 often insisted on covering in the draft minutes, events that did not transpire or take place during the meetings. In addition, the queries and concerns raised by the independent directors during board meetings were never captured and there was always pressure from Respondent Nos. 2 to 4 to remove the queries raised by the independent directors from the draft minutes. As the Company Secretary, the Answering Respondent refused to comply with such directions of the non-independent directors to manipulate minutes of the meetings.

35. *In fact, the Answering Respondent in the last Board Meeting of ECL held in September 2023 had shared the agenda as well as the draft notice for scheduling the Annual General Meeting (hereinafter "**AGM**") with the board of directors as well as Respondent No. 8. Notably, the agenda included the appointment of Respondent No. 6 as the independent director for a period of 2 years. However, despite repeated reminders, the AGM was never held during the remaining tenure of the Answering Respondent and all the related compliances such as filing of financial statements with AOC-4 form and filing of annual returns with MGT-7 forms remained pending.*

36. *It is now apparent that Respondent Nos. 2 to 4 were deliberately obstructing the holding of the AGM as one of the agenda items for the AGM was to appoint Respondent No. 6 as a director for a tenure of 2 years. Evidently, the AGM was obstructed to prevent this from happening and to orchestrate the removal of Respondent No. 6 as an independent director. This benefited Respondent Nos. 2 to 4 in a number of ways including i) ensuring that Respondent No. 6 is not confirmed for a period of 2 years,*

thereby preventing Respondent Nos. 2 to 4 from being questioned; ii) being able to evade filing the financials of ECL which would have had to be updated and uploaded with the Ministry of Corporate Affairs following the conclusion of the AGM. It is evident that Respondent Nos. 2 to 4 intentionally obstructed the AGM to evade the consequences that would have followed an AGM.

Re: Non-maintenance of credit policy

37. *RBI through the Master Circular RBI/201516/23 DBNR (PD) CC No. 044/03.10119/201516 dated 1 July 2015 ("**RBI Master Circular 2015**") requires all NBFCs to frame an appropriate loan/credit policy of the company. Particularly, Clause 7 of the RBI Master Circular mandates the board of directors of NBFCs granting/intending to grant demand/call loans to frame an appropriate loan policy and also implement the same.*

38. *While loan policy was framed by the Answering Respondent and Respondent No. 7, the non-independent board of directors pushed back on presenting the drafted policy to the rest of the board i.e., the independent directors for implementation. The Answering Respondent, in his due diligence, time and again requested for the loan policy to be implemented for adherence with the RBI Master Circular. However, his reminders were to no avail and till the time he resigned from his position as Company Secretary, the loan policies, covering matters such as (1) uniformity in interest rates being issued to borrowers; (2) uniformity in waiving of interest and liabilities; (3) imposition of penal charges on defaulting borrowers, etc. remained unimplemented. Subsequently, before resigning from his position as Company Secretary of ECL, the Answering Respondent relayed this information to the independent directors in interest of ECL.*

A copy of the RBI Master Circular 2015 is annexed hereto and marked as ***Annexure R2.***

Re: Non-disclosure of financial information for filing returns

39. *It is stated that the Master Direction (Filing of Supervisory Returns) Directions, 2024 (hereinafter "**RBI Supervisory Returns Directions**") issued by the RBI on 27.02.2024 mandates for all supervised entities like NBFCs to file supervisory returns. These returns encompass the projected cash flow for the expected deposits of borrowers towards their issued. These supervisory returns are a requisite maintenance for financial institutions like NBFCs. However, ECL has not filed Form 4A and 4B as mandated under the Supervisory Returns Directions.*

    A copy of RBI Supervisory Returns Directions is annexed hereto and marked as ***Annexure R3.***

40. *In order to ensure compliance with the Supervisory Returns Directions, the Answering Respondent sought the requisite financial information from Respondent Nos. 2 to 4. However, these financial information were never shared by the non-independent directors. Accordingly, as Respondent No.1 failed to file its supervisory returns in complete violation on the Supervisory Returns Directions. Pertinently, no supervisory returns had been filed by Respondent No.1 since the non-independent took control of the Company in October 2021.*

Re: Failure to furnish information to Credit Information Companies

41. *Pursuant to Section 17 of the Credit Information Companies (Regulation) Act, 2005, read with other certain other provisions, NBFCs are required to furnish credit information to Credit Information Companies ("**CICs**") on a monthly basis. Even though*

Respondent No. 1 was registered with all the four CICs – i.e., Transunion CIBIL, CRIF Highmark, Experian and Equifax, Respondent No. 1 did not submit any of its information on its customers with these CICs.

Re: Failure to register Respondent No. 1 on Vahan Portal

42. Despite being registered as an NBFC with the main stated objective of financing purchase, hiring etc. of vehicles, Respondent Nos. 2 to 4 refused to register Respondent No. 1 on the Vahan Portal, which is the flagship portal maintained by the Government of India. Without such a registration, Respondent No. 1 could neither hypothecate nor register its hypothecation over any vehicle, financed by Respondent No. 1.

43. It is stated that the Answering Respondent was faced with perpetual intimidation by Respondent Nos. 2 to 4 for signing dubious agreements and for turning a blind eye to sham transactions. This form of coercion peaked ever so more when the Answering Respondent began refusing to partake in the illegal transaction and started voicing his concerns for non-compliances. By the end of his tenure the Answering Respondent was left with no option but to resign, and with the support of his peers he tendered his resignation from the position of Company Secretary on 10 December 2023. It is pertinent to note that, post his resignation, no communication was ever issued to Answering Respondent by Respondent No. 1 to resume his role. In fact, by email dated 26 December 2023 [Annexure P14 / Vol. 2 / Petition / @Pg. 238] he was called upon to return company property and any other related documents, evidencing furthermore that there was immediate ceasing of employment as on that date."

30. During the course of hearing, the Ld. Senior Counsel for the Petitioners submitted that the rejoinder on its behalf had been filed. Nevertheless, the counsels for Respondent Nos.1 to 4 espoused that since the rejoinder was not

filed within the time limit prescribed by this Tribunal, the same could not have been taken on record. It was also submitted on behalf of Respondent No.1 that an application for deleting the rejoinder from the record had been filed by him and to await the listing of the application, the present petition should not be taken up for hearing. In any case, on 22.04.2024 the counsels for the parties jointly submitted that Hon'ble NCLAT directed/desired this Tribunal to decide the present Company Petition within 07 days. It is pertinent to note that despite our specific asking, none of the parties either cared to provide us the details of the appeal preferred before Hon'ble NCLAT or the copy of the order passed by it. In any case, once the counsels for the parties were ad idem that we are needed to decide the present petition within 07 days, as per the order passed by Hon'ble NCLAT, we concluding the hearing within 07 days from 22.04.2024. Nevertheless, the pleadings being lengthy, it could unavoidably take some time in authoring the judgment.

31. Mr. Vikram Nankani, the Ld. Senior Counsel for the Petitioners submitted that:- (i) the raising of funds by the Respondent No.1 to the extent of seven times of the paid-up share capital, by issuing optionally convertible debentures resulted in violation of the threshold mandated in the NBFC Directions which requires the leverage ratio to be maintained at seven at any point of time, w.e.f. 31.03.2015; (ii) even if the OCDs are converted to CCPS, the same has been done without the approval of the RBI, as required by the NBFC Directions viz. Non-Banking Financial Company-Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016, thus the conversion is irregular; (iii) the key managerial personnel including

Respondent Nos.7 to 9 had to resign and they have been vocal about their concern regarding the mismanagement of the affairs of the Respondent No.1; (iv) the recommendation made regarding appointment of Mr. Sambharia as CEO was scuttled, for no reason; (v) the salary of the staff including Mr. Sambharia was withheld without any reason or justification; (vi) the luxury car was bought at an exorbitant price of INR 9,09,00,000/- (Rupees Nine Crores Nine Lakhs) from Luxus Retail Private Limited, a company which is entirely controlled by Respondent No.2 and has Respondent No.3 as its directors, thus the funds of the company are siphoned off. Exorbitant premiums of INR 2,95,47,599/- (Rupees Two Crores Ninety Five Lakhs Forty Seven Thousand Five Hundred Ninety Nine Only) is paid, while purchasing a second hand car; (vii) the material information were not disclosed to the board as also to the Independent Directors; (viii) the Respondent Nos.3 and 4, who are drawing their salary from the Respondent No.1 Company consistently worked to advance the interest of the related companies; (ix) the expansion agreement was not executed, despite approval from RBI; (x) the Respondent Nos. 2 to 4 are not qualified and competent to manage the affairs of an NBFC.

