

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
02-04-2024 AT 10:30 AM**

**CP No. 38/2006
TP No. 07/HDB/2016
AND
Contempt. P (CA) 3/2023 & IA (CA) 6/2023 in CP No. 38/2006
TP No. 07/HDB/2016
u/s. 397/398 of Companies Act, 2013**

IN THE MATTER OF:

Mr. Vijay Kumar Goyal & 3 Others

...Petitioner

AND

Krishna Metal Industries Pvt Ltd & 4 Others

...Respondent

C O R A M:-

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

ORDER

CP No. 38/2006

TP No. 07/HDB/2016

Orders pronounced. In the result, **the Company Petition is allowed** to the extent indicated in the order.

Contempt. P (CA) 3/2023

Orders deferred till **09.05.2024**.

Since the orders in IAs 104/2008, 24/2010 and 1/2015 are ready however as the court officer she in advertently not listed in the cause list. Let these IAs be listed in the supplementary list for passing of orders.

IA (CA) 6/2023

This application is disposed of.

Supplementary List

IA No. 104/2008

This application is disposed of.

IA No 24/2010

This application is disposed of.

IA No 1/2015

This application is disposed of.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH No.1, HYDERABAD**

**CP No. 38 of 2006
TP No.07/HDB/2016**

..

- 1. Vijay Kumar Goyal**
- 2. Bhushan Goyal**
- 3. Vishal Goyal**
- 4. Smt. Sudha Goyal**

All at: No.30, Rajasekharan Street
Mylapore
Chennai – 600 004.

.. **Petitioners**

VERSUS

- 1. Krishna Metal Industries Private Limited**

Having its registered office at
13-6-824/1, Karwan Road
Hyderabad – 500 067.

- 2. Smt. Sheela Gupta**
12-2-713, Nanal Nagar
Hyderabad – 500 028.

- 3. Mitesh Gupta**
12-2-713, Nanal Nagar
Hyderabad – 500 028.

- 4. Girish Gupta**
12-2-713, Nanal Nagar
Hyderabad – 500 028.

- 5. Smt. Mukta Mangal Alias
Meenu Mangal**
2/8, New Palasi
Indore – 452 001.

... **Respondents**

UNDER SECTIONS 397, 398, 402, 403, 406 AND
SCHEDULE XI OF THE COMPANIES ACT, 1956.

Date of Order: 2nd April 2024

Coram:

**Dr. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH
MEMBER (TECHNICAL)**

Parties / Counsels Present

For petitioners : Shri Satish Parasaran, Senior Counsel and
Shri R. Parthasarathy, Senior Counsel
assisted by Mr. T.V.P. Sai Vihar, Advocate.

For respondents 1 to 4 : Shri Y. Suryanarayana, Advocate.

For respondent 5 : None

Per BENCH

ORDER

This company petition is filed under sections 397,
398, 402, 403, 406 of the Companies Act, 1956, praying
for the following reliefs.

- (a) To supersede the Board of Directors of the company and to appoint a Committee to take charge of the affairs of the company.
- (b) To direct the Committee appointed to bring the landed/ immovable properties belonging to the company to sell

by public auction at the best possible price and to distribute the proceeds among the shareholders pro rata after paying off any statutory and unsecured liabilities.

- (c) To appoint a Chartered Accountant or such other competent person to conduct an investigative audit into the affairs of the company and to pass orders under Schedule XI of the Companies Act, 1956 surcharging such of those persons, officers who have caused loss to the company.
- (d) In the alternative provide for an exit mechanism for one group to exit the company.

2. This Company Petition was instituted on 05.07.2006 as CP No.38 of 2006 before the erstwhile Ld. Company Law Board (CLB), Additional Principal Bench, Chennai, and on abolition of CLB, the matter was transferred to this Tribunal, and it got renumbered as Transfer Petition No.07/HDB/2016.

The description petitioners:

The petitioners are the shareholders of respondent no.1/ company. Petitioners no.1 and 4 are parents. Petitioners no.2 and 3 are their elder son and younger son respectively. Petitioner no.1 is elder brother of late Nirmal Kumar Gupta (NKG).

Description of respondents:

The 1st Respondent is the company. The 2nd Respondent is the widow of late Nirmal Kumar Gupta (NKG), who was younger brother of petitioner no.1. Respondents no.3, 4 and 5 are sons and daughter respectively of late NKG. Thus, respondents no.2 to 5 are the legal heirs of late Nirmal Kumar Gupta. Said late Nirmal Kumar Gupta was Director of the Company, who expired on 03.05.2006. The present petition was filed a month later, viz. in June 2006.

Respon- dent No.	Name	Relationship
1	Krishna Metal Industries Pvt Ltd.	The company in question.
2	Smt. Sheela Gupta	Widow of late Nirmal Kumar Gupta (NKG). R/5 is her daughter.
3	Mitesh Gupta	Younger Son of late NKG. R/5 is his sister.
4	Girish Gupta	Elder son of late NKG. R/5 is his sister.
5	Smt. Mukta Mangal Alias Meenu Mangal.	Daughter of late NKG. R/2 is her mother. R/3 and R/4 are her brothers. She is wife of Rajesh Mangal.

3 The 1st Respondent was incorporated on 21.06.1982 with two Directors, viz. petitioner no.1 (resident of Chennai) and late NKG (resident of Hyderabad).

4. Shareholding pattern of the company is:

Res- pon- dent no.	Name and description	Shareholding
1	Krishna Metal Industries Pvt Ltd., a company registered under the Companies Act, 1956 with the	Its authorized share capital is Rs.20,00,000 divided into 15,000 number of equity shares of

	erstwhile RoC, Andhra Pradesh on 21.06.1982. Its main objects are described in Memorandum and Articles of Association at Annexure-1 .	Rs.100 each and 5,000 number Preference Shares of Rs.100 each; and issued, subscribed and paid-up capital is Rs.2,87,300 divided into 2873 number of equity shares of Rs.100 each.
2	Mrs. Sheela Gupta (first subscriber of R/1), wife of late Nirmal Kumar Gupta.	Respondents no.2 (wife) and 3 (son) along with late Nirmal Kumar Gupta held 1203 number of equity shares in R/1 company. When Nirmal Kumar Gupta expired on 03.05.2006, 678 number of shares held by him is deemed to have been acquired by his legal heirs/ respondents no.1 to 5.
3	Mitesh Gupta, son of late Nirmal Kumar Gupta, R/3.	
4	Girish Gupta, son of late Nirmal Kumar Gupta, R/4.	
5	Smt. Mukta Mangal Alias Meenu Mangal, wife of Rajesh Mangal and daughter of late Nirmal Kumar Gupta.	

The petitioners and the respondents are biologically related parties. As averred in para 53 of the petition, several efforts made by the petitioners to resolve the issues between the parties failed. **Late Nirmal Kumar Gupta could have been a link** between the parties and he could have used his office and energy to sort out the issues. It may be apt to quote the following phrases from para 53 of the petition:

“It is universal and proven fact that two knives cannot fit in a single groove and hence separation of the assets between the groups in proportion to their shareholdings is the only justified alternative.”

49. At the outset it may further be necessary to note the following phrases from para 52 of the petition:

*“52. .. The company having become defunct and **non-functional**/ non-operational remains only on paper, **but with precious assets** in which the petitioners and shareholders are substantially interested.*

*...
There is no likelihood of any chance to revive the company or bring it back to manufacturing stream inasmuch as there was no machinery left worth mentioning or the workforce needed or the main material and infrastructure needed for the same. Recent photographs of the factory premises as ANNEXURE-41 clearly show the present ambience of the factory premises. The only object of the respondents is to dislodge and dispossess the petitioners from the company. The only possible way to render equitable justice to the petitioners and the respondents is to divide the assets.”*

6. ORIGIN OF RESPONDENT NO.1/ COMPANY:

(i) A partnership firm in the name and style as ‘Krishna Metal Industries’ was constituted in 1970, which was reconstituted on 01.05.1972 under a fresh partnership deed.

(ii) A separate company known as ‘M/s Krishna Metal Industries Private Limited’ incorporated as a private limited company on 21.06.1982 with the RoC, Andhra Pradesh

Its first subscribers are:

- Smt. Bimla Devi, wife of Nand Kishore Goel
- Smt. Sheela Gupta (R/2), wife of late Nirmal Kumar Gupta.

Its Directors are:

- Vijay Kumar Goyal, petitioner no.1, representing the interest of petitioner-Group, hereinafter referred to as ‘VKG Group’
- Late Nirmal Kumar Gupta-Group, husband of respondent no.2, hereinafter referred to as ‘NKG Group’.

(iii) On 20.10.1982, the partnership firm ‘Krishan Metal Industries’ was dissolved and its entire assets and liabilities were taken over by M/s Krishna Metal

Industries Private Limited. Dissolution of partnership firm was complete in all respects and its assets were taken over by respondent no.1/ company being a partner. Interest of all other partners in the said firm was also settled satisfactorily in all respects.

(iv) Reins of respondent no.1/ company were taken over by the family of Vijay Kumar Goyal Group. Shareholding pattern between two groups is:

- VKG Group/ petitioner-group .. 34.53%
- NKG Group/ respondent-group .. 65.47%

A copy of Annual Return as on 30.09.2003 is at **Annexure-2.**

(v) During 1982-83 Erstwhile Bank of Tamilnadu had sanctioned Cash Credit Limit of Rs.35 lacs and Term Loan of Rs.25 lacs to respondent no.1/ company, which was eroded by the company in one and half years due to

mismanagement by its resident director, late Nirmal Kumar Gupta. Indian Overseas Bank, which took over Bank of Tamilnadu had filed a case against respondent no.1/ company. Said case has ultimately been transferred to DRT.

(vi) In 1984 respondent no.1 became sick and in 1990 it became non-functional, dormant and no business was carried on ever since.

(vii) In 2000 One Time Settlement (OTS) was entered into between the Bank and respondent no.1/ company and thereby the proceedings before the DRT came to end.

