

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
11-07-2024 AT 10:30 AM**

**CP No.199/241/HDB/2020  
AND  
CA 29/2021 & IA (CA) 19/2021 in CP No.199/241/HDB/2020  
u/s. 241 of Companies Act, 2013**

**IN THE MATTER OF:**

Mr. G.V. Reddy

**...Petitioner**

**AND**

Kosher Pharmaceutical Pvt Ltd & Others

**...Respondent**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**O R D E R**

**CP No.199/241/HDB/2020**

Orders pronounced. In the result, **this Company Petition is dismissed. No costs.**

**CA 29/2021 & IA (CA) 19/2021**

As the main company petition is dismissed these IAs becomes infructuous. Accordingly, **these IAs disposed of as infructuous.**

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-I, HYDERABAD**

**CP 199/241/HDB/2020**

UNDER SECTIONS 241 AND 242 AND OTHER APPLICABLE  
PROVISIONS OF THE COMPANIES ACT, 2013 R/W RULES 11  
AND 23 AND OTHER APPLICABLE PROVISIONS OF THE NCLT  
RULES, 2016

**IN THE MATTER OF:**

**Between: -**

**M/S. KOSHER PHARMACEUTICAL PRIVATE LIMITED**

1. G.V. Reddy

C/o. Sri Adi reddy  
Aged about 60 years  
R/o. 744, Vasanth Nagar  
KPHB, Hyderabad — 72  
Ph.No. 9866415966

**.... Petitioner**

**Vs.**

1. M/s.Kosher Pharmaceutical Private Limited  
#1-48/3/2 Shanker Nagar Chandanagar,  
Hyderabad-TG 502050

2. Thirupathi Reddy Lakkireddy

SA) L. Buchi Reddy  
Aged about 44 years  
R/o H.NO 1-48/3/2

Shanker Nagar Chandanagar,  
Hyderabad-TG 502050

3. Pallavi Lakki Reddy  
W/o L. Thirupathi Reddy  
Aged about 40 years  
R/o H.NO 1-48/3/2  
Shanker Nagar Chandanagar,  
Hyderabad-TG 502050

**.... Respondents**

**Order pronounced on:18.07.2024**

**Coram:**

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)  
Shri Charan Singh, Hon'ble Member (Technical)

**Appearance:**

For the petitioners: G.Bhupesh, Advocate

For respondents: V.Raghunath, Advocates

**PER BENCH: :ORDER**

\* It is brought to the notice of the Tribunal that while issuing the certified copy of the order in CP No.199/241/2020, it is observed that instead of Section 241 it is typed inadvertently as Section 9. Therefore, it being a

typographical error, suo-moto order to be corrected by deleting the relevant part of the order. Registry shall issue a fresh order forthwith.

**SD**

**SD**

**Charan Singh**

Member Technical

**Dr. Venkata Ramakrishna Badarinath Nandula**

Member Judicial

*Pavani*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-I, HYDERABAD**

**\* CP 199/241/HDB/2020**

UNDER SECTIONS 241 AND 242 AND OTHER APPLICABLE  
PROVISIONS OF THE COMPANIES ACT, 2013 R/W RULES 11 AND  
23 AND OTHER APPLICABLE PROVISIONS OF THE NCLT RULES,  
2016

**IN THE MATTER OF:**

**Between: -**

**M/S. KOSHER PHARMACEUTICAL PRIVATE LIMITED**

1. G.V. Reddy  
C/o. Sri Adi reddy  
Aged about 60 years  
R/o. 744, Vasanth Nagar  
KPHB, Hyderabad — 72  
Ph.No. 9866415966

**.... Petitioner**

**Vs.**

1. M/s.Kosher Pharmaceutical Private Limited  
#1-48/3/2 Shanker Nagar Chandanagar,  
Hyderabad-TG 502050

2. Thirupathi Reddy Lakkireddy  
SA) L. Buchi Reddy  
Aged about 44 years  
R/o H.NO 1-48/3/2  
Shanker Nagar Chandanagar,  
Hyderabad-TG 502050

3. Pallavi Lakki Reddy  
W/o L. Thirupathi Reddy  
Aged about 40 years  
R/o H.NO 1-48/3/2  
Shanker Nagar Chandanagar,  
Hyderabad-TG 502050

**.... Respondents**

**\* corrected as per order dated 18.07.2024**

**Order pronounced on:11.07.2024**

**Coram:**

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial) Shri Charan Singh, Hon'ble Member (Technical)

**Appearance:**

For the petitioners: G.Bhupesh, Advocate

For respondents: V.Raghunath, Advocates

**PER BENCH: :ORDER**

1. This Company petition is filed under sections 241 and 242 of the Companies Act, 2013 for the following reliefs, by the Petitioners:
  - a) To set aside the transactions which are found to be illegal and invalid in the Independent Auditor's inspection and investigation consequently directing the respondents No.2 and 3 to deposit the equivalent amounts siphoned off;
  - b) To declare the Form No. DIR 12 dated 15.06.2019 filed allegedly showing the resignation of the Petitioner from Directorship as illegal;
  - c) To set aside the Form No. DIR 12 dated 15.06.2019 filed allegedly showing the resignation of the Petitioner from Directorship;
  - d) To declare the increase in share capital and allotment of 5,00,000 Shares done in favor of Lakkireddy Thirupathi Reddy and Lakkireddy Pallavi i.e., the 2nd and 3<sup>rd</sup> respondents respectively, vide Board Resolution dt.22.06.2017 as illegal;
  - e) To set aside the illegal increase in share capital and allotment of 5,00,000 Shares done in favor of Lakkireddy Thirupathi Reddy and Lakkireddy Pallavi i.e., the 2<sup>nd</sup> and 3<sup>rd</sup> respondents respectively, vide Board Resolution dt.22.06.2017;

**2. The averments of the Petitioner in brief are:**

**2.1** That the 1st Respondent company was incorporated on 29.03.2012 and registered under the provisions of the Companies Act, 1956. The 1<sup>st</sup> Respondent company is engaged in the business of Active Pharmaceutical Ingredients (APIs) and manufacturing of bulk drugs.