32. Mr. Abhinav Vashisth, the Ld. Senior Advocate, who appeared on behalf of the Respondent No.1 buttressed: - (i) might be the amount raised in debt i.e. Rs.315 Crores resulted in violation of NBFC directions, but remedial measures could be taken and the OCDs were converted into CCPS; (ii) the Petitioners who became shareholders qua Respondent No.1/ECL on 05.09.2022 cannot question the investment received by the Respondent No.1 Company in the form of OCD from October 2021 till March 2022; (iii) the

financials regarding infusion of Rs. 315 Croes in Respondent No.1 Company was approved by the shareholders in their meeting dated 29.09.2022, the minutes qua which were also signed by the Respondent No.8 (Auditor); (iv) the Respondent Nos.6 and 7 who associated with the Respondent Company only in December 2022 cannot take credit for investment of Rs. 315 Crores in Respondent No.1 Company, which was made by way of subscription to OCDs from October 2021 till March 2022; (v) the investment made into the Respondent No.1/ECL was solely on account of the efforts made by the Respondent No.2; (vi) for conversion of OCDs to CCPS, no approval of RBI is needed and the approval can be needed only at the time of conversion of CCPS into equity; (vii) the conversion of OCDs to CCPS was also approved by the board in its meeting held on 27.09.2022; (viii) the Petitioners were never vigilant enough in participating the EGM/AGM; (ix) having not participated in the EGMs/AGM, the Petitioners have lost their morale to question the irregularities in management of the affairs of the Respondent No.1; (x) the Petitioners are unable to point out any such act which is burdensome, harsh and wrongful, involving lack of probity or fair dealing with any member; (xi) the KMP's and employees in question were not acting inline with the business of the Respondent No.1 and their conduct had been damaging to the interest of the business of Respondent No.1 Company; (xii) the Bentley Mulsane EWB 20MY was purchased out of the funds of the Respondent No.1, only for official purpose; (xiii) it was the stand taken by the Respondent No.6 himself that the Board qua the Respondent No.1 consists of highly knowledgeable/experience members; (xiv) the Petitioners are not supposed to be in possession of e-mails regarding the sharing of information by Non-Independent Directors with the

Independent Directors; (xv) the Petitioners never offered the infusion of amount of Rs.5 Crores; (xvi) the plea regarding non-maintainability of the petition is not pressed; (xvii) the Respondent No.7 refused to accept the position as WTD and CEO for his own reasons. He also resigned from his existing position of Business Head on his own accord.

33. Mr. Yadav, the Ld. Senior Counsel for Respondent Nos.2 and 3 adopted the arguments put forth by Mr. Abhinav Vashisth, the Ld. Senior Counsel for the Respondent No.1. Additionally, he espoused:-

a) The right to file an application for operation and mismanagement, since the inception of the Companies Act has been made available only to the member of the company and not to anyone else, thus the allegations made by Respondent Nos.5 to 9 cannot be taken into account by this Tribunal.
b) The petition is bad for misjoinder of parties.
c) While examining a petition under Section 397 and 398 of the Companies Act, 1956, this Tribunal need to confine itself to the allegations in the petition alone and not embark upon rambling inquiry into the indefinite charges of mismanagement and operation.
d) In the absence of any pleadings of commission of fraud, on the part of the Petitioner, no direction can be issued by this Tribunal.
e) An unwise, inefficient or careless conduct of a director in the performance of his duty cannot give rise to a claim for relief under Section 397 of the Companies Act.

f) In a petition filed under Section 241 of the Companies Act, 2013, the Tribunal cannot ask a question whether the removal of a director was legally valid and/or justified or not. The question to be asked should be whether a removal tantamount to a conduct oppressive or prejudicial to some members.

g) The NCLT/NCLAT do not have jurisdiction to deal with the issues relating to enforcement of contractual provisions between the parties and they have no power to decide the civil suits.

h) A person cannot be allowed to take different stands at different points of time.

i) A case under Sections 397 and 398 must be determined with reference to the fact transpiring on the date of the presentation of petition and on the basis of the averments made in the petition itself. In a petition under Section 397 and 398 of the Act all material facts must be pleaded.

j) When a decision is taken on a business consideration, it is tried; the Court should not ordinarily interfere.

34. Ms. Rita Bhalla, the Ld. Senior Counsel for the Respondent No.4 contended that the bona fide of corporate democracy cannot be questioned casually. It is further contended on behalf of the Respondent No.4 that since the other shareholders are not impleaded as parties to the petition, the petition is bad for the non-joinder of necessary parties. It is also the submission made by the Ld. Counsel for the Respondent No.4, the present petition is time barred by limitation.

35. Mr. Sudhir Makkar and Mr. Siddharth Luthra, the Ld. Senior Counsels for the Respondent Nos.5 and 6 supported the allegation of mismanagement of the affairs of Respondent No.1 made in the petition. They buttressed the plea of non-compliance of the credit policy evolved by the Respondent No.1 and the favouritism shown to certain creditors. In their submissions, the appointment of Mr. Om Prakash Sambharia as CEO qua the Respondent No.1 was scuttled by the act of the Respondent Nos.3 and 4. Mr. Siddharth Luthra made reference to certain e-mails to bring to fore the plea regarding transaction between the Respondent No.1 and such parties/companies like Clover Media Pvt. Ltd. in which the Respondent Nos.2 and 3 had interest. Mr. Luthra also made a reference to the letter dated 05.02.2024, to espouse that the mismanagement of the affairs of the Respondent No.1 could lead to writing of letter dated 05.02.2024 by VSJ Investments Private Limited, alleging that the Respondent No.1 defaulted in making the payments.

36. Mr. Saurabh Kripal, the Ld. Senior Counsel for the Respondent No.7 submitted that the said Respondent never resigned from his position as business head qua the Respondent No.1 on his own volition and he being engaged with the Respondent No.1 only as business head, there could be no occasion or reason for him to refuse to accept the position of CEO qua the Respondent No.1, on account of being involved in other assignments. According to him, the stand taken on behalf of the Respondent Nos.1 to 4 that the exodus of the KMP's and Independent Directors from the Respondent No.1 was not attributable to them is not correct.

37. Mr. P. Nagesh, the Ld. Senior Counsel for the Respondent No.9 and the Ld. Counsel for Respondent No.8 pressed the pleas raised in their respective counter replies.