(viii) By virtue of Agreement to Lease dated 28.06.1990 (**Annexure-3**) respondent no.1/ company was leased out to M/s Jairaj Ispat Limited, Hyderabad, which came to end in 1995.

(ix) Vide Lease Deed dated 25.04.1997 respondent no.1/ company was leased out to M/s Adilaxmi Steel Industries Ltd., which came to end in 1998.

(x) Shareholding pattern of respondent no.1/ company as on 30.09.2002 is:

Sl. No.	Name of shareholder	Number of shares held
1.	Late Smt. Chanda Devi	234
2.	Vijay Kumar Goyal, P/1.	0
3.	Sudha Devi, P/4	510
4.	Bushan Goyal, P/2	183
5.	Late Nirmal Kumar Gupta, younger brother of P/1	560
6.	Sheela Gupta, R/2	693
7.	Mitesh Gupta, R/3	510
8.	Girish Gupta. R/4	183
TOTAL		2873

49. IRREGULARITIES ALLEGED:

Irregularities alleged	Consequential effect
Company becoming non-functional	

<p>Under Agreement dated 04.05.1983 (Annexure-4), respondent no.1/ company had appointed Late Nirmal Kumar Gupta as Resident Director. He had admitted that he was solely in-charge of the affairs of the company in his letter dated 09.04.2005 (Annexure-5) and in para 2 of the Written Statement dated 31.03.1988 (Annexure-6, page 91) filed before the DRT.</p>	<p>Failure on the part of late Nirmal Kumar Gupta led the company becoming non-functional to the detriment to interest of shareholders, particularly, the shareholding of the petitioners/ Vijay Kumar Goyal Group.</p>
<p>In view of the disputes between Vijay Kumar Goyal (petitioner) Group and Nirmal Kumar Gupta (respondent) Group, petitioner no.1 had addressed letter dated 22.03.2005 (ANNEXURE-8) to RoC requesting him not to receive</p>	<p>Such a proposition did not work.</p>

<p>any document filed by any person other than the petitioners.</p>	
<p style="text-align: center;">Illegal induction of R/3 & R/4 as Directors Cornering land/ misappropriation of plant & machinery</p>	
<p>The equity as per annexure-2 (as on 30.09.2003) and the composition of Board of Directors was in effect till early 2005. Late Nirmal Kumar Gupta deceitfully inducted his sons, viz. respondents no.3 and 4 into the Board of Directors in EGM dated 21.04.2005, by sending Telegraphic communications belatedly without relevant papers in an attempt to connive and conspire with the respondents.</p> <p>Annexures, 9, 10, 11 12 are such Telegraphic communications exchanged between late Nirmal Kumar Gupta and the petitioners.</p>	<p>Cornered the precious land owned by respondent no.1/ company admeasuring acres 6.36 gunthas at Survey No.497, 498, 500/1, 502 and 503 on Karwan Road, Ranga Reddy District under Greater Hyderabad limits, abutting Inner Ring Road, worth not less than Rs.40 crores.</p> <p>Late Nirmal Kumar Gupta along with sons/ R3 and R/4 had misappropriated valuable plant and machinery comprising heavy machinery, viz. steel re-rolling mills, electrical transformers, lathe machines, etc. Value of such machinery as per Balance Sheet for 1988 was Rs.22,55,126/-.</p> <p>Photos of factory premises reflecting signs of removed machinery are at Annexure-7.</p>

Form-32 dated 27.04.2005 filed with RoC, AP reflected the same.	
R/4 proclaiming himself as Chairman	
By virtue of his directorship respondent no.4 proclaimed himself as Chairman of the company.	Respondent no.1/ company sustained undue loss.
On requisition dated 07.02.2005 (ANNEXURE-13) made by Smt. Sheela Gupta an EGM was convened on 21.04.2005, without notice to the Board members.	Resolution was passed inducting her sons, viz. respondents no.3 and 4/ Mitesh Gupta and Girish Gupta, as explained above.
Denial of inspection of books of accounts. Mutation of company's lands in favour of late NKG	
Petitioner no.1 vide letters dated 04.04.2005, 20.05.2005, 03.12.2005, 13.03.2006, 10.04.2006 (Annexures 14, 15, 16, 17 & 18) requested late Nirmal Kumar Gupta and the respondents to allow him to inspect records and	Such written requests of petitioner no.1 were not adhered to. Per contra, mutation of the company's property has been changed to show the name of late Nirmal Kumar Gupta as proprietor of respondent no.1/ company. The respondents have illegally mutated the immovable property of the

<p>statutory books of the company. Petitioner no.1 also addressed communications dated 11.03.2005, 20.05.2005, 03.12.2005, 26.12.2005, 06.02.2006, 16.03.2006 and 18.04.2006 (Annexures 10, 15, 16, 19, 20, 21 & 22) requesting him to send Minutes of Board/ General Meetings.</p>	<p>company admeasuring acres 6.36 gts in the name of Nirmal Kumar Gupta showing him proprietor of R/1. When asked Nirmal Kumar Gupta gave vague and evasive reply (Annex.23 of petition).</p>
<p>Petitioner no.1 has sought clarification vide his letters dated 04.04.2005 and 03.12.2005 (Annexure-14 and 16).</p>	<p>Late Nirmal Kumar Gupta vide his reply dated 13.12.2005 (Annexure-23) stated that the matter of ownership of land is subjudice, without stating how it is subjudice. Thus, he cannot comment on the same.</p>
<p>Petitioner no.1 vide his letters dated 20.05.2005, 03.12.2005, 06.12.2005, 11.12.2005 and 21.01.2006 (Annexures 15, 16, 24, 25 and 26) sought to know</p>	<p>Plant and machinery appears to have been misappropriated by the respondents since there is no response from them to communications at Annexures 15, 16, 24 and 25).</p>

<p>status of machineries of respondent no.1/ company.</p>	
<p>Siphoning off funds of Rs.13.95 lacs</p>	
<p>Without knowledge of petitioner no.1, three cheques dated 08.09.2004, 18.03.2005 and 03.06.2005 to Mitesh Gupta and late Nirmal Kumar Gupta for an aggregated amount of Rs.13,95,000/- were issued from Bank Account of respondent no.1/ company and paid to Mitesh Gupta, respondent no.3 and late Nirmal Kumar Gupta</p>	<p>Proceeds of the said three cheques have been siphoned off and misappropriated. No explanation was given by late Nirmal Kumar Gupta despite letters dated 20.05.2005, 03.12.2005 and 20.01.2006 (Annexures 15, 16 and 27).</p>
<p>Finalization of Balance Sheets without notice to P/1</p>	
<p>Petitioner no.1 being Director visited the Registered office of respondent no.1/ company on 05.12.2005 with intent to convene Boar Meeting. Premises were kept</p>	<p>Mischievously drew Balance Sheet of the company for year ended on 31.03.2005 (ANNEXURE-28). Notice of AGM, Balance Sheet for FY ended on 31.03.2005 proposed to be adopted on 30.12.2005 were</p>

locked to ensure that no Board was held by legally constituted Board.	issued by Girish Gupta, respondent no.4 in order to legitimize and legalize the illegal appointments of Mitesh Gupta and Girish Gupta, respondents no.3 & 4, as Directors. Besides, machineries were sold, details of which can be unearthed by Tribunal appointed Commissioner.
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8. FINANCIAL IRREGULARITIES ALLEGED:

(i) The petitioners submitted that the Directors' report annexed to the Balance Sheet of the company for the year ending 31-03-2005 states that,

“It is to bring to the notice of the members that one of the Director, Mr. Vijay Kumar Goyal, has operated Company's Bank Account at Chennai without the Board's sanction, and despite being asked to explain the arbitrary operation of the Bank Account by the Board, he declined to give any reasons for the same”.

Consequently, the opening and closing balances of the said bank account at Indian Bank, Chennai, was debited to the unsecured loan account of the First Petitioner. The

petitioners refuted the above allegation as imaginary and absurd. The First Petitioner was authorized to operate the said bank account for past more than a decade. A copy of the letter of authority to operate the said account along with the relevant documents of Indian Bank are enclosed collectively as **ANNEXURE 29**.

(ii) The petitioners submitted that Balance Sheet of respondent no.1/ Company for the year ended on 31.3.2004, shows that respondent no.1/ Company owes unsecured loans to the tune of Rs.40.35 lacs which includes an amount of Rs.19.77 lacs due to petitioner no.1 and the said outstanding unsecured loan of Rs.40.35 lacs has been diluted and brought down to Rs.18.60 lacs as on 31.3.2005.

(iii) The petitioners further submitted that the petitioners' letters dated 11.12.2005, 25-12-2005 and 11-04-2006 (**ANNEXURES 25, 30 & 31**) could not elicit information from the Respondents as to how the outstanding unsecured loan amount of Rs.40.35 lacs has been accounted for and brought down to Rs.18.60 lacs and to whom the difference was paid, who has brought in the money and to whom the Company owes etc. have not been spelt out.

9. Apparently, the figures shown under the head 'unsecured loan', that too without any breakup. Late Nirmal Kumar Gupta along with Mitesh Gupta and Girish Gupta/ respondents No.3 and 4 (alleged Directors) had fabricated the figures under the head unsecured loans. Below are the amounts advanced by the petitioners and their HUFs to respondent no.1/ company which are yet to

Be repaid but appears to have diminished mysteriously in the books:

Sl. No.	Name of Creditor	Status in CP No.38 of 2006	Amount due as on 31-03-2005
1	Vijay Kumar Goyal	Petitioner no.1	14,29,960.50
2	Sudha Goyal	Petitioner no.4	3,77,480.00
3	Bhushan Goyal	Petitioner no.2	3,55,025.00
4	Vishal Goyal	Petitioner no.3	2,58,137.00
5	Vijay Kumar Goyal HUF		2,58,137.00
6	V K Goyal (S) HUF		2,58,137.00
TOTAL			29,36,876.50

10. This in itself is a clear violation of the requirements of Part-I of Schedule VI of the Companies Act, 1956 and the requirement of Section 211 of the Companies Act, 1956 and more importantly violative of the disclosure norms under the aforesaid Section of the Act.