**2.2** It is averred that the Respondent company was originally promoted by the 3<sup>rd</sup> Respondent and one Mrs. Guda Venkata Lavanya and they originally held 1,000 shares each of Rs.100 each and on 28.03.2015, the 3<sup>rd</sup> Respondent and Mrs. Guda Venkata Lavanya further increased their capital by allotting 18,000 shares of Rs.100 each equally to each other, by Board Resolution increasing the paid-up capital of the 1<sup>st</sup> Respondent company to 18,000 shares of Rs.100 each, total amounting to Rs.18,00,000.

**2.3** It is averred that the 1<sup>st</sup> Respondent company did not commence business until October 2017 but accepted the share capital from the Promoter Directors and during the year 2012-13 and 2013-14, respondent company purchased land at Sy No 286,287 & 297, Jagadevpur Village and Mandal, Siddipet District, Telangana for the purpose of setting up the factory.

**2.4** It is averred that the 2<sup>nd</sup> Respondent was inducted as a Director in the Respondent company with effect from 07.11.2015. and Mrs. Guda Venkata Lavanya resigned as a Director of the 1<sup>st</sup> Respondent company

and transferred her 8,000 shares to the 2<sup>nd</sup> Respondent, thereby making the 2<sup>nd</sup> Respondent a 40% shareholder in the 1st Respondent company.

**2.5** It is averred that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were unable to handle the affairs of the 1st Respondent company in a professional manner and had to re-file the filings made from 2012-13 to 2014-15 on account of defect pointed out by the RoC.

**2.6** It is averred that the Petitioner is an expert in the field of environmental consultancy for the past 30 years. During the course of his business, the Petitioner was approached by the Respondent No.2 & 3 to obtain Environmental Clearance in the name of Respondent No.1 and another company under the name and style of M/s. Elite Pharmaceutical Private Limited. Further averred that in the month of January 2016, the Petitioner was approached by the Respondent No.2 and 3 with an investment proposal in their business of selling bulk drugs and pharmaceuticals and as consideration Petitioner was promised 30% of the share capital and appointment as a full-time director of the company.

**2.7** It is averred that 1<sup>st</sup> Respondent Company was in need of funds and the Petitioner infused funds aggregating to over Rs.1,13,50,000 from his own account and also from the companies in which he is a promoter and director into the 1<sup>st</sup> Respondent company between 2016-2018.

**2.8** It is averred that the Petitioner was initially appointed as an Additional Director in the 1st Respondent company vide board resolution



dt.17.03.2016 and upon repeated follow-ups regarding the Petitioner's full-time appointment as a Director, in October 2016 the 2nd Respondent informed the Petitioner that 20,000 shares were allotted in his name and he was appointed as a full-time Director of the 1<sup>st</sup> Respondent company for which the 2<sup>nd</sup> Respondent shared a certified copy of a Board Resolution dt.19.09.2016 which shows the appointment of the Petitioner as a full-time Director and allotment of around 20,000 shares in his name and the Petitioner was shocked to see the board resolution as he did not receive any notice of such meeting nor did the Petitioner attend the said meeting, which is in gross violation of Section 173(3) of the Companies Act, 2013 and fraud played upon the Petitioner by the 2<sup>nd</sup> Respondent which is punishable in terms of Section 448 of the Act.

**2.9** It is averred that the 2<sup>nd</sup> and 3rd Respondents, got themselves allotted 1,30,000 and 50,000 shares, totaling 1,80,000 shares on 27.02.2017, thereby taking their shareholding to 66% and 33% respectively.

**2.10** It is averred that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents continued to increase their stake in the 1st Respondent Company from time-to-time by round-tripping the funds of the 1st Respondent company as revealed in a forensic audit. Further averred that on 22.06.2017, the 2<sup>nd</sup> and 3<sup>rd</sup>

Respondents further passed a Board Resolution allotting 5,00,000 shares of Rs.100 each equally among themselves.

**2.11** It is averred that the Respondents were facing a mounting pressure from the Petitioner and other investors to allot shares as they were long pending and, in this regard, the Respondents passed a resolution dt.01.03.2018 allotting further 5,00,000 shares of Rs.100 each, of which around 88,500 shares were allotted to the Petitioner, which constitutes 12.64% of the post-issue paid up capital of the 1<sup>st</sup> Respondent company. Further averred that the Petitioner has been allotted shares for the first time after infusion of funds in 2016 and 2<sup>nd</sup> and 3<sup>rd</sup> Respondents also got an individual allotment of 1,67,770 shares of Rs.100 each holding 33.40% and 33% respectively of the paid-up capital of the 1<sup>st</sup> Respondent company.

**2.12** It is averred that surprisingly, the above allotment of 5,00,000 shares of Rs.100 each to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on 22.06.2017 does not reflect anywhere in the books of accounts of the 1<sup>st</sup> Respondent Company though share allotment forms being uploaded on the MCA website and annual returns of 1st Respondent company for FY 2017-18 reveals that the 2nd and 3rd Respondents have only shown an increase of 1,67,700 shares each in their shareholding whereas, the same should have been 4,17,700 shares during FY 2017-18. This clearly shows that the 2<sup>nd</sup> and 3rd Respondents have been allotting shares and passing

resolutions for such allotment at their whims and fancies without following the due process u/s 42 of the Companies Act, 2013.

**2.13** It is averred that the 1<sup>st</sup> Respondent company conveniently maintained monies received from the Petitioner as unsecured loans, whereas the Petitioner infused such funds for allotment of shares.

**2.14** It is averred that the Respondent Nos.2 and 3 were in-charge of the day-to-day operations including accounting and finance and were the authorized signatories of the company's bank accounts and started manipulating the records of the Company and undertook activities detrimental to the interests of the Respondent No.1 and other shareholders grossly violating their duties as set out under 166 of the Act and have achieved undue gain an advantage to themselves.

**2.15** It is averred that during October 2017, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents obtained loans from third parties on behalf of the 1st Respondent company from other stakeholder and informed the Petitioner that they are planning to repay the loan within 3 months and the total sum availed was not spent for the development of the plant/company and was diverted to the personal accounts of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent and this act of siphoning of funds came to the knowledge of the Petitioner in the month of March, 2019.

**2.16** It is averred that on Dussehra in October 2019, the Petitioner along with other stakeholders attended the Puja at the Plant of the 1<sup>st</sup>

Respondent company and noticing certain new equipment in the premises, the Petitioner was informed conflicting figures of the cost of the equipment as Rs.25 lakhs to Rs.40 lakhs and the Petitioner was inadvertently given the purchase order which reflected the cost of equipment as Rs.6.25 lakhs only.