38. Rejoining the submission, Mr. Nankani the Ld. Senior Counsel for the Petitioner contended:- (i) the apprehension of the Petitioner regarding the mismanagement of the affairs of Respondent No.1 by the Respondent Nos.2 to 4 vindicated from the fact of removal of the Independent Directors (Respondent Nos.5 and 6), after filing of the present petition, despite there being interim order dated 22.03.2024, passed by this Tribunal being in operation; (ii) in the replies filed by them, the Respondent Nos. 7 to 9 could highlight fraudulent transactions and alarming actions taken by the Respondent Nos.1 to 4; (iii) the petition is maintainable as the Petitioners comprise more than 1/10th of the total members of the Respondent No.1 and have also disputed the conversion of OCDs to CCPS; (iv) the shareholding of the Petitioner need to be calculated at the point of time, preceding the preceding the cause of action; (v) besides the Petitioner, the other shareholders qua Respondent No.1 are the Respondent Nos.2 and 3, who are already party to the present petition; (vi) after the illegal conversion of OCDs to CCPS, the 99.26% shareholding is by CCPS holders, the such illegal development itself, which would deprive all other shareholders to have their say regarding the management of the affairs of the company in itself is a cause to exercise jurisdiction in terms of the provisions of Section 242 of the Companies Act; (vii) not only the conversion of OCDs to CCPS is irregular, but the issuance of OCDs itself is in violation of NBFC Directions, 2016; (viii) if

the contention raised by the Respondent Nos.1 to 4 regarding the locus of the Petitioners, who acquired the shares to a Respondent No.1 after issuance of OCDs is accepted, then there would be no check qua the irregularities committed by the NBFC; (ix) the consent by the Petitioners to convening the meeting of EGM cannot be construed as approval of the illegal resolution passed in the meeting; (x) the Respondent Nos.1 to 4 have not alluded any purpose for which the amount of INR 315 Crores has been utilised; (xi) the Respondent No.5 (Independent Director) avoided voting on the Circular Resolution concerning the conversion of OCDs to CCPS; (xii) at no point of time the Petitioners conceded to conversion of the OCDs to CCPS; (xiii) the Petitioners have extended a loan of INR 62.05 Crores to the Respondent No.2 and the Respondent No.2 had assured the Petitioners that he will settle part of liability owed to the Petitioners by issuing shares qua Respondent No.1 as stipulated under the 'Expansion Agreement'. Thus, clearly the Petitioners have already parted with the funds required to be paid under the 'Expansion Agreement'; (xiv) only after receiving the funds from the Petitioners, the Respondent No.2 directed Respondent No.3 to file application before RBI seeking approval for issuance of equity shares to the Petitioners qua the Respondent No.1; (xv) regarding violation of RBI regulations, the Petitioners have remedies available to them to file appropriate application before RBI, but resorting to such remedy would not deprive them from availing the separate and independent remedies, before this Tribunal; (xvi) the Petitioners and Respondent Nos.5 to 9 have taken the stand only for the wellbeing of the Respondent No.1; (xvii) the Respondent No.1 has entered into various related party transactions, which are not related to its business as NBFC; (xviii) the

invoice placed on record by Respondent Nos.1 to 4 regarding the value of luxury car is from their own group company and cannot be relied upon; (xix) besides, even if, the invoice is relied upon, the difference between the new car and the old car is only of Rs.60 Lacs; (xx) though in terms of the provision of Rule 6A under chapter XII of the Board meeting rules authorized the Audit Committee to grant omnibus approval for related party transactions on an annual basis, still the Audit Committee need to examine the justification and need for such omnibus approval; (xxi) the Respondent Nos.1 to 4 have not denied the fact of loan being granted to the related party; (xxii) the loans were granted to Respondent No.2 in June 2022 and to Sulojay during January to June 2022 and the Audit Committee was constituted in September 2022, thus the Committee could not have approved the grant of said loans; (xxiii) the Respondent Nos.1 to 4 have not placed on record any bank statement qua the Respondent No.1 to show that the loan granted to Respondent No.2 was ever paid; (xxiv) besides, the grant of loan to related parties without approval of the board in terms of the provisions of Section 179, 185, and 188 of the Companies Act, read with Board Meeting Rules cannot be found in order, merely because the same was repaid; (xxv) when in terms of the Circular dated 21.09.2022 the annual related party transaction was restricted to INR 10 Crores, the loan granted to Sulojay itself exceeded the limits of INR 10 Crores prescribed by Respondent No.1 itself; (xxvi) instead of acquiring a securities and assets with high recovery rate, Respondent No.1 at the behest of Respondent Nos.2 to 4 are acquiring non-performing assets with little to no possibility of yielding any returns; (xxvii) when the Independent Directors of the company have details of all the bad debts, one such debt with Clover

Media Pvt. Ltd. has come to the knowledge of the Petitioners through the e-mails issued by the Independent Directors; (xxviii) the Respondent No.1 is no longer a lender to Asian Hotel (North Limited); (xxix) it is on account of the mismanagement of affairs of Respondent No.1 that the AHNL debt has been taken over by VSJ, which is apparent loss to the Respondent No.1; (xxx) as can be gathered from the replies of Respondent Nos.6, 7 and 9 a total of INR 200 Crores, approximately has been spent by Respondent No.1 on acquiring bad loans at the behest of related parties.

39. As can be seen from the stand taken on behalf of the Respondent No.4, the plea raised by him is that the present petition is barred by limitation and is also vitiated for non-joinder of other shareholders, as Respondents/Parties to the petition. As far as the plea of limitation is concerned, as can be seen from the averments made in para 28 of the reply filed on behalf of the Respondent No.1, the Petitioners acquired shares qua the said Respondent (ECL) after 05.09.2022. Thus, there could be any cause of action to allege oppression or mismanagement at the end of Petitioners, after acquiring the status of shareholders/members. In the wake, we do not find any substance in the plea raised on behalf of the Respondent No.4 regarding the petition being barred by limitation and the plea is rejected. As far as the issue of non-joinder of necessary parties is concerned, indubitably, the Petitioner held 10% shares qua the Respondent No.1 and the remaining 90% shares qua the said Respondent are held by Respondent Nos.2 and 3. Thus, it would not be correct to allege that the other shareholders are not impleaded as Respondents in the petition. As far as the CCPS holders are concerned, the salient basis for filing

the present petition is the irregularity in issuance of OCDs and the conversion of the same in CCPS. Thus, when the very existence of CCPS is in question before us, it cannot be viewed that the non-impleadment of CCPS holders as party to the petition would vitiate the same for non-joinder of necessary parties. We may not be oblivious of the fact that the Petitioners have questioned the allotment of OCDs itself. The plea raised on behalf of the Petitioners is that of violation of Non-Banking Financial Company, Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 in issuance of OCDs and conversion thereof in CCPS. According to them, such violation would invite action against the company, from RBI and their interest as shareholders would be adversely affected. In a way, the plea raised in the petition is that the OCDs and CCPS should have been issued after following due procedure of law. Thus, the plea is also in the interest of those to whom the OCDs were allotted. In the wake, we are not inclined to accept the plea of non-joinder of necessary parties, raised on behalf of the Respondent No.4.

40. Mr. Siddharth Yadav, the Ld. Senior Counsel for the Respondent Nos.2 and 3 argued with vehemence that the details given by the Respondent Nos.5 to 9 in their reply cannot be relied upon, as it is stare decisis that to hold that any investigation should be directed or relief ought to be granted to the Petitioner, even though facts relating to mismanagement, oppression, misappropriation and improper conduct have not been pleaded would open the door to grave injustice. In his submission, the averments made in the replies filed on behalf of the Respondent Nos.5 to 9 cannot be relied upon, as

it would amount to gathering the facts by way of investigation, to entertain the petition filed under Section 241/242 of the Companies Act, 2013. The plea raised on behalf of the Respondent Nos.2 and 3 is tenable. We cannot order an investigation to find out the facts to check as to whether there is any oppression and/or mismanagement qua the affairs of the company. Similarly, the facts which are not related to the allegations made in the petition, given by the Respondent Nos.5 to 9 cannot be taken into account by us for the reasons:- (i) the Respondent Nos.2 to 4 did not get any opportunity to file rejoinder thereto and (ii) the said Respondents being not covered by Section 244 of the Companies Act have no locus to make any independent allegation of oppression and mismanagement. Nevertheless, such a stand taken in the reply filed on behalf of Respondent Nos.5 to 9, which is relevant to the allegations made in the petition can be relied upon by us to arrive at the conclusion, as to whether an action under Section 242 of the Companies Act, 2013, is needed or not. The Ld. Senior Counsel for Respondent could also take the plea regarding misjoinder of Respondent Nos.5 to 9 as Respondents in the petition. In our considered view, once the petition contained the allegation that the Respondent Nos.2 to 4 kept such affairs qua the management of Respondent No.1, which were detrimental to the interest of the Respondent No.1 and the shareholders, secret from the Independent Directors (Respondent Nos.5 and 6) and the Key Managerial Persons (Respondent Nos.7 to 9), it was necessary for them to implead them as parties to the proceedings, as these are only Respondent Nos.5 to 9, who could confirm the allegations of non-sharing the information with them. In the

wake, we do not find the plea of misjoinder of parties raised on behalf of Respondent Nos.2 to 9 as tenable.