(i) When the petitioner addressed detailed letter dated 11.12.2005 (Annexure-25) to the Board of Directors of respondent no.1/ company on the points:

- Unjust debit of difference in the bank account to the account of petitioner no.1.
- Wrong information fed to the auditors,
- Non-disclosure in the Directors' Report,
- Selling plant and machinery and electrical components,
- Dilution of unsecured loans,
- Unusual high balances of cash in hand, and
- Demand Drafts on hand worth Rs.2,57,848/-.

Response from the respondents vide reply dated 19.12.2005 (Annexure-32) is mere denial sans concrete facts and figures, since the respondents had no explanation to offer. In fact, the petitioners have

addressed letter dated 23.01.2006 (Annexure-33) to the Board of Directors of R/1 enumerating all the happenings/ transactions carried out by R/3 and R/4.

11. STATUS/ CONDITION OF THE COMPANY AS ON DATE WHEN THE PETITION WAS FILED:

- The company is mostly closed since last 10 years.
- Electricity supply got disconnected for the last 10 years.
- Basic amenities and facilities which are required to run a company are non-existent.
- Accounts are manipulated and assets are siphoned off by the respondents.
- The company has thus, become **non-functional/** non-operational and it remains only on paper, **but**

with precious assets in which the petitioners and shareholders are substantially interested.

12. Respondents no.1 to 4 have filed COUNTER dated 06.08.2015 levelling counter allegations against the petitioners as under:

(i) The applicants have highhandedly broke open the locks of the rooms belonging to the first respondent company and illegally occupied the same.

(ii) The petitioners, minority shareholders of respondent no.1/ company are harassing the respondent-group, misappropriating the assets of the first respondent company, committing irregularities, are trying to usurp the company properties, threatening the workers and apart from many other unhealthy and illegal acts, are trying to misguide this Hon'ble bench. They are not leaving any stone unturned to illegally appropriate the

company's property to their personal benefit, illegally claim the ownership of the Company's property, and damage the Company's property and also denying information to the company for the illegal transactions carried out by them.

(iii) Furthermore, M/s Tirupati Roller Flour Mills Pvt. Ltd., a company controlled by the applicants, which is a tenant of respondent no.1/ company is illegally occupying a whole block of the first respondent company, though only one room was let-out to them. They have damaged the construction, removed the walls, demolished the room and are guilty of many such illegal acts relating to the said block. Said tenant is paying a mere rent of Rs.1250/- per month for occupying 2,566 sft of constructed area in a prime locality in the city of Hyderabad.

(iv) It is submitted by the respondents that for a similar property, the lessee, M/s Axis Bank is paying approximately Rs.52.25p per Sq. Feet plus service tax to its lessor including for the area on first floor, whereas the applicants are paying Rs. 0.487/- per Sq. feet for the ground floor area only. The said lease deed bearing document No.680 / 2008 is filed herewith as Annexure-1.

(v) Aggrieved by such occupation, respondent no.1/company filed an eviction petition in RC 85 of 2006 in the court of the Hon'ble I Addl Rent Controller, City civil court, Hyderabad and a Fair Rent matter in RC 292 of 2013 in the court of the Hon'ble IV Addl Rent Controller, City civil court, Hyderabad.

(vi) The applicants have claimed the ownership of the bore well belonging to the first respondent company (Last

line of Page 8 of Annexure 03 of the Sur-rejoinder to Company Application No. 24 of 2010 in the present Company Petition).

(vii) The applicants, on 20.02.2009 have stopped the water supply from the said bore well to the first respondent company herein. The applicants have not replied to telegram dated 27.02.2009 telegram (**Annexure-4 of the Sur-rejoinder to Company Application No. 24 of 2010 in the present Company Petition**) to the tenant/ company controlled by the applicants herein

(viii)The applicants replied on 09.03.2009 (**Annexure 05 of the Sur-rejoinder to Company Application No. 24 of 2010 in the present Company Petition**) stating that the borewell belongs to them and that they have not disconnected the water supply. The respondents filed the

various invoices as **Annexure 06 of the Sur-rejoinder to Company Application No. 24 of 2010 in the present Company Petition** to establish the fact that the bore well was dug by the first respondent company.

(ix) The applicants have produced several alleged receipts of rent, duly signed by petitioner no.1, who is residing at Chennai. Paid by M/s Tirupati Roller Flour Mills Pvt. Ltd. to respondent no.1/ company, for the period from 01.04.1996 to 31.03.2004, collectively filed as **Annexure 09 of the Sur-rejoinder to Company Application No. 24 of 2010 in the present Company Petition.**

(x) Respondents in their counter in Company application No. 104 of 2008 have highlighted the acts of the applicants in misusing the bank account of the first respondent company to their own benefits.

(xi) As regards the allegations levelled by the petitioners with regard to misappropriation of assets and selling plant and machinery and electrical components, the respondents submit that such allegations are untenable.

(xii) The alleged lease agreement titled as Memorandum of Agreement is of the year 1995. Such old list, especially of an unregistered document and which is not original, cannot stand on its own legs and is inadmissible as evidence.

(xiii) Several items of Plant and Machineries were sold subsequent to the date of alleged list, and the sales were duly accounted for as can be seen from the balance sheet and Sales Invoice annexed as material papers in pleadings made by these respondents in Company application No.24 of 2010 in the present suit.

(xiv) Even assuming without admitting the list to be correct, the applicants are comparing with the list supposed to be annexed to the alleged lease deed but have not produced any verification / confirmation list that shows that all the items were received back by the first respondent company on completion of the lease.

(xv) As regards the allegations made in para 2 of the application the respondents submit that though the manufacturing activity of the company is closed for past many years, the first respondent company is carrying out business activities as per the main objects of its Memorandum of Association. It is dealing in Iron and Steel. In addition, a weigh bridge is also being operated by the first respondent company. The valuation made by

the applicants is vague and without any basis and also not supported by any documents.

(xvi) The items of plant and Machineries are available in the shed of the first respondent company and out of the two main blocks of building, the bigger block is presently being occupied by the tenant company, M/s Tirupati Roller Flour Mills Pvt. Ltd., controlled by the applicants, paying a meagre rent of Rs.1250/- pm for a constructed area of approx. 2566 sft.

(xvii) As regards induction of respondents no.3 and 4 in the Board the respondents contend that the same is legal and valid. The petitioners chose to abstain from attending EGM on 21.04.2015, wherein it was resolved to induct respondents no.3 and 4 as directors unanimously

and Form-32 was filed with the RoC. Thus, said induction was done by following due process of law and thus, the are legally inducted directors of the first respondent company. As on the date of induction of respondents 3 and 4, the 1st applicant was also one of the directors of the first respondent company and hence the allegation of

“a well-designed scheme to wrest 100% control of the first respondent company”

by inducting respondents 3 and 4 as directors is evidently false.

(xviii) The respondents submit that 1st applicant himself vacated the office of the director under the provisions of Section 283(1)(g) of the Companies Act, 1956, as he abstained himself from attending three consecutive Board meetings of the 1st Respondent Company held on 26.03.2006, 30.06.2006 and

05.09.2006. The notice of all the meetings were duly served on him.

(xix) As regards the allegations of misusing of control by the respondents, wrongful exclusion of the applicant group, filing of false and flimsy cases, the same are denied as false and baseless. It is also denied that the cases filed by the first respondent company against M/s Tirupati Roller Flour Mills Pvt. Ltd. are filed with an intention to harass the applicants. They are filed only to protect the interest of the first respondent company.

(xx) As regards the allegation that value of the property of the first respondent company to be Rs. 40 crores and increased it to Rs. 80-100 crores in the present application, but the rent paid by the applicant-controlled company remained meagre and the same for the past 15

years, the applicants are neither paying the fair rent nor are vacating the property, the respondents submitted that rent along with maintenance charges demanded is approx. Rs.1,67,700/- per month as against Rs.1250/- per month being paid by the applicant-controlled company. The difference amount since September 2013 till date itself amounts to approx. Rs.36-37 lakhs.

(xxii) The respondents submitted that the applicants with *mala fide*, intention have stated the landed property to be situated in Rajendranagar Mandal, Ranga Reddy District. The applicants themselves in this application and in the main company petition admitted to the property to be situated in Hyderabad.

(xxiii) The respondents have enclosed Chart of Funds as Annexure-4 (Page 86) of this Court to demonstrate as to how the applicants, illegally and without knowledge/

consent of the respondents, have encashed Fixed Deposits of respondents no.3 and 4 herein and how funds were transferred from one account to another account and how the said funds reached to the accounts of applicants no.1 and 2 herein. Net result of the above illegal transactions was that the outstanding payable to the respondents to the tune of Rs. 10,00,000/- from M/s Tirupati Roller Flour Mills Pvt. Ltd. was shown as 'repaid' without the respondents receiving any amount and an outstanding liability payable to the applicants was created in the books of M/s Tirupati Roller Flour Mills Pvt. Ltd. without the applicants actually parting with any sum.

(xxiv) The respondents submitted that they have addressed letters dated 08.04.2005, 25.04.2005, 13.05.2005, 30.05.2005, 21.11.2005, 06.12.2005,

13.12.2005, 27.12.2005, 23.01.2006, 16.03.2006,
17.04.2006, 04.03.2008, 08.04.2008, 19.10.2008,
20.10.2008, 05.10.2009, 08.10.2010, 29.09.2011,
08.11.2012, 18.10.2013, 31.01.2014 and 18.10.2014 to
the applicants questioning about the above transactions in
the bank account of the first respondent company, to
which they gave *vague reply without* furnishing the
details of the transactions.

(xxv) The respondents have enclosed Financial Statements as ANNEXURE-5 of this Counter (pages 87 to 104). The same evidence and support the turnover of the company. To avoid any extra transportation cost, the goods are purchased and consigned directly to the consignee's place.