**2.17** It is averred that the forensic audit commenced in November 2019, and the forensic auditor, in March 2020, submitted a detailed report for the period March 2012 to January 2020 setting out the various frauds committed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent, and the manner in which the funds of the 1<sup>st</sup> Respondent company were diverted through shell firms and fictitious persons. The siphoning-off was achieved in the following manner:

- (i) Rerouting funds through fictitious employees
- (ii) Rerouting money from suppliers
- (iii) Diversion of funds to personal accounts
- (iv) Rerouting personal loans through the accounts of the company

**2.18** It is averred that the forensic audit report also revealed that apart from siphoning off funds to a tune of Rs. 3 crores, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were also maintaining two sets of accounts internally to commit the said fraud and failed to maintain records which give a true and fair view of

the state of the affairs of the 1<sup>st</sup> Respondent Company in terms of Section 128(1) and 129(1) of the Act.

**2.19** It is averred that there were series of transactions between the 1<sup>st</sup> Respondent company and Elite Pharmaceutical Pvt. Ltd. during the year 2017-18, While the books of accounts of the 1<sup>st</sup> Respondent company reflect a balance of Rs.51,20,000 as a loan advanced from Elite Pharmaceutical Pvt. Ltd., whereas the books of Elite Pharmaceutical Pvt. Ltd. reflect a balance of a sum of Rs.71,35,999 advanced to the 1<sup>st</sup> Respondent company.

**2.20** It is averred that the Petitioner learnt from the forensic auditor in March 2020 that he is shown to have "resigned" as a director in June 2019 and the documents on the MCA website revealed that the Respondents used the digital signature of the Petitioner to achieve this purpose. The digital signature was earlier taken from the Petitioner in April 2019 under the guise of KYC updating, and was used to forge a resignation letter of the Petitioner and the same was uploaded along with Form DIR-12 on the MCA website removing the Petitioner as a director of the 1<sup>st</sup> Respondent company. Further averred that while the alleged date of resignation letter is dated 06.06.2019, the digital signature time stamp or the alleged resignation letter of the Petitioner is shown at 15.06.2019 at around 20:41:32 (GMT), which translates to 2:10 AM on 16.06.2019 as per Indian Standard Time (IST). The Form DIR-12 which was

uploaded by the 1<sup>st</sup> Respondent company, shows the Board Resolution to be passed on 15.06.2019 at 9 PM approving the said resignation, while the digital signature of the 3<sup>rd</sup> Respondent shows a time-stamp on the same day i.e., 15.06.2019 at 20:51:19 (GMT), which is only 10 minutes after the time-stamp on the alleged resignation letter which clearly shows that the resignation letter was clearly fabricated by the Respondents themselves by taking advantage of the possession of the digital signature of the Petitioner.

**2.21** It is averred that against the above acts of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents falsifying books of accounts and siphoning off funds, the Petitioner filed a criminal complaint with PS Jagdevpur, Siddipet on 21.05.2020, which was registered as Crime No.52/2020 for offences u/s 409, 420, 467, 468, 471, 477-A and 506 of the Indian Penal Code which is pending investigation.

**2.22** It is averred that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents operated the factory premises by violating numerous norms of the Telangana State Pollution Control Board (TSPCB) and upon a complaint by a resident of the village in which the factory is situated regarding the acidic discharge by the 1<sup>st</sup> Respondent company in March 2020, an inspection was conducted by the Officers of the TSPCB, who noted several violations and issued orders dt.23.05.2020 for closure of the factory premises.

**2.23** It is averred that the affairs of the company have been conducted in a manner prejudicial to the interests of the members of the company which clearly portray the continuous acts of oppression and mismanagement of the respondents No.2 and 3 in the respondent company.

**2.24** It is averred that it is necessary to reflect on the oppression and mismanagement by the Respondents Nos. 2 and 3 and it is expedite and necessary for appointing an Independent Auditor for conducting inspection and investigation into the accounts of the company and to set aside the transactions which are thereby found to be illegal and invalid and further to set aside the Form No. DIR 12 dated 15.06.2019 filed allegedly showing the resignation of the Petitioner from Directorship and further to set aside the illegal increase in share capital and allotment of 5,00,000 Shares done in favor of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

**3. The averments in the counter filed by the Respondent no.1,2 & 3 in brief are as below:**

**3.1** It is averred that the Respondent company was incorporated on 29th March 2012 and acquired land on 6th April 2013 at Sy No: 286,287 and 297 Jagadevpur Village and Mandal, Siddipet District, Telangana and the following activities took place till October 2017: -

"Applied for conversion of land for the purpose of setting up of the manufacturing unit and R&D unit. Obtaining Village NOC, Environmental Impact assessment (EIA) study after selection of land and report to MoEF, Govt of India Which takes 8 months to 1 year, Town and Country planning, Director of Factories. Fire department NOC, Public hearing by State PCB and Environmental Clearance from MoEF, Govt of India, Preparation of DPR. Selection of the Product, Market feasibility study, lay out finalizations, technical evaluation, Vendor qualifications, Civil construction selection, qualification of equipment and erecting of equipment and construction of the building which was started in the month of 2016".

- 3.2** It is averred that the commercial production was started in August 2017 and as per the procedures to be followed by every pharma (manufacturing) company, the Respondent company underwent Consent for Establishment (CFE) and Consent for Operations (CFO). A sanction letter for OD by Canara Bank dt:27-03-2017 for commercial operations was obtained by the R1 company. Further averred that for any company it requires a justifiable period for more than 5years for any new green field project establishment.
- 3.3** It is averred that before FY 2017-18, the 2nd and 3rd Respondents were completely dependent on professional advices and they are not aware of the applicable laws to a corporate entity and they could not manage basic



functions such as filing of the annual returns with the ROC and had to re-file the filings made from 2012-13 to 2014-15 on account of defect pointed out by the ROC where they were constrained to pay the penalties against the statutory violations and taxes and other dues under respective provisions of applicable laws and they have even offered refund of the petitioners amount with applicable rate of interest during the FY 2017-18. Further averred that the petitioner never showed resistance and agreed for the allotment of shares and during FY2018-19.