41. The Respondent Nos.2 to 4 also raised the issue that since the shareholding of the Petitioners is less than 10%, the petition is not maintainable. Though, during the course of the arguments, Mr. Abhinav Vashisth, the Ld. Senior Counsel for Respondent No.1 categorically submitted that it is not so that the petition is not maintainable, being hit by Section 244 of the Companies Act, 2013, but as the plea could be raised also at the behest of the Respondent Nos.2 to 4, we need to deal with the same.

42. In terms of the provisions of Section 244 of the Companies Act, 2013, in case of a company having a share capital, not less than 100 members of the company or not less than 1/10th of the total number of its members, whichever is less, or any member or members holding not less than 1/10th of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares would have the right to apply under Section 241 of the Companies Act, 2013. It is not in dispute that the Petitioners held 10% shares qua the Respondent No.1. The only question raised on behalf of the Respondent Nos.2 to 4 is that the issued share capital would also include both the Preferential Shares and the Equity Shares. In view of the provisions of Section 85, 86 and 87 of the Companies Act, 1956, the expression 'Issued Share Capital' used in Section 399(1) of the 1956 Act, (corresponding to Section 244(1) of the 2013 Act) can only referred to the share capital issued, i.e. both the equity and preference share capital therefore, the 'Issued Share

Capital' would include even the preference share capital. However, the moot question arises to be determined in the present petition is as to, "whether the issuance of OCDs and conversion of the same into CCPS was in order". Thus, in a case, where the question of validity of issuance of shares in itself in issue and the percentage of shares held by the Petitioners is questioned by taking into account such shares, the validity of issuance of which is yet to be determined by this Tribunal, the plea raised under Section 244 of the Companies Act cannot be accepted. Rather, such plea raised on behalf of the Respondent Nos.2 to 4 would give rise to a proposition that the issuance of OCDs and conversion thereof into CCPS resulted in reduction in percentage of shareholding of the Petitioners qua Respondent No.1, depriving them of their locus to file a petition under Section 244 of the Code. Besides, it is not in dispute that the Petitioners comprise more than 1/10th of the total number of members qua the Respondent No.1, thus also in this way, they are entitled to maintain the present petition.

43. Section 241 of the Companies Act, 2013, provides, any member of a company who complains that:-

a) The affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other members or members in a manner prejudicial to the interest of the company; or
b) The material change, not being a change brought about by, or in the interest of any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or

control of the company, whether by an alteration of the Board of Directors, or manager; or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to this Tribunal provided such member has right to apply under Section 244 for an order under chapter XVI of the Companies Act, 2016.

44. In terms of the provisions of Section 242 of the Companies Act, if on an application made under Section 241 (ibid) this Tribunal is of the opinion-

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

45. The chapter XVI which comprises Section 241 to 245 of the Companies Act, 2013, though provides for addressing the grievances related to 'corporate oppression and mismanagement', but the chapter does not indicate any clear definition of oppression and mismanagement. The omission in the Act to give

concrete definition of the term led to a range of interpretations. In a way, the oppression can be alleged where there is something more than a mere loss of confidence or deadlock. It requires a departure from fairness. The oppressive conduct needs to encompass a violation of conditions of fair play. Various judicial precedents (supra) outline the oppression as burdensome, harsh and wrongful conduct. An element of lack of probity or fair dealing concerning the Petitioners' proprietary right as shareholder is also perceived as oppression. As could be ruled in Needle Industries (ibid), a technically legal and correct conduct may still justify relief under Section 242 of the Companies Act, 2013.

46. Like oppression, the term mismanagement is also not defined explicitly in the Companies Act. The term can be characterised as the affairs of the company conducted in a prejudicial, dishonest or inept manner. As can be seen from Section 241(1)(supra) any action detrimental to the public interest, shareholders or the company itself amounts to mismanagement. Stating succinctly, the management/mismanagement is a question of prudence. Any affair qua the management of the company which is imprudent and is resorted to not in a prudent and a fair manner, but with ulterior motive and for extraneous reasons may turn to be an act of mismanagement. As outlined in **Shanti Prasad Jain vs. Kalinga Tubes** ((1965) 2 SCR 720), the oppression involves a conduct that signifies a visible departure from the standard of fair dealing. It underscores the violation of the conditions of fair play that every shareholder expects when investing in a company. In **Sangramsinh P. Gaekwad and Ors. vs. Shantidevi P. Gaekwad and Ors.,** the term, "oppressive" is a conduct related to the manner in which a company's affairs

are conducted. The conduct should oppress the minority shareholders, resulting in the majority obtaining pre-dominant voting power or securing pecuniary advantages at the expense of the oppressed. Such acts of operation may take the form of either seeking pecuniary gains to the detriment of minority shareholders or a wrongful usurpation of authority. In **Mohanlal Ganpatram and Anr. vs. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. and Ors.** (1964 SCC OnLine Guj 66), the object of Sections 397 and 398 of the Companies Act could be outlined by saying that aim is to halt oppression and mismanagement by controlling shareholders, by preventing their continuance to the detriment of the aggrieved shareholders or the company.

47. Going by the various judicial pronouncements including those by Hon'ble Supreme Court, one may infer that any act which is inept and prejudicial to the interest of the shareholders or company or to public interest amounts to oppressive as also an act of mismanagement.

48. Since, it is argued by Mr. Siddharth Yadav, the Ld. Senior Counsel for the Respondent Nos.2 and 3 that only when the company's affairs are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest and though the facts would justify the making of a winding order, but the winding up would unfairly prejudice the member/members of the company, an order Under Section 242(2) should be passed. Thus, while examining the present petition, we may check whether the factual development is such that the winding up of the Respondent No.1 would also be justified. For this purpose, it would be pertinent to consider the

circumstances outlined in the companies act, which may warrant the commencement of winding up proceedings. It is Section 271 of the Companies Act, 2013 which describes such circumstances. The section reads thus:-

> *"**271.** A company may, on a petition under Section 272, be wound up by the Tribunal-*
>
> *(a) if the company has, by special resolution, resolved that the company be would up by the Tribunal;*
>
> *(b) if the company has acted against the interests of the sovereignty and foreign States, public order, decency or morality;*
>
> *(c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;*
>
> *(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or"*

49. While analysing the scope for exercising the jurisdiction under Section 242 of the Companies Act, we may not be oblivious of the settled legal position that the aim and object of the Section 241-242 of the Companies Act is to hold operation and mismanagement by controlling shareholders, preventing their continuation to the detriment of the aggrieved shareholders or the company. The remedies do not empower aggrieved shareholders to undo actions already taken by controlling shareholders in managing the company. Such is the view also taken in **Mohanlal Ganpatram** (ibid).

50. Coming to the issues involved in the present petition, it is seen that in terms of the Non-Banking Financial Company-Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016, the leverage ratio of an applicable NBFC (except NBFC-MFIs and NBFC-IFCS) should not be more than 7 at any point of time, with effect from March 31, 2015. The Regulation 6 of the aforementioned Regulations/Directions reads thus:-

"Section-II Prudential Issues

Chapter-IV

Prudential Regulations

6. Leverage Ratio

The leverage ratio of an applicable NBFC (except NBFC-MFIs and NBFC-IFCS) shall not be more than 7 at any point of time, with effect from March 31, 2015."