13. Respondents no.1 to 4 have submitted **WRITTEN SUBMISSIONS** dated 18.04.2023 stating:

(i) The petitioners have miserably failed to establish any case of oppression and mismanagement and it would further be clear that it is the Petitioners who are the wrong doers. Petitioners have also failed to establish that the facts of the case would justify an order of winding up by this Tribunal.

(ii) The petitioners having abstained from attending the EGM on 21.04.2005 and having not complained about induction of R3 and R4 before a legal forum for about 14 months cannot voice their grievance, for the first time in the present petition filed in July 2006.

(iii) As regards Notice issued for convening EGM, the respondents submitted that Section 170(1)(ii) of the Companies Act, 1956 enables the Private Limited Companies to prescribe the length of notice for EGMs in their Articles. Therefore, the EGM held on 21.04.2005 for

which notice was issued on 08.04.2005 is perfectly valid and no challenge can be raised on the ground that the length of notice is less than 21 days.

(iv) The respondents submitted that corporate democracy finds its roots in the concept of **majority rule**.

Admittedly, the Respondents are the majority shareholders of the Company. It is a settled law that the appointment of directors by the majority shareholders of the company is not oppressive.

(v) The respondents vehemently resisted the claim of the petitioners that 1st respondent company had become sick or non-functional and stated that the Company is carrying on business with turnover ranging from Rs. 10-15 crores p.a. by pursuing the main objects as per the memorandum of association.

(vi) As regards the allegation of the petitioners that Board Meeting were convened without sufficient notice/ material papers the respondents submitted that Section 286 of the Companies Act, 1956 neither mandates any length of Board meeting notice nor circulation of agenda/ material papers to be sent along with the notice for the Board meeting.

(vii) As regards the allegation of ‘denial inspection of records’ the respondents submitted that the petitioners did not produce details of letters exchanged between the petitioners and the respondents. In order to prove that they were ever open and receptive, the respondents have furnished, in para 10, page 6 of the Written Submissions, gist of such letters duly explaining the circumstances and conditions of the relevant occasion in ‘Remarks’ column. The same is reproduced below.

1st Petitioner	Respondents	Remarks
Letters Details & Extract	Letters details & Extract	
<p>04.04.2005 [Convenience Compilation (CC)-31] (Ann 14 at Page 120 of Petition) ...make available for my scrutiny and inspection at your immediate convenient date and time, all the files, documents and statutory records like: Members' Register, Minutes Book, Registrar of Companies file, all Banks statements from 1.4.2004 to 31.3.2005, list of machineries, details of machineries, scrap and other spares, electrical items etc. of the Company, sold to various parties.</p>	<p>31.05.2005 [Convenience Compilation (CC)-32] (Ann 27 at Page 86 of Counter) ...You may peruse the records of our company at any time in the register office of the Company at a time and date mutually convenient to both of us</p>	<p>1. This Letter is dated 04.04.2005 i.e. before R3 & R4 were inducted as directors of IRC. As on that day the only other director apart from P1 was Late Shri Nirmal Kumar Gupta, who passed away before filing of the present petition.</p> <p>2. No intimation of date & time from P1.</p>

<p>20.05.2005 [Convenience Compilation (CC) 33 & 34] (Ann 15 at Page 121-122 of Petition) ...I call upon you to make available to me the books of accounts, statutory books, ROC files, Bank statement of company and the property records for my inspection and for getting the necessary copies of the same...</p>	<p>30.05.2005 [Convenience Compilation (CC)-35] (Ann 18 at Page 76 of Counter) ... The information / document required by you may be perused by you at the registered office of the Company on any working day by giving prior notice.</p>	<p>1. This Letter is addressed to Late Shri Nirmal Kumar Gupta, who passed away before filing of the present petition. 2. No intimation of date & time from P1</p>
<p><u>03.12.2005</u> [Convenience Compilation (CC) 36 to 40] <u>(Ann 16 at Page 123 to 127 of Petition)</u> ...kindly let us know 3-4 different dates and time of your convenient on</p>	<p><u>13.12.2005</u> [Convenience Compilation (CC) 41 & 42] <u>(Ann 21 at page 79-80 of Counter)</u> As I am not keeping in good health, I request you to contact Mr. Girish Gupta, one of the directors of the company, for the inspection of the records and necessary details....</p>	<p>This Letter is addressed to Late Shri Nirmal Kumar Gupta, who was <u>seriously ill</u> at that time and who passed away even before filing of the present petition. – Copy to R2 who is not the director of 1RC</p>

<p>which the same may be inspected...</p>		
<p><u>13.03.2006 [CC-43]</u> (Ann 17 at Page 128 of Petition) ... I will be visiting the registered office of the Company at 1:00 pm on 16.03.2006 for inspection of minutes books of the board and general body, fixed assets register and member register; and noting down the information.</p>	<p><u>18.03.2006 [CC-44]</u> (Ann 28 at Page 87 of Counter) Refer your letter-dated 13.03.2006 received by the Company on 16.03.2006 at 13.45 hrs and Shri Nirmal Kumar Gupta on 17.03.2006. Mr. Girish Gupta and Mr. Mitesh Gupta the other Directors received the same on 16.03.2006 at 13.15 hrs. Immediately Mr. Mitesh Gupta came to the registered office of the Company but you were not there. However he waited for some time and left. The mutually convenient date and time, with sufficient advance intimation, may be fixed in future for the purpose.</p>	<p>49. The letter was received after the inspection time stated in the letter. P1 was not available when R3 rushed to the office to provide inspection.</p>
<p><u>10.04.2006 [CC-45]</u> (Ann 18 at Page 129 of Petition) ... I will be visiting the registered office of the</p>	<p><u>17.04.2006 [CC-46]</u> (Ann 29 at Page 88 of Counter) As you are aware Shri Nirmal Kumar Gupta, one of the directors, is ailing. Mr. Mitesh Gupta another</p>	<p>1. The P1 was well aware that Sri Nirmal Kumar Gupta was seriously ailing at that period of time and R3 was not in station. Sri Nirmal</p>

<p>Company at 1:00 pm on 18.04.2006 for inspection of minutes books of the board and general body, fixed assets register and member register; and noting down the information</p>	<p>director is out of station and Girish Gupta the undersigned shall be unable to attend the office on 18.04.2006 due to some urgent personal matter. Unfortunately, even the manager of the company Mr. Srinivas Ratawa is in hospital having undergone a by-pass surgery. In the circumstances you are informed that other mutually convenient date may be fixed with sufficient advance notice, for the purpose.</p>	<p>Kumar Gupta passed away on 03.05.2006.</p> <p>2. The P1 was also well aware that the Manager has also undergone by-pass surgery.</p>
<p><u>24.04.2006 [CC-47]</u> <u>(Ann 31 at Page 90 of Counter)</u> ...I wish to visit the company registered office premises on 03.05.2006 at 11:00AM and failing which at 1:00 pm of the same day, to inspect the records and books.</p>	<p>Nirmal Kumar Gupta passed away on 03.05.2006</p>	<p>Since then there is no request for inspection of records, which itself shows that the P1 was interested only in harassing his ailing brother Sri Nirmal Kumar Gupta and was actually not interested to inspect the records.</p>

(viii) All the above letters were written by petitioner no.1 in the capacity as director of 1st respondent company and not as a shareholder. Allegations of denying inspection of records to a director is out of the purview of the relief sought for in the present petition filed under section 397 & 398 of the Companies Act, 1956. In V.M. RAO AND ORS. VS RAJESWARI RAMAKRISHNAN AND ORS. – 1985 SCC OnLine Mad 151: (1987) 61 Comp Cas 20, at para 89 it was held that

“... The oppression complained of must affect a person in his capacity or character as a member of the company; harsh or unfair treatment in any other capacity, e.g., as a director or a creditor is outside the purview of the section...”

(ix) As regards the allegation the company land is improperly mutated, the respondents submitted that the said mutation has no relevance as the land of 1st respondent company is not situated in the jurisdiction of

MRO, Rajendernagar Mandal, Ranga Reddy District, but it is within the Hyderabad Municipal Corporation. In the **Annexure 02 at page 47-78 of Counter in CA No. 1 of 2015, relevant portion at page 71**, it is clearly held by the Hon'ble city civil court that,

“Therefore I hold that H. No. 13-6-824/1 and 2 are within the limits of the defendant (Hyderabad Municipal Corporation).”

Besides, respondent no.1/ company is paying taxes to GHMC regularly.

(x) As regards Balance Sheet of the company for the year ended on 31.03.2005 (ANNEXURE-28), proper notice was sent to petitioner no.1 before approval of the same and there is no manipulation of accounts.

(xi) On the allegation of the petitioners that company funds were siphoned off by the respondents, the respondents submitted that:

- Such allegation is baseless. On the contrary, petitioner no.1 was also authorized to operate the savings bank accounts of these respondents maintained with Karur Vysya Bank, Chennai (KVB) **[Convenience Compilation (CC)-69] (Annexure 03 at page 12 of counter in CA 104 of 2008)**. The P1 was also authorized to operate the bank account of M/s Goyal Finance Corporation, a proprietary concern of Sri Gajanand ji Gupta, the father of P1 and Grandfather of the P3, P4, R3 & R4 maintained with KVB. **[CC-70] (Annexure 02 at page 11 of counter in CA 104 of 2008)**.
- There were unsecured loans payable to these respondents from another group company viz., M/s Tirupati Roller Flour Mills Pvt. Ltd. which is under the total control of the petitioners herein.