- 3.4** It is averred that Mr. VASISHT SAINATH, son of the Petitioner closely associated with the Respondent Company from September 2017 on behalf of the petitioner and the respondents also approached the Petitioner seeking professional assistance in obtaining PCB permissions and management of the company and the petitioner was appointed for his expertise in the field but after setting up of the Respondent's pharma company he had been trying to grab in many ways and means.
- 3.5** It is averred that it is false and incorrect to say that in the month of January 2016, Petitioner made an investment proposal and for appointed as a full/whole time director of the company but was never promised 30% of the share capital.
- 3.6** It is averred that 21st march 2016 to September 2017 petitioner lent an amount of Rs. 88,50,000/- as loan to the company and on request of the petitioner the shares were allotted by the respondent company against his

money Rs. 88, 50,000/-. Further averred that the respondent company also received the money of Rs 18,50,000 from GREEN EARTH ENVIRO ASSOCIATES as a borrowing and refunded Rs 8,50,000/- and the balance Rs 10,00,000 is shown as debt in the books of accounts.

**3.7** It is averred that there was no board meeting conducted on 19-09-2016 and no shares were allotted, the Effective date of appointment of the petitioner was 17th March 2016, meeting conducted during the calendar year after his appointment were 24-04-2016, 20-08-2016, 03-09- 2016 and 23-11-2016, hence the fact of non service of notice is denied and allegations made are completely false The same can be verified in the form MGT-7 filed for the FY 2016-17 with the ROC Hyderabad.

**3.8** It is averred that the petitioner resigned from directorship of the respondent company on 06-06-2019 and was taken on the board on 15-06-2019. Further, the petitioner incorporated the new companies, one named as VASCHEM ORGANICS PRIVATE LIMITED with the same objectives as that of respondent company on 30-07-2019 and no such intimation to the respondents. Further averred that while incorporating a company the petitioner submitted a signed the form MBP-1 to MCA under the provisions of section 184 of the companies Act, 2013 shall be called for to prove the sanity of the petitioner as he has not disclosed his interest in the similar company i.e, R1 company. Further averred that the

petitioner has been holding two DINs vide DIN: 08203904 and DIN: 02130068.

**3.9** It is averred that the petitioner compelled the respondents for an investigating audit, from August 2019 the proposal for auditor was put forth and informally the petitioner provided the documents for the said purpose to the auditor from which it is construed from the investigating audit report that the petitioner this company petition from June 2019 to till date.

**3.10** It is averred that the allotment of shares is under due process and the provisions of section 42 of the companies Act, 2013 and applicable rules. It is further averred that it is false that 10,00,000 shares at Rs. 100/- were issued when the authorized share capital of the company is Rs. 700,00,000/- only. The Respondents relied on the decision as held in *Rajahmundry Electric Supply Co. v. Nageshwara Rao AIR 1956 SC 213*, by the Hon'ble Supreme Court that:

"The courts will not, in general, intervene at the instance of shareholders in matters of internal administration, and will not interfere with the management of the company by its directors so long as they are acting within the powers conferred on them under articles of the company Moreover, if the directors are supported by the majority shareholders in what they do the minority shareholders can in general do nothing about it."

**3.11** It is averred that the respondents had spent monies from the external personal borrowings on infrastructure and civil constructions from the inception, and on August 2017, at the time of commencement of the operations the value of the assets of the company has been enhanced from

Rs 27Crores to Rs. 34Crores as per the bank valuation report given in August 2017 and 2020 . Further averred that new equipment was purchased and installed in the premises and the vouching of purchase order which reflected the cost of equipment and other installation costs are recorded in the books of accounts.

**3.12** It is averred that the respondents agreed to appoint an independent Auditor for conducting inspection and investigation into the accounts and the recommended M/S Narven Associates Chartered Accountants as the auditors for the said purpose and the petitioner initiated the audit without bringing to the knowledge of the management of the respondent company and stolen all the statutory records, registers and fabricated the documents wherever necessary and intentionally made the false statements. Further averred that for the said audit for the period 29th March 2012 (From the date of incorporation) to 31st January 2020 auditor was proposed to be appointed in a board meeting in the month of Dec 2019, but auditor completed audit in the month of February 2020 for which the respondents made an advance payment of Rs 500,000/-.

**3.13** It is averred that on 5th March 2020 the investigating audit report was served by GV Ramana, Narven Associates which is incomplete wherein the management provided further explanation, information and documents to make the report complete but after 5th March 2020 no correspondence was received from the investigating auditors to the

company nor company reverted to auditor due to COVID-19 Lock down restrictions and no access to books for verification and confirmation by the management.

**3.14** It is averred that the auditor sent an email to petitioner and his associates along with the respondent No-2 ignoring disclaimer of the alleged audit report the petitioner acted seriously and lodged criminal complaints in the Police Station, NCLT and Banks to all the stake holders of the company and the said report on which petitioner relied is unsigned and unlettered. The DISCLAIMER paragraph in the page No-43 of the Investigating report states as below,

**DISCLAIMER:**

This report is based exclusively on the facts and circumstances described during the engagement of the team for conducting investigative Audit and is given based on the representations express or implied we have relied on explanations and information provided by the management of the company and accepted the information provided by the management of the company and accepted the information provided to us as accurate and complete in all respects existence of any other factual or historical background not provided to us might require a conclusion different from the one expressed here in the information contained herein a specific only to the facts of the present case and cannot be used in any other matter and is not intended to address the circumstances of any particular individual or entity other than what has been desorbed in the report on person should act on such information without appropriate professional advice based on circumstances of a particular situation

**3.15** It is averred that on 5th August 2020 the petitioner made a Physical attack on the respondent by which the respondent No-2 filed a criminal case and an FIR registered in SR Nagar Police Station, vide Cr. No.566/2020 U/S

448, 427, 324, 506 IPC against the petitioner and his son the same is under investigation.

**3.16** It is averred that for the internal audit purpose and to rectify the defects in compliance management and make good the filings of the respondent company on 12th February 2021 a request was made to the investigating auditor to provide the documents based on which the report has been issued but has not received any reply.

**3.17** It is averred that along with the 2nd and 3rd Respondents the petitioner visited the banker of the 1st Respondent Company on 31.08.2018 and he was introduced as a director of the 1st Respondent Company, and signed as such in the credit documents and even offered personal guarantee in August 2018 for the loans availed by the 1st Respondent company with no collateral security.