51. The 'Leverage Ratio' means the total outside liabilities/own funds. In other words, the quotient of the division of outside liabilities by owned funds of the company should not be more than seven.

52. It is seen from the averments made in para 35 of the petition that when the total shareholding qua the Respondent No.1 is only INR 2,34,65,000 (Rupees Two Cores Thirty Four Lakhs Sixty Five Thousand), it raised funds from private investors in the form of Optionally Convertible Debentures (OCDs) in excess of seven times of the funds owned by the company. If we divide the amount of INR 315 Crores by INR 2,34,65,000, the quotient would be 134.24248881312. Apparently, the leverage is in excess to the prescribed limit i.e. seven, by manifold.

53. The plea regarding violation of the aforementioned directions of IBC has not been denied by the Respondent No.1. The only plea raised in the reply filed by it is that the amount of Rs.315 Crores raised in debt was on account of goodwill of the Respondent No.2. The paras 27-32 of the reply, filed on behalf of the Respondent No.1 reads thus:-

> *"27. It is alleged by the Petitioners herein that the Respondent No.1herein caused toppling of the leverage ratio of Respondent No.1/ECL herein beyond 7% (requirement as per NBFC Directions) due to the fact that the shareholding of Respondent No.1/ECL herein was only Rs.2,34,65,000/- but the amount raised in debt was 315 Crores. It is submitted that the Petitioners have been entirely wrong in stating that the credentials of Respondents No.5,6 and 7 is what persuaded the investors to invest such huge amounts in Respondent No.1/ECL.*
>
> *28. It is submitted that the said funds were infused into the Respondent No.1/ECL for the purpose of expanding the business activities of the Respondent No.1/ECL herein and was received from investors from October 2021 until March 2022 only on the good faith and relationship of the Respondent No.2 herein. It is further submitted that the Petitioners herein were shareholders of the Respondent No.1/ECL from September 2022, from 05.09.2022 to be precise. The audited balance sheet of the Respondent No.1/ECL for FY-2021-2022 as on 31.03.2022 clearly reflected the amount of Rs.315 Crores as "long term borrowings". A copy of the Audited Financials for FY 2021-2022 is already annexed in the Petition at Pg No. 140-169. It is submitted that if the Petitioners were so concerned with the alleged debt of Rs.315 Crores toppling of the leverage ratio of Respondent No.1/ECL herein beyond 7%, the Petitioners should not have purchased the equity shares of the Respondent No.1/ECL that they hold today. Further the audit balance*

sheet/accounts for the FY-2021-2022 specifically mentioned about the conversion of OCD to CCPS.

29. *It is submitted that when one purchases stock or any other security representing an ownership interest in a company, prior and sufficient due diligence is required to be conducted by the persons willing to do so. In the present case, if the Petitioners herein were so disquieted with the amount of alleged debt in the company, the Respondent No.1/ECL questions the locus and intentions of the Petitioners herein for purchasing the aforementioned number of shares in the Respondent No.1/ECL. Further, even after purchasing the said equity in the Respondent No.1/ECL, the Petitioners have remained mum over the last 2 years by never attending any of the meetings where the business affairs of the Respondent No.1/ECL were discussed and the instant reply will evidence the same in detail as provided below.*

30. *It is submitted that up until the instant Petition, the Petitioners herein have never questioned the alleged debt of Rs.315 Crores till date which can be clearly evidenced from the annexures to the instant reply. It is also pertinent to bring to the knowledge of the Hon'ble Tribunal that the said financials were approved by the shareholders in their meeting dated 29.09.2022 and even signed by the then Auditor Mr. V V Kale/Respondent No.8 herein. It is submitted that even after receiving due notice and agenda dated 28.09.2022 for the said meeting on 29.09.2022 and further also providing consent for the same, the Petitioners herein failed to attend the said meeting. A copy of the minutes of the meeting dated 29.09.2022 is annexed herein as* ***Annexure-1.***

31. *It is submitted that Respondents 6 and 7 were induced into Respondent No.1/ECL only in December 2022 and thereby the said investments brought into the Respondent No.1/ECL has no nexus with Respondents 5 to 7. It is submitted that due to the hard work and diligence extended by the Respondent No.2*

herein, the said investments were made in the Respondent No.1/ECL. The Petitioners have misled this Hon'ble Tribunal in stating that the credentials of Respondents No.5,6 and 7 is what attracted such large investments made in Respondent No.1/ECL.

32. *It can be stated that the investments made into the Respondent No.1/ECL are solely on the effort and business contacts painstakingly maintained by the Respondent No.2 herein as the Respondent No.2 was in contact with High Net Worth (HNI) individuals that could provide such funding for the business affairs of the Respondent No.1/ECL herein. It is submitted that the mere presence of Respondents No.5 to 7 as independent directors on the board of the Respondent No.1/ECL herein have not attracted investors to make investments of such a huge amount of Rs.315 Crores. It is submitted that Respondent No.6 became an Independent Director on 15.12.2022 while Respondent No.7 was appointed in the Respondent No.1/ECL on 09.12.2022, which is subsequent to the raising of funds from Teesta Retail Private Limited. A Truce Copy of Form No. DIR -12 regarding the appointment of Respondent No.6 is annexed as* ***Annexure-2.****"*

54. The literal meaning of the term 'leverage' is to enhance it by supply with financial leverage. A leverage ratio is any one of several financial measurements that assesses the ability of a company to meet its financial obligations. The leverage ratio assesses the ability of a company to meet its financial obligations. Too much debt can be dangerous and risky for a company and its investors. Uncontrolled debt levels can lead to credit downgrades or worse. As can be seen from the aforementioned, the Respondent No.1 has not denied that the OCDs could be issued in disregard of the RBI directions and the leverage ratio is violated. The creation of liability

for a company, far beyond the permissible limit is certainly not in the interest of the company. As can be seen from Section 45JA, if the RBI is satisfied that in the public interest or to regulate the financial system of the company to its advantage or to prevent the affairs of non-banking financial is being conducted in a manner prejudicial to the interest of non-banking financial company it is necessary or expedient so to do, it may determine the policy and give direction to all or any of non-banking financial companies relating to capital adequacy based on risk weights for assets and credit conversion factors inter alia. Thus, the violation of the aforementioned direction issued by RBI regarding maintenance of leverage, issued in the interest of the company and in public interest amounts to an act, both against the interest of the company as also public interest. Even otherwise, the debt to capital ratio is the most meaningful ratio because it focuses on the relationship of debt liabilities as a component of a company's total capital base. It is calculated by dividing a company's total debt by its total capital. The higher debt capital ratio leads to higher risk of default. In the present case, when apparently, the OCDs issued by the Respondent No.1 were much beyond the permissible limit of liability the risk of default is there. Ex-facie the violation of direction issued by RBI not only in the interest of the company, but also in public interest is a ground recognised by Section 242(1)(a) of the Companies Act, 2013 for taking action under Section 242(2) of the Companies Act, 2013. The provision reads thus:-

> ""***242.*** *(i) If, on any application made under section 241, the Tribunal is of the opinion-*
>
> *(a) that the company's affairs have been or are being conducted in a prejudicial or oppressive to any member or members or*

prejudicial to public interest or in a manner prejudicial to the interests of the company; and"

55. The liability of a company being more than hundred times of its paid-up capital can also be a ground to form an opinion that it is just and equitable that the company should be wound up. Thus, in a way, the situation/requirement delineated in Section 242(1)(b) of the Companies Act, 2013, is also met. The clause b of sub-section of Section 242 (ibid) reads thus:-

*"**242.** (i) If, on any application made under section 241, the Tribunal is of the opinion-*

....

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the marking of a winding up order on the ground that it was just and equitable that the company should be wound up."