- It may be noted that on **23.12.2004** how multiple transactions were done to and from the accounts of 1st respondent/ company with intent to create false credits in favour of the petitioners:

- (a) From the bank account of the 1st respondent company and M/s Tirupati Roller Flour Mills Pvt. Ltd., the petitioners deposited cheques of Rs. 3.65 Lakhs and 11.53 Lakhs respectively in the bank account of these respondents, to falsely show as if portion of outstanding unsecured loan of these respondents in both the companies is paid off.
- (b) The above amounts were transferred from these respondents' account to M/s Goyal Finance Corporation Account under the signature of the 1st petitioner. **(As per 'A' in Chart-1) [Convenience Compilation (CC)-71].**
- (c) This amount from M/s Goyal Finance Corporation was transferred to the bank accounts of the petitioners group, again under the signature of the P1. **(As per 'B' in Chart-1) [CC-71]**

(d) The same amounts were transferred from petitioners' bank account to the bank account of the 1st Respondent Company, with a motive to create false credits in favour of the petitioners in the books of the 1st Respondent Company. **(As per 'C' in Chart-1) [CC-71].**

(e) The amounts were transferred to the bank account of these respondents, to falsely show as if the remaining portion of outstanding unsecured loan of these respondents in the 1st respondent company is paid off. Again transactions were under the signature of the P1. **(As per 'D' in Chart-1) [CC-71].**

- On the same day (24.12.2004) the amounts were transferred from the bank accounts of these respondents to the bank account of M/s Goyal Finance Corporation, again under the signatures of the P1. **(As per 'E' in Chart-1) [CC-71].**

- Finally the amounts were transferred from the bank account of Goyal Finance Corporation to the petitioners group bank accounts, and again under the signatures of the 1st Petitioner. **(As per 'F' in Chart-1) [CC-71].**
- Individual details of the above transactions are at Page 2 of Chart-1 **[CC-72].**

The respondents submitted that the petitioners provided no reasons for the above transactions.

(xii) The respondents submitted that they had addressed various letters to the petitioners during the period from 2005 to 2014, as described at page 11 of the Written Submissions, copies of which are produced at **pages 77 to 98 of the Convenience Compilation** asking details and reasons for carrying out the transactions in the bank

account of the first respondent company at Chennai.

However, the petitioners gave vague reply.

(xiii) As regards allegations on illegal sale of movable assets, comparison of alleged list of machineries with advocate commissioner's report (Para 7 of the of the synopsis dated 17.01.2023 and Para V of synopsis of rebuttal arguments dated 31.03.2023 filed by Petitioners) the respondents submitted that:

(49) Neither there was an order from this Tribunal to the Court-appointed commissioner to compare the list of machineries available with 1st respondent company with the alleged list of machineries filed by the Petitioners nor the Court-appointed commissioner had prepared any comparison list. The comparison list is not authored by a technical person who understands the items of plant and

machineries. The comparison list referred to is prepared by the Petitioners only. The alleged missing 69 machinery is only the assumption of the Petitioners and not at all prudent. The comparison is irrelevant on the following basis:

(b) The alleged agreement is unregistered and is allegedly more than 11 years prior to the date of petition and has no evidentiary value.

(c) The list is allegedly annexed to the agreement relating to the year 1995. Subsequently several items of Plant and Machineries were sold during the tenure of 1st Petitioner being a director of the Company, and the sales were duly accounted for. Such sales are evident from the following:

Balance Sheet for Year ended on 31.03.2006:

- (a) As regards allegation that the balance sheet for YE 31.03.2006 was finalized through circular resolution, without calling for objection of petitioner no.1, the respondents submitted that all the directors of the Company along with P1 was sent draft Annual accounts for YE 31.03.2006 for approval vide letter dated 17.06.2006 [**Convenience Compilation 138 to 151**] (**Annexure 37 & 38 at page 186 to 199 of the petition**)
- (b) Before sending the circular resolution, Balance Sheet and Profit and Loss account together with the annexures to the P1, the same were faxed to him on 17.06.2006. Bill for sending the fax is filed as **Annexure 54 at page 135 to Counter [CC-152]**.
- (c) Since majority of the Board had approved, the Annual account for the YE 31.03.2006 were signed and

forwarded to the Auditors. The Auditors gave their report on the same day.

Balance Sheet post 31.03.2006:

(a) The respondents submitted that this Tribunal allege that loans were taken from the companies promoted by the relatives of R4. Similar allegation was made in IA 913 of 2019 in the present case. This Hon'ble Tribunal in the said IA observed that,

“There is sufficient proof filed by the Applicants that money was borrowed from the corporate lenders. It is true that the said money is to be discharged.”

(b) By pledging the fixed deposit and borrowing money against the fixed deposit the company has saved more than Rs.8 Lakhs as detailed below:

<u>Financial Year</u>	<u>Interest received on FD from Bank (Rs.)</u>	<u>Int. paid on OD to Bank(Rs.)</u>	<u>Difference (Income)</u>
2014-15	10,30,302.00	7,46,189.00	284113.00
2015-16	9,56,972.00	6,44,244.00	312728.00
2016-17	8,49,103.00	7,13,153.00	135950.00
2017-18	7,17,011.00	6,12,198.00	104813.00
Total:	35,53,388.00	27,15,784.00	8,37,604.00

14. To demonstrate that business generated due to Overdraft on Fixed Deposits resulting into substantial Trading profits to the Company the respondents furnished the following details:

<u>Financial Year</u>	<u>Trading Sales</u>	<u>Trading Purchases</u>	<u>Gross Trading Profit</u>	<u>Page No in IA 1152/2019</u>
2014-15	12,27,80,730	11,97,44,233	30,36,497	Pg 60 [CC-171]
2015-16	12,43,61,865	12,16,33,331	27,28,534	Pg 97 [CC-172]
2016-17	10,27,47,050	10,02,20,466	25,26,584	Pg 132 [CC-173]
2017-18	14,29,37,413	13,91,25,050	38,12,363	Pg 167 [CC-174]
2018-19	14,43,14,525	14,11,29,889	31,84,636	Pg 202 [CC-175]
2019-20	13,35,76,701	13,06,57,171	29,19,530	
2020-21	12,00,11,221	11,80,75,126	19,36,095	
2021-22	11,43,51,554	11,26,11,729	17,39,825	

(xv) The respondents submitted that exit mechanism, as prayed for, is practically not possible for the following reasons:

A. The Court of the III Additional Chief Judge, City Civil Court, Hyderabad in I.A. No.: 2371 of 2005 in O.S.No. 328 of 2005 passed a Status Quo Order **[CC 128 to 132] (Annexure 58 at page 141 of the counter to main petition)** on 05.10.2005 regarding the properties of the Company including Land, Plant and Machineries among other properties and the same is continuing till date.

B. All the Petitioners and Respondents in the present matter are parties to the above civil suit.

C. There are several legal matters pending between the 1st respondent company and its tenant, viz. M/s Tirupati Roller Flour Mills Pvt. Ltd.

D.The Property of the Company cannot be apportioned among the contending parties in view of the pending legal matters and in view of a subsisting status quo over the property from a City Civil Court.

E.Laying emphasis on its plea the respondents submitted that unless a case of oppression and mismanagement is made out the Tribunal has no jurisdiction to pass any orders in terms of Sub section (1) or (2) of section 242 of the Companies Act 2013. The respondents relied on the following decisions in this regard.

(xvi) In support of the above contention the respondents relied on the following rulings:

- In **Shanti Prasad Jain v. Kalinga Tubes Ltd. (1965) 2 SCR 720: AIR 1965 SC 1535: (1965) 35 Comp Cas 351**, in paragraphs 14, 17, 18 and 35. Held. *“there should be actual acts of oppression in terms of Section 397 and mismanagement or*

apprehended mismanagement in terms of Section 398 for grant of relief under Section 402 of the Act.”

- **Hind Overseas Private Limited vs Raghunath Prasad Jhunjhunwalla (1976) 3 Supreme Court Cases 259.**
- Judgment of Hon’ble Supreme Court in **Dale and Carrington Invt. (P) Ltd. and Anr. V. P.K. Prathapan & Ors., MANU/SC/0748/2004.**
- In **Shanti Prasad Jain v. Kalinga Tubes Ltd. (1965) 2 SCR 720: AIR 1965 SC 1535: (1965) 35 Comp Cas 351**, the Hon’ble Supreme Court has held that,

“a member who is complaining of oppression by the majority shareholders should establish in clear terms that the complaining shareholder or shareholders must be under a treatment which is harsh, burdensome, unfair, unjust and tyrannical. The conduct must involve a visible departure from the standards of fair dealing.”

15. Petitioners have filed SUBMISSIONS ON LAW dated 20.04.2023 and relied on the following decisions:

(i) On point of character of a company the petitioners relied on Sangramsingh P. Gaekwad Vs. Shatadevi P. Gaekwad, (2005) 11 SCC 314, wherein it was held:

“The real character of the company .. for the purpose of judging the dealings .. may assume significance and in such an event, the principles of quasi-partnership in a given case may be invoked.”

(ii) The present case is required to be considered in light of a closely held company, namely, Bhagyanagar Board & Chemicals Pvt Ltd, wherein this Tribunal has passed order dated 19.10.2022 in TP No.6/ HDB/ 2016

(iii) On twin-test to be applied, the petitioners relied on Tata Consultancy Services Vs. Cyrus Investments (P) Ltd., (2021) 9 SCC 449, wherein twin test was laid down by the Hon’ble Supreme Court, as applicable to oppression and mismanagement, as under:

(i) A “functional dead lock”, where the inability of members to cooperate in the management of the company’s affairs leads to an inability of the company to function at Board or shareholder levels; or

(ii) Where a company is a quasi-partnership and an irretrievable breakdown in trust and confidence between the participating members has taken place.

(iii) It is submitted that both the circumstances justify granting relief.

(iv) On illegal appointment of Directors, the petitioners relied on S.P. Jain Vs. Kalinga Tubes Pvt Ltd, 1965 AIR 1535, 1965 SCR (2) 720 , wherein it is observed by the

Hon’ble Supreme Court that:

“The circumstances must be such as to warrant the inference that there had been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company’s affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy”.

(v) On improper mutation of Company's lands and other acts of mismanagement of company property and accounts, the petitioners relied on Loch Vs. John Blackwood, 1924 AC 783 (PC) as followed in Tata Consultancy Services (supra).