**3.18** It is averred that the Petitioner wrote a letter on 31-08- 2019 to the bank for his commission and brokerage from the respondent company as a complaint letter which was attached to the copy of this petition has no locus standi as No acknowledgement and endorsement by the Bank authorities or management for commission and brokerage.

**3.19** It is averred that in May 2020, the unsigned resignation letter of the petitioner and filing of the Form DIR-12 and non-representation to the board of respondent company till the criminal cases are filed, company petition filed by the petitioner on 7th August 2021 are fore thought

activities and to disable the operations of the respondent company and put the business to route to newly owned Company by the name M/S VASCHEM ORGANICS PRIVATE LIMITED.

**3.20** It is averred that the respondents made a request to the petitioner to sign on guarantee forms for regularization of bank accounts and renewals of sanctioned limits. In addition to all these complaints, on 22nd March 2021 the petitioner approached the CANARA Bank manager and furnished investigating audit report and descended to give bank Guarantor, thereby the respondent company account is frozen and subsequently the respondent company is led to shutdown from May 2020 to till date. Further averred that as the Bank Accounts are under freeze and no financial transactions are possible to make payments to employees, workers, creditors and statutory authorities and many Creditors served notices on companies for non-payment of their dues. Further, the bank issued a loan recall notice dated 26-03-2021 and probable NPA date to the respondent company.

**3.21** It is averred that the Petitioner lodged a criminal Petition with PS Jagdevpur, Siddipet on 21.05.2020 against the 2nd and 3rd Respondents, publicized unauthenticated and unapproved audit report including falsifying books of accounts and siphoning off funds, which was registered as Crime No 52/2020 for offences under Section 409, 420. 467, 468, 471, 477-A and 506 of the Indian Penal Code 1880. The same is

currently pending before Criminal court under investigation. (The FIR Crime No 52/2020 copy is given its Annexure-23) and while the respondent was attending the PS Jagadevpur on 21st May 2020 and based on receiving a complaint from a stranger on 23rd May 2020 authorities of the TSPCB, though the respondent company received the permissions till December 2023 from Telangana state Pollution Control Board (TSPCB), without giving any opportunity of being heard or serving prior notice or any verification and inspection conducted and TSPCB closed the manufacturing unit on 23rd May 2020.

**3.22** It is averred that the after due verification, fulfilling all the conditions and on fastening 100% of satisfaction, The High court directs vide orders dated 03-12-2020, the respondent company received revoke orders on 4<sup>th</sup> March 2021 from the TSPCB and the respondent company is now operational.

**3.23** It is averred that the respondent company was progressive and extremely performing well with turnovers for FY 2017-18 was Rs. 34 Crores, for FY 2018-19 was Rs.14.27 Crores and Turnover of the FY 2019-20 is 33.56 Cr and having great business opportunity during this COVID-19 period, the turnover could have been more than Rs 60Cr and cost loss and profit loss to the company due to the petitioner's malcontent caused the total loss amounts to more than Rs. 30Cr.



**3.24** It is averred that petitioner concealed facts of Theft case lodged against him under Section 379 of the Indian Penal Code 1860 and to devastate the respondent company and to take over the operations to the petitioner's newly incorporated company M/S VASCHEM ORGANICS PRIVATE LIMITED with a duplicate DIN on 30<sup>th</sup> July 2019 and another Limited Liability partnership firm LLP and concealed all these facts in the FIR filed before the PS Jagadevpur on 21<sup>st</sup> May 2020, with a motive to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors.

**4. A Rejoinder has been filed to the counter filed by R1,2 &3 contending that:**

**4.1** It is averred that the process of availing Consent for Establishment and Consent for Operations usually takes 3 to 6 weeks of time even as per the Government norms and it is not just by Respondents to avert that 5 years are required for availing the said consents and delay of 5 years in commencing the business.

**4.2** It is averred that the Respondents cannot take the plea of not knowing the applicable laws to a corporate entity and denies that the Respondents have offered refund of the Petitioner's amount with applicable rate of interest during the Financial Year 2017-18 and prepared to refund the amounts to the Petitioner at the then valuation of shares.

- 4.3** It is averred that the books of accounts were always kept at the registered office of the Company which also happens to be the residence of the Respondents No.2 and 3.
- 4.4** It is averred that the amounts invested by the Petitioner was aggregating to over Rs. 1,13,50,000/- between 2016-18 out of which an amount of Rs.32,00,000/- was infused through one of his Companies in which he is a promoter.
- 4.5** It is averred that the 2nd and 3rd respondents got themselves illegally allotted 1,30,000 and 50,000 shares totaling to 1,80,000 shares on 27-2-2017 increasing their shareholding illegally to 66% and 33% respectively. Further averred that the 2nd and 3rd respondents on 22-6-2017 passed a Board Resolution allotting 5,00,000 shares of Rs. 100/- each equally among themselves round-tipping the funds of the respondent Company which was revealed in the Forensic Audit.
- 4.6** It is averred that the Respondents passed a resolution on 1-3-2018 allotting further 5,00,000 shares of Rs. 100/- each of which around 88,500 shares were allotted to the Petitioner constituting 12.64% of the post-issue paid-up share capital and the 2 und 3 respondents also got individual allotment of 1,67,770 shares and they held 33.40% and 33% respectively. However, to the utter surprise of the Petitioner, the said allotment of 5,00,000 shares does not reflect anywhere in the books of accounts of the

Company and the Annual Returns for the FY 2017-18 shows increase of only 1,67,700 shares while the same should have been 4,17,700.