56. The relevant excerpt of the reply filed on behalf of the Respondent Nos. 2 and 3 regarding toppling the leverage limit reads thus:-

"10.3.4 As soon as the Answering Respondents became aware that the issuance of OCDs to Teesta Retail Pvt Ltd had the potential to topple the leverage ratio, a legal opinion was sought from Mr. A Abhinav and Associates (Chronical Advisors LLP), Company Secretary, to take remedial measures. The observations made by the Company Secretary in its Legal Opinion dated 26.08.2022 is as follows:

"... OCD allotment is not in compliance with the prudential regulations regarding leverage ratio also upon allotment of OCD's, the Tier II Capital exceeds Tier I Capital. Thus, it is in

variance with the requirement of para 6 of the NBFC Directions.

... the Company needs to change the terms of the instrument (OCD) in such a way that it qualifies as one of the instrument which forms a part of Tier I Capital i.e. either as a equity shares or preference shares which are compulsorily convertible into equity shares.

Therefore, company may subject to approval of Debenture Holder & Shareholders change the Terms & Conditions of OCD considering the Leverage Ratio and Tier I capital & Tier II Capital. Compulsorily convertible preference shares comes under the definition of Owned Funds, thus, it does not have an impact on Leverage ratio, as it becomes part of Tier I Capital.

... Further, as per para 61 of Chapter IX of the Master Directions 17, any change in shareholding of the NBFC, which will result in shareholding of any person going beyond 26%, such change can only take place with the prior approval of the RBI.

Hence, in the instant case, RBI approval is not required at the time of conversion of OCD into CCPS and this provision is important in the context that CCPS may convert into equity post their issuance and approval of RBI under Para 61 of the Master Directions, will be required if at the time of conversion of CCPS, resultant equity will result in shareholding of any person going beyond 26% or change in shareholding of the company beyond 26%.

"True Copy of the Legal Opinion dated 26.08.2022 received from A. Abhinav and Associates is produced herewith and marked as ***Annexure R7****."*

57. Even in the reply filed on behalf of the Respondent Nos.2 and 3, there is no denial of the fact that the leverage ratio was toppled. It is admitted that with an intent to rectify the toppling of the leverage ratio, the OCDs were sought to be converted to CCPS. And the conversion of OCD to CCPS was done as a remedial measure. In this connection, we may refer to the relevant RBI regulation as under:-

"Section III: Governance Issues

Chapter - IX Acquisition / Transfer of Control of Applicable NBFCs

61. An applicable NBFC, shall require prior written permission of the Bank for the following:

a) any takeover or acquisition of control of the applicable NBFC, which may or may not result in change of management;

b) any change in the shareholding of the applicable NBFCs, including progressive increases over time, which would result in acquisition / transfer of shareholding of 26 per cent or more of the paid-up equity capital of the applicable NBFC.

Provided that, prior approval would not be required in case of any shareholding going beyond 26 per cent due to buyback of shares/ reduction in capital where it has approval of a competent Court. The same is to be reported to the Bank not later than one month from its occurrence;

(emphasis supplied)"

58. It is apparent that above regulation refers to 'progressive increase over time' of the shareholding, indicating, thereby that permission of the RBI is required, if the CCPS issued will result in progressive increase in

shareholding in the future. The respondent No.2, being a prudent businessman would not be unaware of the fact that infusion of ₹315 crores will topple the mandated leverage ratio, and also that the proposed issuance of CCPS would progressively increase the shareholding of the CCPS holders, for which the prior approval of RBI is mandated. He is expected to be aware of the possible impact of such a conversion on the shareholding of respondent company No 1, and the adverse impact on the petitioners whose shareholding will be reduced to a miniscule. Thus, we are of the view that the only correct measure that was open to respondent No.2 would have been to repay the OCD holder and subsequently take RBI permission to increase the paid-up capital as mandated under the law.

59. In view of the above, the conversion of OCD to CCPS was not a bona fide act and resulted in the oppression of the minority shareholder, whose shareholding would be reduced by virtue of infusion of additional capital. Keeping in view of the clear wordings in the RBI circular, the legal opinion taken by the respondent, looks more like a ruse to circumvent the provision of the circular, and retain the money of the investors in CCPS in an illegal manner. We are, therefore, of the considered view that this is a fit case to exercise our powers under Section 242 of the Companies Act, 2013 and direct the cancellation of OCD/CCPS and return the money to the respective OCD/ CCPS holders.

60. We further notice that the provision of Section 58B (aa) of the RBI Act provides for penal action against the defaulting company. The clause reads thus:-

*"**58.B. Penalties**-*

[(aa) fails to comply with any direction given or order made by the Bank under any of the provisions of Chapter IIIB; or]

(b) issues any prospectus or advertisement otherwise than in accordance with section 45NA or any order made under Section 45J, as the case may be,

he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend,-

(i) in the case of a contravention falling under clause (a), to twice the amount of the deposit received; and

(ii) in the case of a contravention falling under clause (b), to twice the amount of the deposit called for by the prospectus or advertisement."

61. Thus, apparently, the interest of the company and the shareholders has been exposed to the peril, as the act of issuance of OCDs in violation of RBI's Direction is not only *against* the interest of the public and the company but is also prejudicial to the stake of the shareholders.

62. The Respondent Nos.1 to 4 could also not deny the fact of mass resignation by Key Managerial Persons qua the company. However, they tried to justify the development, by imputing misdemeanour against them. It is matter of investigation as to whether the resignation by/removal of the Respondent Nos.5, 6, 8 and 9 from their positions qua the Respondent No.1 is on account of their misdemeanour or because of attitude of Respondent Nos.2 to 4. In terms of the submissions, made by Mr. Siddharth Yadav, the Ld. Senior Counsel, it is not open for this Tribunal in the proceedings under Section 241/242 of the Companies Act, 2013, to conduct a roving inquiry to

find out the truth. What is relevant for the purpose of these proceedings is that there is mass exodus of the Key Managerial Persons qua the Respondent No.1 including its business head and there is apparent mismanagement of the affairs of the company. In the circumstances, it would be harsh on the shareholders, if the action under Section 242 of the Companies Act, 2013, is nixed by us.

63. A perusal of para 10.4.7 of the reply filed on behalf of the Respondent Nos.2 and 3 reveal that in terms of the Assignment Agreement dated 04.10.2023, all the rights of Respondent No.1 over the loans of AHNL were assigned. May be the Respondent Nos.2 and 3 have blamed the Respondent No.9 for such act, but from the averments made in para 10.04.6 to 10.4.13 of the reply filed by the Respondents, it is apparent that the affairs qua the Respondent No.1 are mismanaged and improbity is prevalent qua the management of its affairs.

64. It is the plea raised on behalf of the Respondent Nos.1 to 3 that the Respondent No.7 had resigned from the company and he also refused to accept the position of CEO qua it. Even if the plea raised on behalf of the Respondent Nos.2 to 4 is accepted, apparently, the circumstances and affairs of the company are such that the Respondent No.1 is not prepared to even accept the position of CEO qua it. Such a situation also mandates the intervention in terms of the provisions of Section 420 of the Companies Act, 2013.

65. Regarding disclosure of material information to independent board of directors and Key Managerial Persons, though the Respondent Nos.6 to 9 have

filed detailed replies canvassing vital financial irregularities qua the affairs of the Respondent No.1, but as has been rightly contended by the Ld. Senior Counsels for the Respondent Nos.2 and 3, firstly, they being not the members of the company, we may not look into the allegations made by them and secondly, the Respondent Nos.2 to 4 have no opportunity to rebut the allegations made by the said Respondents. Nevertheless, the replies filed on behalf of Respondent Nos.6 to 9 are relevant for the purpose that the Respondent Nos.2 to 4 were running the affairs of the Respondent No.1, clandestinely, keeping even independent directors and the Key Managerial Persons in dark. Such factual position indicates that there was improbability qua the affairs of the Respondent No. 1 which is certainly burdensome, harsh and wrongful act involving lack of probity and fair dealing.