(vi) On status quo order passed in O.S.No. 328 of 2005 before The III Additional Chief Judge, City Civil Court, Hyderabad, the petitioners submitted that the said order ostensibly covers 1st respondent's properties as well. In this regard the petitioners relied on Dhananjay Mishra Vs. Dynatron Services Pvt Ltd (2019) 2014 ComCas 45, wherein it is held:

“ It is also indisputable that the statutory powers and plenary jurisdiction vested in the Tribunal renders it the appropriate forum to deliver result oriented justice.”

(vii) On deadlock and defunct nature of the company and on the point that there is a breakdown of

trust amongst the shareholder groups, the petitioners relied on:

- **MSDC Radharaman Vs. MSD Chandrasekara Raja & another, (2008) 6 SCC 750 (paras 16, 22-24, 26-27, 39).**
- **Tata Consultancy Services Vs. Cyrus Investments (P) Ltd., (2021) 9 SCC 449.**
- **Kamal Kumar Dutta Vs. Ruby General Hospital Ltd., (2006) 7 SCC 613 (para 30).**
- **Bennet Coleman & Co. Vs. Union of India, (1977) 47 Comp Cas 92 (Bom) (para 14).**

It is submitted that the company's manufacturing operations are defunct since 1998 and trading operations are not reliant on any capital asset or manpower. This would justify allowing this petition.

(viii) The petitioners, by way of this Written Submissions, have prayed for certain reliefs in the form of Preliminary Reliefs, 1, 2, 3 and 4; and in the form of Options-1 and 2. Such is not the proper procedure; it may be in accordance NCLT Rules, 2016. As such, such reliefs cannot be considered in the form of Written Submissions.

16. In the light of the contest as aforementioned the points that emerge for our consideration are:

POINTS:

- (1) Whether *framing* an *exit scheme* directing the sale of the assets of the 1st respondent by public sale, affording opportunity to the parties herein to buy /bid, is the most equitable solution in this case?
- (2) Whether the EGM dated 21.04.2005, and the induction of the 3rd & 4th respondents as directors, besides the alleged acts of denial of right of inspection of the books of accounts, minutes of the meetings and the statutory registers of the 1st respondent, wrongful mutation of the land belonging to the 1st respondent in the name of

Nirmal Kumar Gupta in revenue records, finalising the balance sheets for the FY 31.03.2005 & 31.03.2006, and the removal of the 1st petitioner as director of the 1st respondent constitute the acts of oppression & mismanagement by the respondents 2 to 5 and have caused or causing prejudice to the interests of Company Petitioners or the 1st respondent company? If so, for what relief ?

- (3) Whether the Petitioners have made out a case warranting the appointment of a Chartered Accountant or such other competent person to conduct an investigative audit into the affairs of the 1st respondent and to surcharge such of those who have caused loss to the 1st respondent?

17. We have heard Shri Parthasarathy, learned Senior Counsel for the petitioners and Shri Y. Suryanarayana, learned Counsel for the respondents. Perused the record and the case laws presented before us.

POINT (1):

- (1) Whether *framing an exit scheme* directing the sale of the assets of the 1st respondent by public sale,

affording opportunity to the parties herein to buy /bid, is the most equitable solution in this case?

A three-Judge Bench of Hon'ble Supreme Court in Needle Industries (India) Ltd. Vs. Needle Industries Newey (India) Holding Ltd, wherein Chandrachud, C.J. upon considering a large number of decisions of this Court as also the English Courts including S.P. Jain and Harmer Ltd, categorically held:

“172. Even though the company petition fails and the appeals succeed on the finding that the holding Company has failed to make out a case of oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in which they would have been, if the meeting of May 2 were held in accordance with law.”

In MSDC Radharamanan vs. MSD Chandrasekara Raja and Anr, 2008 6 SCC 750, *relying* on the above ruling, in paras 14, 15, 21, held that,

“14. Section 398 of the Act provides for filling of an application for the reliefs in cases of mismanagement. Section 402 provides for the powers of the Company Law Board on an application made under Section 397 or 398 of the Act which includes the power to pass any

order providing for the purchase of the shares or interests of any member of the company by other member(s) thereof or by the company.

*15. Ordinarily, therefore, in case where a case of oppression has been made ground for the purpose of invoking the jurisdiction of the Board in terms of Sections 397 and 398 of the Act, a finding of fact to that effect would be necessary to be arrived at. **But, the jurisdiction of the Company Law Board to pass any other or further order in the interest of the company, if it is of the opinion, that the same would protect the interest of the company, it would not be powerless. The jurisdiction of the Company Law Board in that regard must be held to be existing having regard to the aforementioned provisions.***” (Emphasis is ours)

18. Here is the story of two illustrious and closely held families known as ‘NGK’ & VGK groups, who have started business in 1970 as a partnership firm in the name and style as ‘Krishna Metal Industries’, with Mrs Bimla Devi and Mrs Sheela Devi as partners, reconstituted the same and ultimately on 20.10.1982 dissolved the same, by transferring the entire assets and liabilities of the said partnership business in favor of M/s Krishna Metal Industries Private Limited, (1st respondent herein) a private limited Company incorporated on

21.06.1982 by the very same Mrs Bimla Devi w/o Shri Nanada Kishore and Mrs Sheela Devi W/o Nirmal Kumar Gupta, which is now in a state of '*dead lock*' as the 'Rolling Mill' the main business activity in the 1st respondent, has come to a 'grinding halt', long prior to the filing of this company petition due to internal differences and disputes among the members.

19. It is claimed that the reins of the 1st respondent were taken over by the family of *Vijay Kumar Goyal Group*, and the shareholding pattern between two groups is:

- VKG Group/ petitioner-group .. 34.53%
- NKG Group/ respondent-group .. 65.47%

Vijay Kumar Goyal, the 1st petitioner and Late Nirmal Kumar Gupta the husband of 2nd respondent are the directors of the 1st respondent.

The erstwhile partnership firm “Krishan Metal Industries’ was owned and operated by these closely-held families were in the nature of *quasi-partnership* as the immediate family members own, hold and control the entity. The 1st Respondent company was managed principally by two directors, comprising one representative from the VKG group and one from the NKG group . There was mutual trust and understanding as regards the role of each of the groups in the conduct of the business, besides, the petitioners and the respondents are biologically related parties. Therefore, it clearly stands established the existence of a *quasi-partnership*.

In *Sangramsingh P. Gaekwad v. Shantadevi P. Gaekwad*, [2005] 11 SCC 314 – Paras 225 to 231, it was held that;

“The real character of the company...for the purpose of judging the dealings...may assume significance and in such an event, the principles of quasi-partnership in a given case may be invoked”

(Para 230).

Therefore, the principles of a quasi-partnership can be invoked in the case on hand.

20. As stated supra, unfortunately, disputes have cropped up between the two groups much prior to filing of this company petition. It is averred by the petitioners that late Nirmal Kumar Gupta, who was considered to be the mutually respected well-wisher of both the groups, endeavored to resolve the issues between the parties in vain. A letter said to have been written by Late Nirmal Kumar Gupta, in this regard also has been relied on by the petitioners. The relevant passages of the said letter as quoted by the petitioners are as below:

“It is universal and proven fact that two knives cannot fit in a single groove and hence separation of the assets between the groups in proportion to their shareholdings is the only justified alternative.”

“52. .. *The company having become defunct and **non-functional/non-operational** remains only on paper, **but with precious assets** in which the petitioners and shareholders are substantially interested.”*

- There is no likelihood of any chance to revive the company or bring it back to manufacturing stream inasmuch as there was no machinery left worth mentioning or the workforce needed or the main material and infrastructure needed for the same. Recent photographs of the factory premises as ANNEXURE-41 clearly show the present ambience of the factory premises. The only object of the respondents is to dislodge and dispossess the petitioners from the company. The only possible way to render equitable justice to the petitioners and the respondents is to divide the assets.”

21. A HUF Partition suit, in O.S. No.328 of 2005 was instituted in the Court of learned XIII Additional Chief Judge, FTC, City Civil Court, Hyderabad, by Manoj Goel and Manish Kumar Goel, who are not parties in the

present proceedings. The learned Judge has passed the following interim order dated 05.10.2005 in I.A. No.2371 of 2005 in O.S. No.328 of 2005:

“Issue urgent notice to respondents. Call on 26.10.2005. Till then the respondents shall maintain status quo as on today.”

Respondents 1 to 4 would contend that in view of the above order dated 05.10.2005, the land, building, plant and machinery of 1st respondent company cannot be divided/ sold. The matter was carried to the Court of RDO, Chevella Division by the petitioners therein and is presently pending disposal.

An appeal being Appeal (C) No.2069 of 2013 before the Revenue Divisional Officer, Chevella Division, Ranga Reddy District at Attapur is filed by the same parties in the above suit, namely, Manoj Kumar Goel and Manish Kumar Goel against the order dated 21.02.2013 passed by

Deputy Collector & Tahsildar, Rajendranagar Mandal, RR District in File No.D/264 of 2012. The matter relates to rectification of revenue record of landed property of 1st respondent company in favour of the erstwhile partnership/ firm represented by partners. The claim of the petitioners in the said appeal was that the property does not belong 1st respondent company but to the partnership/ firm. Copy of the above Appeal is at pages 8 to 13 of Memo dated 15.12.2017 filed by respondents no.1 to 4.

22. An Eviction Suit being CRP No.5982 of 2010 is instituted before the Hon'ble High Court of Judicature at Hyderabad for eviction of M/s Tirupati Roller Flour Mills Pvt Ltd., from a portion of premises of 1st respondent no.1/ company.

23. A proceeding in R.C. No.292 of 2013 filed by 1st respondent company against M/s Tirupati Roller Flour Mills Pvt Ltd in the Court of the learned Principal Rent Controller, City Civil Court, Hyderabad praying for fixation of fair rent of Rs.1,60,000/- per month plus maintenance charges, refundable security deposit, etc. Copy of above suit is at pages 14 to 19 of Memo dated 15.12.2017 filed by respondents no.1 to 4.