- 4.7** It is averred that Forensic Auditor submitted a detailed report setting out the various frauds committed by the 2nd and 3rd respondents and the manner in which funds to a tune of Rs.3 Crores of the Respondent Company were diverted through shell firms and fictitious persons respondents have obtained loans from third parties.
- 4.8** It is averred that the Disclaimer Column in the Forensic/Investigative Audit Report does not anywhere state that the findings thereunder are incorrect. Further, the said Disclaimer evidences that the same is arrived at upon the information provided and explained by the Management. Further it is not just and proper on part of the Respondents to question the right of the Petitioner in lodging a Criminal Complaint and preferring the present Company Petition over fraudulent acts of mismanagement and acts of oppression in the Respondent Company.
- 4.9** It is averred that the Petitioner, in his due course of business, had proposed to open a new Company at New Delhi and as per the MCA mandated updating of KYC with the website, the actual name of the Petitioner is Mr. GOPU VENUGOPALA REDDY and the original DIN of the Petitioner was drawn on Mr. VENUGOPAL REDDY GOPU. However, while updating the KYC, the DIN was not accepted as the spelling of the name of the Petitioner varies from the Aadhaar Card and

misses Letter "A" after the word "VENUGOPAL" and the First Name "GOPU" is Reflected as the Last Name. Unaware of the procedure to rectify the same and a new DIN was drawn and updated KYC with MCA by the Consultant which is not willful to defraud or cheat any person and the same is a rectifiable mistake as per the provisions of the Companies Act, 2013, and the Petitioner had already taken steps to rectify the said mistake.

**4.10** It is averred that cross-criminal complaints lodged vide FIR No.566 and FIR No.567 dated 5-8-2020 at SR Nagar PS, Hyderabad, with issues of alleged physical fight and the Company Petition had been filed in the month of July, 2020 to mention the same. Further, the same being criminal in nature involving alleged physical fight between two individuals, would not fall under the scope of issues involved in the present Company Petition.

**4.11** It is averred that upon accessing the documents on the MCA website, it was revealed that the Respondents used the digital signature of the Petitioner to file his from Directorship and the alleged Resignation Letter does not consist of his manual signature, but consists of his digital signature which was earlier taken from him in April, 2019, under the guise of KYC updation. Further the Petitioner visited the Banker of the Respondent Company on 31-8-2019 along with the 2nd and 3rd respondents and provided personal guarantee in 2019 as evident from

Annexure 14 of the Company Petition which shows he had not resigned from his Directorship on 6-6-2019. It is further submitted that the Petitioner had also given a No-Commission Letter to the Bank on 31-8-2019 for the Personal Guarantee provided by him.

**4.12** It is averred that petitioner had no role in the TSPCB orders for closure of the factory premises as it is basing on physical verification and analytical result of samples collected from the site regarding acidic discharge by the respondent 1 factory. Incidentally, the non-operation of effluent treatment plant was observed in the Investigative Audit Report also.

**4.13** It is averred that the respondents had preferred a Writ Petition vide W.P.No. 10085 of 2020 and the Hon'ble High Court vide its orders dated 1-9-2020 had directed TSPCB to give an opportunity of hearing to the respondent as a post-decisional hearing and to give time to rectify the defects present in the functioning of the unit. Thereafter, TSPCB Issued a Temporary Revocation Order after multiple site inspections on 4-3-2021, and the Factory resumed its operations and the losses incurred by the Company cannot be attributed to the Petitioner by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

**4.14** It is averred that even after filing of this company petition, the respondents have not stopped in continuing their illegal acts which is evident from the attempts of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in proposing to conduct an AGM on 8-7-2021 to receive, conduct and adopt the Audited Financial

Statements for the Financial Year ended March 31, 2020 which period is inclusive of the period under the Forensic/Investigative Audit.

5. Therefore, in the light of the contest as above put forth by both the parties, the following point emerges for our consideration:

**POINT 1**

**Whether alleged acts of respondents i.e., removal of petitioner from directorship, issuance of shares repeatedly to R2 & R3 and siphoning off of funds by R2&R3 can be treated as acts of oppression and mismanagement? If so, what remedial actions can be taken against the respondents?**

6. We have heard Mr. G.Bhupesh, Learned Counsel for Petitioners and Mr. V.Raghunath, Ld. counsel for Respondents, perused the record and the submissions.

**POINT 1**

Whether alleged acts of respondents i.e., removal of petitioner from directorship, issuance of shares repeatedly to R2 & R3 and siphoning off of funds by R2&R3 can be treated as acts of oppression and mismanagement? If so, what remedial actions can be taken against the respondents?

**Submissions:**

7. Ld. Counsel for the Petitioners would submit that, the R1 Company was promoted by R3 and one Mrs Guda Venkata Layanya and as on March- 2015 each of them was holding 1000 shares of Rs100

per share in the Company. In the year 2015-16, additional 18000 shares were issued to both of them thus making shareholding of each of them as 10000 shares. In the same financial year, on 07.11.2015, R2 joined the Company as Director and Mrs Guda Venkata Layanya resigned from the Directorship and she also transferred her 8000 shares to R2. Ld Counsel further submitted that Petitioner joined this Company on 17.03.2016 as Additional Director. Ld Counsel further submitted that he was told that he has been appointed as full time Director as per Board Resolution dated 19.09.2016 but later it turned out to be a fraud played upon by R2 on the petitioner. Ld Counsel further submitted that on 22.06.2017, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents passed a Board Resolution for allotment of 5,00,000 shares of Rs.100 each equally among themselves but this allotment does not reflect anywhere in the books of accounts of the 1<sup>st</sup> Respondent Company as per annual returns of 1st Respondent company for FY 2017-18 which clearly shows that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have been allotting shares and passing resolutions for such allotment at their whims and facies without following the due process u/s 42 of the Companies Act, 2013. Ld. Counsel further submitted that petitioner was also issued 88500 shares out of these 5,00,000 shares through a board resolution dated 01.03.2018. The counsel further alleged that R1 Company conveniently maintained monies received from the petitioner

as unsecured loans whereas the petitioner infused the funds for allotment of shares.

- 8.** Ld counsel further submitted that R2 and R3 are involved in the act of siphoning off of funds of R1 company and forensic audit report reveals that apart from siphoning off of funds to a tune of Rs. 3 crores, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were also maintaining two sets of accounts internally to commit the said fraud and failed to maintain records which give a true and fair view of the state of the affairs of the 1<sup>st</sup> Respondent Company in terms of Section 128(1) and 129(1) of the Act. Ld counsel further submitted that the books of accounts of the 1<sup>st</sup> Respondent company reflect a balance of Rs.51,20,000 as a loan advanced from Elite Pharmaceutical Pvt. Ltd., whereas the books of Elite Pharmaceutical Pvt. Ltd. reflect a balance of a sum of Rs.71,35,999 advanced to the 1<sup>st</sup> Respondent company which shows that books of accounts of R1 company are not maintained properly.
- 9.** Ld counsel for petitioner further submitted that Respondents used the digital signature of the Petitioner to forge a resignation letter dated 15.06.2019 of the Petitioner and the same was uploaded along with Form DIR-12 on the MCA website on the same day removing the Petitioner as a director of the 1<sup>st</sup> Respondent company. The counsel for Petitioner further alleges that respondents took digital signature of



Petitioner in April 2019 under the guise of KYC updating and misused it.