66. The allegations made by the Petitioners regarding purchase of luxury cars, the Respondent Nos.2 and 3 have admitted that the car has been purchased from Luxus Retail Pvt. Ltd., wherein they are directors. Paras 10.5.2 to 10.5.4 of the reply filed by the said Respondent Nos.2 and 3 reads thus:-

> *"10.5.2 The purchase of the Luxury Car has from Luxus Retail Pvt Ltd ("**Luxus**") wherein the Answering Respondents are directors, has been done on an arms length's basis. The Petitioners have miserably failed to corroborate their bald allegation that the purchase of the car has been done for the personal use of the Respondent No.2 and the said allegation is false. They have also failed to discharge their onus of proving that the said car was purchased for an exorbitant price. No material has been placed on record to justify the allegations that the car is purchased at a premium. On the*

other, the invoices pertaining to the purchase of the said car shall during the relevant period shall clearly show that the said transaction was done on an arms length's basis. True Copy of the invoice dated 06.06.2020 issued by Exclusive Motors Pvt Ltd is produced herewith and marked as ***Annexure R24.***

10.5.3 All allegations in the Petition to the effect that the said car has been purchased for personal use is devoid of any merits and hence stoutly denied. It is submitted that the said car has only been used for the purpose of Respondent No. 1. Further, the Respondent No. l chose to register the car in Maharashtra on account of lower registration charges and in order to judiciously use the resources of the Respondent No. I the car was registered in Mumbai. It is not out of place to mention that the Luxury Car is an asset of the Company and hence the concerns of the Petitioners with respect to the purchase of the said car is highly misplaced.

10.5.4 It is apposite to note that the said transaction shall come within the purview of the "Omnibus Approval for the Related Party Transactions proposed to be entered by the Respondent No. 1 under the financial year 2022-23" granted by the Board of Directors of Respondent No.1 in the Board Meeting held on 27.09.2022. The payment for the Luxury Car was done in two tranches in accordance with the said approval granted by the Board. True Copy of the Minutes of the Board Meeting held on 27.09.2022 1s produced herewith and marked as ***Annexure R25.****"*

67. May be the justification given by the Respondent Nos.1, 2 and 3 regarding the purchase of the car i.e. the same has been purchased after board resolution according omnibus sanction for the relevant period is tenable, but the act of purchasing Luxury Car for INR 9.09 Crores by a

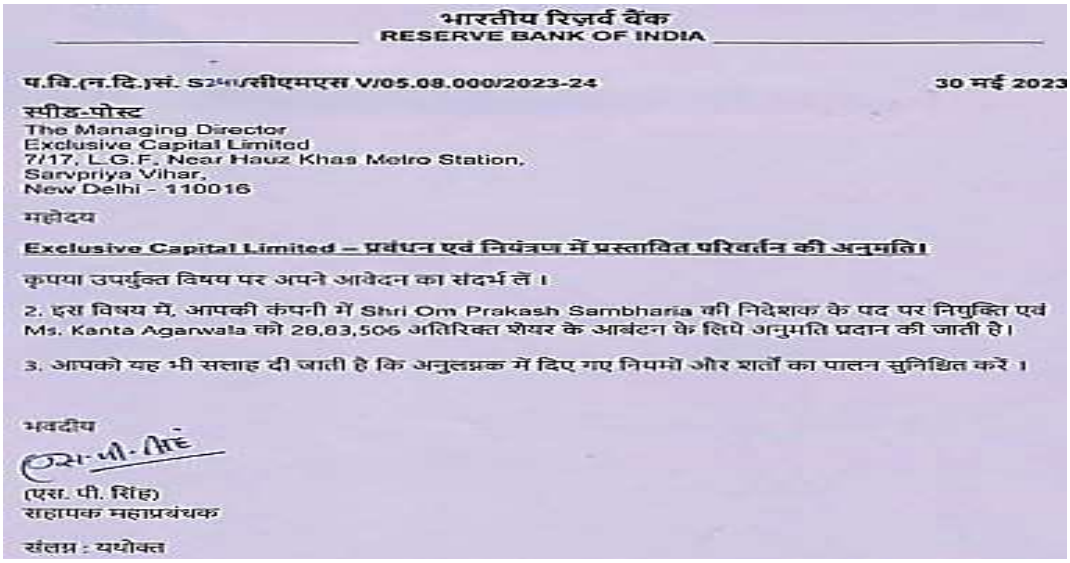
company which has paid-up share capital of Rs.2,34,65,000/- is certainly inept and an act of improbity. Again, the purchase of the car from a company in which the Respondent Nos.2 and 3 are directors render the act as inept. Though, it is the case of the Respondent Nos.2 and 3 that the Petitioners never participated in the EGM/AGM, but nothing turn on such submission. The non-participation by the Petitioners in AGM would not render them ineligible regarding the act of oppression and mismanagement in the company. When the affairs of the company are run in such a manner that the action may be taken by the RBI and/or the company may go into insolvency, the Petitioners are justified in feeling oppressed and taking the remedial steps of filing the present petition. It is also the plea raised in the reply filed on behalf of the Respondent Nos.2 and 3 that at the time of issuance of OCDs, the Petitioners were not even shareholders qua the Respondent No.1. It is stare decisis that the action under Section 242 of the Companies Act, 2013, provides for regulation of current affairs of the company, which may have future ramification also. Thus, when after becoming shareholder, the Petitioners precipitates that the violation of direction of RBI would entail consequences detrimental to their interest, irrespective of the fact that the act committed relates to the date when the Petitioners were not shareholders qua the company, the Petitioners have locus standie to file the present petition regarding the irregularity committed. The Respondent Nos.1 to 4 have also not denied that Respondent No.1 had disbursed loan to Respondent No.2. The only plea taken is that the loan amount has been paid off. While examining the petition filed under Section 241, this Tribunal need not to see whether an act constitutes illegality. What needs to be seen is whether the act constitutes

immorality and improbity. Even otherwise also, when Respondent Nos.1 to 3 addressed the issue of purchase of luxury car, they made a reference to the omnibus resolution passed by the board, but while talking about the loan disbursed to Respondent No.2, no such justification is given. Para 10.6.4 of the reply filed on behalf of the Respondent Nos.2 and 3 reads thus:-

> *"10.6.4 Thirdly, there is no basis to the allegations that the Answering Respondents failed to disclose material information pertaining to Related Party Transactions. It is apposite to note that loans disbursed to Respondent No. 2 has been paid off and as on date the said loan account stands closed. It is respectfully submitted that the said loan was provided in an arms length's basis and the interests rate provided were higher than the interest rate provided to third parties. The loan provided to Respondent No. 2 has been repaid in full and hence he has discharged his obligations under the term loan facility. True Copy of the Term Loan Facility Agreement dated 14.06.2022 executed between Respondent No. 1 and Respondent No. 2 is produced herewith and marked as* ***Annexure R28****. True Copy of the Term Loan Facility Agreement dated 27.06.2022 executed between Bubna Advertising and Respondent No. 1 is produced herewith and marked as* ***Annexure R29****. Therefore, it can be clearly seen that the loans disbursed to Respondent No. 2 was in the ordinary course of business of Respondent No. 1 and hence all allegations to the effect that the said transactions were in contravention of the scheme of the Act is absolutely false and hence denied."*

68. As can be seen from Annexure P-6 (Page 225) of the Petition, the RBI had given permission/approval for appointment of Mr. Om Prakash

Sambharia as Director as also for issuance of 28,83,506 additional shares to the Petitioner No.1. The Annexure reads thus:-