24. A mediation between the parties was attempted under the aegis of the Hon'ble NCLAT detailed below .

(i) This Tribunal had passed order dated 22.02.2018 in this Company Petition, which reads:

“Heard Shri Bhuvana Chandra Reddy and Shri S. Mukundan, learned counsels for the petitioner and Shri S. Chidambaram, Ld. PCS for the respondent.

An Auditor is appointed for valuation of share of the petitioner company (sic.) by granting two months' time for the Auditor to submit his report. Post the case on 19.04.2018.”

The Respondents no.1 to 4 herein have filed an appeal against the above order of this Tribunal being Company Appeal (AT) No.149 of 2018 before the Hon'ble NCLAT, New Delhi. The Hon'ble NCLAT, New Delhi has issued the following directions vide order dated 06.08.2018:

“15 I However, before that, we request the learned NCLT, Hyderabad to first refer the matters between the parties in the present CP 38/2006 (TP 7/HDB/2016) along with Company Petition 60/2006 – TP 08/HDB/2016 relating to Tirupati Roller Flour Mills Pvt. Ltd. and Company Petition 26/2005 (TP 06/HDB/2016) relating to Bhagyanagar Boards and Chemicals Pvt. Ltd. to mediation under Section 442 of the Companies Act, 2013 to Mediator or Mediation and Conciliation Panel, if available in terms of the Companies (Mediation and Conciliation) Rules, 2016. In case such Mediator or Panel is not available, the learned NCLT may refer the above disputes to Mediation Centre at the Hon'ble High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh.

D) In case the mediation fails, the learned NCLT should proceed to expeditiously dispose the above Company Petition on merits.”

25. Accordingly, this Tribunal vide order dated 19.09.2018 has appointed Shri Henry Richard as Mediator. The said Mediator, having obtained extension of time

umpteen number of occasions, has ultimately submitted his report dated 03.09.2019 to this Tribunal under Rule 24 of the Companies (Mediation and Conciliation) Rules, 2016, reporting failure of mediation.

26. There can be no denial of the fact that much prior to the filing of this company petition the 1st respondent became nonoperational and nonfunctional. Electricity supply got disconnected for the last 10 years. Basic amenities and facilities which are required to run a company are non-existent. No profit and loss account of the activities carried on as contended by the respondents is forth coming. The respondent also in their counter have admitted that the manufacturing activity of the company is closed for past many years, however the first respondent company is carrying out business activities as per the main objects of its

Memorandum of Association. It is dealing in Iron and Steel. In addition, a weigh bridge is also being operated by the first respondent company. Though the respondents have contended that items of plant and Machineries are available in the shed of the first respondent company, presently the bigger block of the building is being occupied by the tenant company, M/s Tirupati Roller Flour Mills Pvt. Ltd., controlled by the applicants, paying a meagre rent of Rs.1250/- pm for an constructed area of 74ompany. 2566 sft, the financial statements of the 1st respondent not produced.

27. What now remained is the land measuring acres 6.36 gunthas situate in a prime commercial locality, which stands in the name of the 1st respondent. This land also has been dragged into litigation by unilateral mutation carried out by the respondents. Serious allegations of siphoning of

funds by the respondents to the extent of about Rs.13.95 lakhs, illegally pilfering and selling off various movable assets of the company, non-disclosure of loans given by VKG group to the company amounting to Rs.29.36 lakhs, wrongfully and arbitrarily debiting the 1st petitioner's loan account in the company's books, fudging of accounts and Balance Sheet for subsequent years i.e. post 31-03-2006 are levelled against the respondents.

28. All efforts to resolve the issues through mediation also failed. Above all, there is no mutual trust and understanding between these two groups to revive the business of the 1st respondent.

29. The above narrated fact situation makes it clearer than crystal that, a "functional deadlock" has already emerged in so far as the affairs of the 1st respondent is concerned and the trust amongst the majority and minority

shareholders to achieve a ‘break through’ has broken down irretrievably.

Hon’ble Supreme Court of India, in Tata Consultancy Services v. Cyrus Investments (P) Ltd, [2021] 9 SCC 449 at Para 140-141), which ruling has been rendered in matter alleging the commission of the acts of oppression & mismanagement, held that;

(i) A “functional deadlock” where the inability of members to cooperate in the management of the company’s affairs leads to an inability of the company to function at board or shareholder levels; or

(ii) Where a company is a *quasi-partnership* and an irretrievable breakdown in trust and confidence between the participating members has taken place.

Therefore, in the light of our discussion supra, we are of the firm view that ‘twin tests’, *supra*, are satisfied in the instant case to grant an *exit scheme*.

Point is answered accordingly.

POINT (2)

Whether the EGM dated 21.04.2005, wherein the 3rd & 4th respondents were inducted as directors, besides, the alleged acts of denial of right of inspection of the books of accounts, minutes of the meetings and the statutory registers of the 1st respondent, wrongful mutation of the land belonging to the 1st respondent in the name of Nirmal Kumar Gupta in revenue records, finalising the balance sheets for the FY 31.03.2005 & 31.03.2006, and the removal of the 1st petitioner as director of the 1st respondent constitute the acts of oppression & mismanagement by the respondents 2 to 5 and have caused or causing prejudice to the interests of Company Petitioners and the 1st respondent company? If so, for what relief ?

The crux of the contest.

-The EGM dated 21.04.2005 wherein the 3rd & 4th respondents were inducted as directors,

- *alleged* acts of denial of right of inspection of the books of accounts, minutes of the meetings and the statutory registers of the 1st respondent,

-*alleged* wrongful mutation of the land belonging to the 1st respondent in the name of Nirmal Kumar Gupta in revenue records,

-finalising the balance sheets for the FY 31.03.2005 & 31.03.2006,
and

- the removal of the 1st petitioner as director of the 1st respondent,

according to the company petitioners *constitute* the acts of **oppression & mismanagement** by the respondents *2 to 5* and the same have caused or causing *prejudice* to the interests of Company

Petitioners and the 1st respondent company, which assertions/allegations are *vehemently denied* by the respondents.

The submissions

Mr. Parthasarathi, Ld. Sr. Counsel for the petitioners contends that, the respondents had hurriedly issued notice dt 08.04.2005, calling for EGM on 21.04.2005 and appointed R3 and R4 as directors therein, by taking advantage of the majority held by NKG group. Thus, 3rd and 4th respondents were illegally inducted as directors in the EGM held on 21.04.2005. Therefore, the induction of Respondents 3 & 4 as directors done in the EGM dated 21.04.2005 was by circumventing the Board and also Sec 169(6) of the Companies Act, as 21-clear days' clear notice from 7-4-2005, to the Board to convene EGM was not given.

On alleged denial of inspection of records an opportunity to inspect books of accounts, minute books and statutory records of the company, by the respondents, Ld. Sr. Counsel for the petitioners would contend that the 1st Petitioner was recognized as director of the company till September 2006 and was entitled to inspect the records of the company and take copies thereof. In this regard the petitioners had written letters dated 04.04.2005 (Annexure 14 of the CP), 20.05.2005 (Annexure 15 of the CP), 03.12.2005 (Annexure 16 of the CP), 13.03.2006 (Annexure 17 of the CP) and 10.04.2006 (Annexure 18 of the CP). However, the respondents have never furnished the record. Therefore, the same amounts to oppression of minority members rights by the respondents.

30. As regards wrongful mutation of land, Ld. Sr. Counsel would contend that, the respondents have illegally

mutated the immovable property of the 1st respondent Company admeasuring Ac.6.36 Gts situated in Attapur (V), Rangareddy (D) in the name of NKG showing him the proprietor of “*Krishna Metal Industries Private Limited*”, when the property belongs to the company. When clarification was sought for from NKG vide letters dated 04.04.2005 and 03.12.2005 (Annexure 14 & 16 of the Petition, pgs 126, 127) NKG gave vague and evasive reply vide letter dt 13.12.2005 Annexure 23 to Petition.

31. Ld. Sr. Counsel submits that the said land is owned by the 1st Respondent Company and it belongs to 1st respondent company and no claim has ever been made either by Sri NKG or by answering Respondents herein at any time that the said land belongs to either Sri NKG or to these Respondents.

32. As regards finalizing of balance sheets for FY 31-03-2005 is concerned Ld. Sr. Counsel would contend that the Balance Sheet for FY 31-03-2005 was finalized without notice to 1st petitioner even though he was a Director and manipulation of books of accounts thereon in the following manner:

- (i) Siphoning of funds by the respondents to the extent of about Rs.13.95 lakhs .
- (ii) Illegally pilfering and selling off various movable assets of the company.
- (iii) Non-disclosure of loans given by VKG group to the company amounting to Rs.29.36 lakhs
- (iv) Wrongfully and arbitrarily debiting the 1st petitioner's loan account in the company's books.
- (v). Denial of opportunity to participate in the Rights Issue in 2020 (post filing the CP).
- (vi). Fudging of accounts and Balance Sheet for subsequent years i.e. post 31-03-2006.

On removal of the 1st petitioner as a director of the 1st respondent Ld. Sr. Counsel contends that, after filing the present CP for non-attendance of the alleged meetings held on 26.03.2006, 30.06.2006 and 05.09.2006, without leave of absence, on 5.09.2005 1st petitioner was removed as director, purportedly under 283(i)(g) of the Companies Act 1956.

b). In any event, notice for all the three meetings as mentioned above were issued by R3 and R4 whose appointment itself is illegal, so the 1st petitioner's removal is wrong.

33. On removal of 1st petitioner as director and appointment of new directors, the petitioners relied on the ruling in *S.P. Jain v. Kalinga Tubes Pvt Ltd*, at Paras 17, 18, wherein it was held thar;

“impairment of confidence in the probity with which the company’s affairs was being conducted” was held sufficient to constitute ‘oppression’.