- 10.** Per Contra, Learned Counsel for respondents submit that it is incorrect statement on the part of Petitioner that he was promised 30% share capital and was appointed as a full time Director in 2016. Learned Counsel submitted that Petitioner lent an amount of Rs 88,50,000.00 to R1 company which was properly shown as borrowing in the books of the Company and later on as per request of the petitioner the shares were allotted by the respondent company against his loan of Rs 88,50,000.00. Ld Counsel further submitted that Petitioner was appointed as additional director on 17.03.2016 in R1 Company. Ld Counsel further submitted that in 2019, while updating KYC details of the directors of the Company, it unfolded that Petitioner held another active DIN. Consequently, the respondents requested the petitioner to resign in order to re-appoint him with the existing active DIN. Respondent submits that accordingly, the petitioner resigned from directorship of the respondent company on 06-06-2019 which was subsequently approved by the board on 15-06-2019. Learned Counsel for respondents further submitted that petitioner never approached R1 for re-appointment with the existing active DIN and instead incorporated a new Company, M/s Vaschem Organics Private Limited on 30.07.2019 with the similar objectives of the R1 Company. Learned Counsel

submits that this incorporation of new company was just within 50 days post resignation of petitioner from directorship of R1 company. Learned Counsel further averred that while incorporating a company the petitioner submitted form MBP-1 to MCA under the provisions of section 184 of the companies Act, 2013 and has neither disclosed his interest in the similar company i.e., R1 company nor he disclosed the fact that he has been holding two DINs vide DIN: 08203904 and DIN: 02130068 which is illegal as per Companies Act, 2013 .

- 11.** Ld counsel further submitted that the petitioner compelled the respondents for an investigating audit and he proceeded to engage an auditor supported only by a consent letter from R2 without any Board approval. Ld counsel contended that the information provided to the forensic auditor by the petitioner was falsified and do not reflect correct information about R1 Company. Ld counsel further submits that when confronted on this issue, the petitioner physically assaulted R2, broke cupboards of R1 Company and forcibly took documents therein. A criminal complaint to this effect has already been filed and which is currently under investigation.
- 12.** Ld counsel for respondents further submitted that on 22nd March 2021 the petitioner approached the CANARA Bank manager and furnished investigating audit report and declined to give bank Guarantee, thereby the respondent company's account was frozen and subsequently the

respondent company was led to shut down from May 2020 to till date and the Bank Accounts are under freeze and no financial transactions are possible to make payments to employees, workers, creditors and statutory authorities. Many Creditors served notices on companies for non-payment of their dues and bank also issued a loan recall notice dated 26-03-2021 to the respondent company.

### **OUR OBSERVATIONS AND FINDINGS:**

13. On a careful perusal of the records, facts of the case and oral submissions made by both sides, it is pertinent to state that, the allegations of petitioner pertain to three areas viz. repeated allotment of shares to respondents, Petitioner's removal from the Board as Director and siphoning off of funds of Company by R2 and R3. Our observations and findings in all the three areas are given hereunder.
14. **Repeated allotment of shares to R2 and R3:** On perusal of records, we find that petitioner has simply alleged that the respondents have increased their share capital repeatedly but has not pointed out any non-compliance or defects in the process of allotment of shares to R2 and R3 which contravenes any provision of Companies Act or Articles and Association / MOA of the Company. The only discrepancy pointed out by Petitioner is that on 22.06.2017, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents passed a Board Resolution for allotment of 5,00,000 shares of Rs.100 each equally among themselves but this allotment does not reflect anywhere in the books of accounts of the 1<sup>st</sup> Respondent Company as per annual returns of 1st Respondent company for FY 2017-18 . Ld Counsel submitted that it clearly shows that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have been allotting

shares and passing resolutions for such allotment at their whims and fancies without following the due process u/s 42 of the Companies Act, 2013.

15. We carefully perused the records and find that there is an addition of 5,00,000 shares in equity of the company as per Annual returns of the Company for the year 2017-18, filed with ROC which is in conformity with the alleged Board resolution for allotment of shares. We further perused the records and find that these shares are allotted as under:

Pallavi Lakki Reddy ( R3) ---	1,67,770 shares
Tirupathi Reddy Lakkireddy (R2)-----	1,67,770 shares
G . V. Reddy ( Petitioner) -----	88,500 shares
K. M. Reddy -----	12,980 shares
K. P . Reddy-----	50,000 shares
K. Pushpamala----	12, 980 shares
<b>Total allotted shares</b>	<b>5,00,000 shares</b>

Therefore, the allegation of petitioner that shares were issued without reflecting in the annual returns of the company is not tenable, hence we reject the same. We do not find any other contention raised by petitioner in respect of allotment of shares except alleging in general that shares were repeatedly issued to R2 and R3 which cannot be considered as an act of oppression and mismanagement. We also observe that petitioner has not submitted any document substantiating that the money he lent to R1 Company was for issuance of shares and not as an unsecured loan. We cannot rely this allegation merely on a statement of petitioner without any proof or records substantiating the same. Hence, we reject the contention of the petitioner that his money was treated as unsecured loan though he gave money for issuance of shares.