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA

प.वि.(न.दि.)सं. S२५१/सीएमएस V/05.08.000/2023-24 30 मई 2023

स्पीड-पोस्ट
The Managing Director
Exclusive Capital Limited
7/17, L.G.F, Near Hauz Khas Metro Station,
Sarvpriya Vihar,
New Delhi - 110016

महोदय

Exclusive Capital Limited – प्रबंधन एवं नियंत्रण में प्रस्तावित परिवर्तन की अनुमति।

कृपया उपर्युक्त विषय पर अपने आवेदन का संदर्भ लें ।

2. इस विषय में, आपकी कंपनी में Shri Om Prakash Sambharia की निदेशक के पद पर नियुक्ति एवं Ms. Kanta Agarwala को 28,83,506 अतिरिक्त शेयर के आबंटन के लिये अनुमति प्रदान की जाती है।

3. आपको यह भी सलाह दी जाती है कि अनुलग्नक में दिए गए नियमों और शर्तों का पालन सुनिश्चित करें ।

भवदीय

(एस. पी. सिंह)
सहायक महाप्रबंधक

संलग्न : यथोक्त

69. Admittedly, the Respondent No.1 could not act as per the permission granted by the RBI. The explanation given in the reply filed on behalf of the Respondent No.1 in this regard sounds quite arrogant. As can be seen from para 73 of the same, it is the stand taken by the Respondent No.1 that the petty amount of Rs.5 Crores as alleged by the Petitioner would not move a small stone in the business activities of the Respondent No.1/ECL. The act of the Respondent Nos.1 to 3 in not appointing Mr. Om Prakash Sambharia as Director as also not allotting the shares as referred to in RBI Letter dated 30.05.2023 sounds as harsh and inept. The para 73 of the reply filed by Respondent No.1 reads thus:-

> *"73. Subsequently, the RBI approval came through on 30.05.2023 approving the allotment of 258,83,506 shares to the Petitioners and appointment of Respondent No.7 as a director. Respondent No.1/ECL di not find it appropriate to seek Rs.5 Crores from the Petitioners considering its huge capital availability. The petty amount of Rs.5 Crores as alleged by the Petitioners would not*

move a small stone in the business activities of the Respondent No.1/ECL herein."

70. Though, it is also the stand taken on behalf of the Respondent Nos.1 to 3 that the Respondent No.1 did not infuse the fund, but it is explained in para 27 of the rejoinder filed on behalf of Petitioners that the understanding was such that the funds would be utilised from the amount of INR 62.05 Crores paid by the Petitioners to Respondent No.2. The explanation seems to be appealing for the simple reason that the Respondent No.1 could not have sought permission from RBI to allot the shares to Petitioner No.1, without there being any basis/funds made available by the Petitioner No.1. Para 27 of the rejoinder reads thus:-

"27. Further, the assertion regarding the inability of the Petitioners to infuse funds is baseless. The Petitioners had extended a loan of INR 62.05 Crores to Respondent No.2. Respondent No.2 had defaulted in repayment of this loan. This sum is quite apart from other substantial sums lent to Respondent No.1 by companies owned and controlled by the Petitioners. Respondent No.2 assured the Petitioners that he will settle part of his liability owed to the Petitioners by issuing shares in Respondent No.1 as stipulated under the Expansion Agreement. This clearly shows that the Petitioners had already parted with the funds required to be paid under the Expansion Agreement. It is for this reason that there is no communication issued to the Petitioners by Respondent Nos.1 to 4 calling upon the Petitioners to infuse the equity as envisaged under the Expansion Agreement. Therefore any allegation concerning their inability of infuse funds is without any basis."

71. In the course of the present proceedings, the respondent company has not been able to give satisfactory explanation to the allegations made regarding multiple related party transactions, which were allegedly done to siphon off money from the Respondent NBFC. This includes transactions of loan of Rs 5.07 crores to the Respondent No.2, purchase of luxury cars for Rs 9 crores, loan of Rs.12.89 Crores to Sulojay Realty Pvt Ltd. The genuineness of these transactions needs to be verified by conducting a transaction audit for the relevant period by an independent person.

72. The institution of an independent director is very important in corporate governance. The circumstances surrounding the removal of respondent No 5 by a Board resolution does not reflect well on the functioning of the respondent company, which is a NBFC dealing with large amount of public money. The allegations made by the company secretary regarding the huge losses incurred due to default of ICD Agreement with Clover Media Pvt. Ltd., which was also acknowledged by the independent Directors, raise suspicion about the manner in which the respondent company has conducted its affairs. The frequent enforcement actions by different Government Agencies point towards possible violation of laws being committed by the Respondent Company and steps need to be taken immediately to make the Respondent Company compliant with laws of the land.

73. In the aforementioned conspectus, we are convinced that the present case warrants appointment of Ld. Administrator to manage the function and affairs qua the Respondent No.1. In the wake, Hon'ble Mr. Justice R.K. Gauba,

a former Judge Delhi High Court is appointed as Administrator qua the Respondent No.1.

A. The Ld. Administrator so appointed would cause to be prepared with respect to the company: -

(a) a complete inventory of

(i) all assets and liabilities of whatever nature;

(ii) all books of account, registers, maps, plans, records, documents of title and all other documents of whatever nature;

(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;

.....

(e) proforma accounts of the company, where no up-to-date audited accounts are available; and

(f) a list of workmen of the company and their dues referred to in sub-section (3) of section 325.

B. The Ld. Administrator would also take over all the functions of the board qua the Respondent No.1 and the power and function of the board would remain in abeyance for a period of 180 days.

C. The OCDs/CCPS issued by the Respondent No.1, in violation of the RBI regulations, shall stand cancelled and money, thereof, shall be returned to respective holders and necessary formalities in this regard would be completed.

D. The Ld. Administrator will take appropriate steps after consulting the CC PS holders with regard to the above, and for this purpose, he would

be at liberty to deal with the assets of Respondent No.1 as he deems fit and as per applicable law.

E. For the purpose of verifying the allegations regarding dubious financial transactions, including those with related parties, for siphoning of funds from the respondent company, a transaction audit for the relevant period of such transactions be carried out. The Ld. Administrator will appoint a reputed Auditor/Audit Firm for the purpose.

F. The Ld. Administrator would appoint/engage Key Managerial Persons and skilled professionals to assist him in managing the affairs of the company (Respondent No.1) and to ensure that the provisions of Non-Banking Financial Company-Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 as also the letter dated 30.05.2023 issued by RBI are complied with and no defiance thereof persist.

G. For a period of 180 days, the Board of Directors would remain in suspended position. Nevertheless, the Respondent Nos.2 to 4 would be paid the same pay and allowances as they are drawing as on date.

H. On expiry of the period of 150 days the Ld. Administrator would evolve a scheme regarding composition of fresh Board of Directors and running the affairs of the company. While doing so, the Ld. Administrator would consult all stakeholders. In the meantime, the Ld. Administrator will file a monthly report regarding the affairs of the Respondent No.1 before this Tribunal, by way of IAs.

I. An appropriate application for approval of the scheme/plan to be evolved by Ld. Administrator (as above) shall be filed before this Tribunal by way of an IA, before expiry of 180 days. Nevertheless, if circumstances warrant, an application for extension of time may be filed by the Ld. Administrator. During this period, the Ld. Administrator will file a report at the end of every month apprising this Bench of the development during the month.

J. The Ld. Administrator shall do all acts as necessary, keeping in view the complications involved in the present case.

K. All parties are directed to cooperate with the Ld. administrator and the management of Respondent no.*1* are directed to make available all documents information requisition by the learned administration.

L. The Ld. Administrator would be entitled to same pay, allowances and facilities as are admissible to CEO/MD of the Respondent.

M. The Ld. Administrator is at liberty to approach this Bench for any clarification/direction with regard to the issues before him.

N. Nothing observed/stated hereinabove would be perceived to have ramification to disqualify the Respondent Nos.2 to 3 from holding the position of Director qua any company. The Petition stands disposed of. No Cost.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)