16. **Petitioner's removal from the Board as Director :**

Prayer (b, c), here in, in this petition are to set aside Form No DIR12 dated 15.06.2019 filed allegedly showing the resignation of the petitioner from

the directorship. Admittedly, as per written and oral submissions of Petitioner, he himself accept that his digital signature has been fraudulently used for his resignation. If that be so, the resignation letter is a valid and legal document containing valid signature of petitioner till it is declared as null and void by any Court on account of fraud as pleaded by the petitioner. As submitted by the Petitioner that he has already filed a criminal complaint on 21.05.2020 which is pending investigation. Therefore, in the light of the above facts as on date this Tribunal cannot set aside DIR12 which is filed with resignation letter of petitioner with genuine digital signature. We further observe that even if we accept the contention of the petitioner that his removal from directorship is illegal it cannot amount to oppression and mismanagement as Hon'ble Apex court in **Needle Industries** has held that act of illegally removing the Petitioner as a Director in itself do not amount to oppression. It is to be seen as to whether this illegality amounted to oppression. In the case of **Tata Consultancy Services Limited vs Cyrus Investments Pvt Ltd, (2021) 9 SCC 449**, also it was observed by the Hon'ble Supreme Court as follows:

“118. An important aspect to be noticed is that in a petition under Section 241, the Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamounts to a conduct oppressive or prejudicial to some members. Even in cases where the Tribunal finds that the removal of a Director was not in accordance with law or was not justified on facts, the Tribunal cannot grant a relief under Section 242 unless the removal was oppressive or prejudicial.

119. There may be cases where the removal of a Director might have been carried out perfectly in accordance with law and yet may be part of a larger design to oppress or prejudice the interests of some members. It is only in such cases that the Tribunal can grant a relief under Section 242. The Company Tribunal is not a Labour Court or an Administrative Tribunal to focus entirely on the manner of removal of a person from Directorship. Therefore, the accolades received by CPM from the Nomination and Remuneration Committee or the Board of Directors on 29-6-2016, cannot advance his case.

.....

121. As we have pointed out above, the validity of and justification for the removal of a person can never be the primary focus of a Tribunal under Section 242 unless the same is in furtherance of a conduct oppressive or prejudicial to some of the members.”

In lieu of the above, the removal of Petitioner from Director cannot be considered as an act of oppression and mismanagement.

**17. Siphoning off of funds of R1 Company by R2 and R3**

We find that the allegations of petitioner about siphoning off of funds of company by R2 and R3 are based merely on the findings of the forensic audit report which was conducted on behest of the petitioner. The respondents have challenged the validity of this report as it is not conducted as per proper procedure. The respondents contend that no Board meeting was conducted for appointment of auditor, nor any approval was given by the Board. We find merit in the submissions made by the respondents that since appointment of Forensic Auditor was not approved by the Board, so this Report cannot be considered as a legal and valid document.

- 18.** We have perused relevant provisions of the Companies Act, 2013 governing investigation/ investigative audit into affairs of company and we deem it proper to reproduced the same hereunder:

*Section 210. Investigation into affairs of company. —*

*(1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company, —*

*(a) on the receipt of a report of the Registrar or inspector under section 208;*

*(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or*

*(c) in public interest,*

*it may order an investigation into the affairs of the company.*

*(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.*

(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

**Section 212.** Investigation into affairs of Company by Serious Fraud Investigation Office. —

(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

- (a) on receipt of a report of the Registrar or inspector under section 208;
  - (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;**
  - (c) in the public interest; or
  - (d) on request from any Department of the Central Government or a State Government,
- the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) to (17) .. ..”

**Section 213.** Investigation into company's affairs in other cases.— The Tribunal may,—

- (a) on an application made by—
  - (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or
  - (ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital,

and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

- (b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—
  - (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;
  - (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
  - (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including

*information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,*

*order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:*

*Provided that if after investigation it is proved that—*

*(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or*

*(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,*

*then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.”*

- 19.** A careful perusal of the above sections transpires that investigation into affairs of the company can be made on the orders of Central Government, National Company Law Tribunal (NCLT) and Serious Fraud Investigation Office (SFIO). *Though Section 212 (1) (b) of the Companies Act, 2013 provides that company itself can order for investigation into its affairs, but for that company has to pass a special resolution that its affairs are required to be investigated.* Therefore, we are of the opinion that the forensic audit conducted to investigate the affairs of the company only on the basis of an authorization letter given



by one Director of the company is not legal, hence cannot be accepted for our findings and observations.

20. We have also perused the Investigative Audit Report compiled by Narven Associates and found that this Report is not addressed to anyone and it is tacit on –

- purpose of this Investigative Audit Report; and
- who authorized Narven Associates to conduct such an audit.

21. On a careful perusal of the Report, we further found that the report records that this Report is based on some excel sheets which G.V. Reddy/ petitioner has made available to them. Extract of relevant part of the Report is reproduced hereunder:

*“2. Mr.G.V. Reddy has made available to us, some excel sheets, that he and his team have found some files in the company’s computer network in Kosher premises, that are being maintained by the kosher management, which were not made available to all the stakeholders/ lenders.*

*When examined the excel sheets provided, they contain data relating to payments made to capital goods creditors through various modes from Kosher and those creditors returning the payments received from kosher, after deducting the VAT component and an excess rate of about 7%. The above mentioned capital goods creditors are namely Shri Laxmi Steels, Vishnu Steels, Electra Solutions, Micrometal Industries and KR Engineering. .. ..”*

*“3. Also, Mr. G.V. Reddy has made various types of information available to us, which were as following:*

- a) Comparison of estimated prices from Schneider relating to various parcels with those prices the company has purchased from the M/s Vibrant Engineering.*
- b) Estimated coal consumption of Kosher and also the prices of coal from the Singareni Collieries Company Limited.*
- c) Purchase orders and Invoices of various vendors to establish that the amounts in the invoices have been inflated.*
- d) Incorrect production figures as sent by the Kosher management to the stakeholders/ lenders. .. ..”*

- 22.** In view of the above observations made in the Investigative Audit Report it becomes clear that firstly this Investigative Audit Report is not obtained in a lawful manner and secondly it was prepared based on the documents / inputs as provided by the petitioner, Mr. G.V. Reddy. We further observe that Investigative Auditor has not sought any comments from the management on the irregularities reported by Investigative Auditor. In view of the above facts this Report is inadmissible in the eye of law. Since, the allegation of siphoning off of funds and misutilization of funds of R/1 company by respondents no.2 and 3 is purely based on this Investigative Audit Report, which is not accepted by us, we hold that this allegation is not maintainable.
- 23.** In the above backdrop, we decide that alleged acts of respondents R2 & R3 cannot be treated as acts of oppression and mismanagement. The point is accordingly decided.
- 24.** Keeping in view the above, we are of the view that this petition is liable to be dismissed. Hence dismissed, without any cost.

**SD**

**SD**

**Charan Singh**  
Member Technical

**Dr. Venkata Ramakrishna Badarinath Nandula**  
Member Judicial

Karim