“It is a well-settled proposition of law that such conduct, even if the same is not in contravention of the letter of the law, would constitute oppression & mismanagement where the same demonstrate a lack of probity and fair dealing on the part of the majority”.

Mr. Y Suryanarayana, Ld. Counsel for the respondent’s strongly refuted the same by contending that on 08.04.2005, the 2nd respondent had issued notice to all the shareholders calling an EGM on 21.04.2005 for induction of Respondents 3 and 4 as directors of 1st respondent company (Annexure 08 at page 59 of Counter) and the said notice was received by the Petitioners on 11.04.2005 (Acknowledgement cards evidencing the service of notice on Petitioners are at page 60 – 63 of the counter). The said notice was also sent to 1st respondent company (Annexure 13 at page 68 of the counter).

34. Ld. Counsel further submits that Article 29 of the AAO of the 1st respondent company allows to convene EGM by giving not *less than 7 days*’ notice in writing. Hence the contention of the Petitioners that the EGM was held without giving 21 days’ notice is legally untenable.

35. Ld. Counsel also contends that Section 171 of the Companies Act, 1956 prescribes that the length of notice for a General meeting shall not be less than 21 days. However, Section 170(1)(ii) of the Companies Act, 1956 enables the Private Limited Companies to prescribe the length of notice for EGMs in their Articles. Therefore, the EGM held on 21.04.2005 for which notice was issued on 08.04.2005 is perfectly valid and no challenge can be raised on the ground that the length of notice is less than 21 days.

36. According to the Ld. Counsel the petitioners chose to abstain from attending the EGM on 21.04.2005 and in the said EGM, the 3rd & 4th Respondents were inducted as directors of the company unanimously and FORM 32 (Annexure at page 119 and 120 of Rejoinder) was filed with ROC. Therefore, there is no illegality in procedure followed to convene the EGM held on 21.04.2005

37. Ld. Counsel further contends that majority rule is the common norm. Corporate democracy finds its roots in the concept of majority rule. Admittedly, the Respondents are the majority shareholders of the Company. Ld. Counsel submits that, it is a settled law that the appointment of directors by the majority shareholders of the company is not oppressive. Therefore, the act of appointing the Respondents 3 and 4 as directors of the company cannot be deemed as an act prejudicial to the

members of the Company as they have been appointed unanimously in the EGM of the members held on 21.04.2005.

As regards the plea that the petitioners were denied access to the statutory records required to be maintained, Ld. Counsel contends that the Petitioners are falsely alleging that the inspection of records was denied to 1st petitioner when he was a director. The Petitioners in a made-up table have extracted the letters of 1st respondent and the response of the Respondents group and the same is given below:

<u>1st Petitioner</u>	<u>Respondents</u>	<u>Remarks</u>
<u>Letters Details & Extract</u>	<u>Letters details & Extract</u>	
04.04.2005 [CC-31] <u>(Ann 14 at Page 120 of Petition)</u> ...make available for my scrutiny and	31.05.2005 [CC-32] <u>(Ann 27 at Page 86 of Counter)</u> “...You may peruse the records of our	1. This Letter is dated 04.04.2005 i.e. before R3 & R4 were inducted as directors

<p>inspection at your immediate convenient date and time, all the files, documents and statutory records like: Members' Register, Minutes Book, Registrar of Companies file, all Banks statements from 1.4.2004 to 31.3.2005, list of machineries, details of machineries, scrap and other spares, electrical items etc of the Company, sold to various parties.</p>	<p>company at any time in the register office of the Company at a time and date mutually convenient to both of us.”</p>	<p>of IRC. As on that day the only other director apart from P1 was Late Shri Nirmal Kumar Gupta, who passed away before filing of the present petition.</p> <p>2. No intimation of date & time from P1</p>
<p><u>20.05.2005</u> [CC 33 & 34] <u>(Ann 15 at Page 121-122 of Petition)</u> ...I call upon you to make available to me the books of accounts, statutory books, ROC files, Bank statement of company and the property records for my inspection and for getting the necessary copies of the same...</p>	<p><u>30.05.2005</u> [CC-35] <u>(Ann 18 at Page 76 of Counter)</u> “... The information / document required by you may be perused by you at the registered office of the Company on any working day by giving prior notice.”</p>	<p>1. This Letter is addressed to Late Shri Nirmal Kumar Gupta, who passed away before filing of the present petition.</p> <p>2. No intimation of date & time from P1</p>

<p><u>03.12.2005</u> [CC 36 to 40] (Ann 16 at Page 123 to 127 of Petition) “...kindly let us know 3-4 different dates and time of your convenient on which the same may be inspected...”</p>	<p><u>13.12.2005</u> [CC 41 & 42] (Ann 21 at page 79-80 of Counter) “....As I am not keeping in good health, I request you to contact Mr. Girish Gupta, one of the directors of the company, for the inspection of the records and necessary details....”</p>	<p>This Letter is addressed to Late Shri Nirmal Kumar Gupta, who was <u>seriously ill</u> at that time and who passed away even before filing of the present petition. – Copy to R2 who is not the director of 1RC.</p>
<p><u>13.03.2006</u> [CC-43] (Ann 17 at Page 128 of Petition) “... I will be visiting the registered office of the Company at 1:00 pm on 16.03.2006 for inspection of minutes books of the board and general body, fixed assets register and member register; and noting down the information.”</p>	<p><u>18.03.2006</u> [CC-44] (Ann 28 at Page 87 of Counter) “Refer your letter-dated 13.03.2006 received by the Company on 16.03.2006 at 13.45 hrs and Shri Nirmal Kumar Gupta on 17.03.2006. Mr. Girish Gupta and Mr. Mitesh Gupta the other Directors received the same on 16.03.2006 at 13.15 hrs. Immediately Mr. Mitesh Gupta came to the registered office</p>	<p>49. The letter was received after the inspection time stated in the letter. P1 was not available when R3 rushed to the office to provide inspection.”</p>

	<p>of the Company but you were not there. However he waited for some time and left. The mutually convenient date and time, with sufficient advance intimation, may be fixed in future for the purpose.”</p>	
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<p><u>10.04.2006</u> [CC-45] (Ann 18 at Page 129 of Petition) “... I will be visiting the registered office of the Company at 1:00 pm on 18.04.2006 for inspection of minutes books of the board and general body, fixed assets register and member register; and noting down the information.”</p>	<p><u>17.04.2006</u> [CC-46] (Ann 29 at Page 88 of Counter) “As you are aware Shri Nirmal Kumar Gupta, one of the directors, is ailing. Mr. Mitesh Gupta another director is out of station and Girish Gupta the undersigned shall be unable to attend the office on 18.04.2006 due to some urgent personal matter. Unfortunately, even the manager of the company Mr. Srinivas Ratawa is in hospital having undergone a by-pass surgery. In the circumstances you are informed that other mutually convenient date</p>	<p>1. The P1 was well aware that Sri Nirmal Kumar Gupta was seriously ailing at that period of time and R3 was not in station. Sri Nirmal Kumar Gupta passed away on 03.05.2006 2. The P1 was also well aware that the Manager has also undergone by-pass surgery.</p>
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	may be fixed with sufficient advance notice, for the purpose.”	
<p><u>24.04.2006</u> [CC-47]</p> <p><u>(Ann 31 at Page 90 of Counter)</u></p> <p>“...I wish to visit the company registered office premises on 03.05.2006 at 11:00AM and failing which at 1:00 pm of the same day, to inspect the records and books.”</p>	<p><u>Sri NKG passed away on 03.05.2006</u></p>	<p>Since then there is no request for inspection of records, which itself shows that the P1 was interested only in harassing his ailing brother Sri Nirmal Kumar Gupta and was actually not interested to inspect the records.</p>

38. Ld. Counsel further submits that the then director of the Company Shri NKG, though underwent a major surgery on 07.12.2005, vide letter dated 13.12.2005 (Ann

21 at page 79-80 of Counter) informed the 1st Petitioner that,

“As I am not keeping in good health, I request you to contact Mr. Girish Gupta, one of the directors of the company, for the inspection of the records and necessary details.”

Thereafter the 4th respondent intimated the 1st petitioner vide letter dated 22.03.2006 (Annexure 30 at page 89 of the counter) to inspect the records on 26.03.2006, the 1st petitioner did not avail the same. After Sri NKG passed away on 03.05.2006, there was no communication for inspection of records. Ld. Counsel submits that the letter dated 04.04.2005 of the 1st petitioner was not addressed to the Respondents. In fact, it was a letter before the 3rd and 4th became the directors of 1st respondent company on 21.04.2005. Furthermore, the 1st petitioner always used addressed letters to Sri NKG in regard to inspection of record. The 1st petitioner was never restrained from

perusing the minutes of the Board and General meetings while he was a director of the Company. Ld. Counsel further submits that the contention of the Petitioners that they were unaware of the health condition of Sri NKG is false as the 1st petitioner was present for a while when Sri NKG underwent surgery on 07.12.2005. Sri NKG clearly stated in his letter dated 13.12.2005 (Ann 21 at page 79-80 of Counter) that,

“As I am not keeping in good health, I request you to contact Mr. Girish Gupta, one of the directors of the company, for the inspection of the records and necessary details.”

39. In respect of the plea that the property of the 1st respondent was wrongfully mutated vide Proceedings No. A/7937/97 dated 29.11.1997 of the MRO, Rajendernagar Mandal, Ranga Reddy District (RR Dist.) (Annexure 12), Ld. Counsel contends that mutation has no relevance as the land of 1st respondent company is not

situated in the jurisdiction of MRO, Rajendernagar Mandal, Ranga Reddy District. Vide Annexure 02 at page 47-78 of Counter in CA No. 1 of 2015, relevant portion at page 71, it is clearly held by the Hon'ble City Civil Court that,

“Therefore, I hold that H.No. 13-6-824/1 and 2 are within the limits of the defendant (Hyderabad Municipal Corporation)”.

Further, none of the respondents were the directors as on the date of above proceedings i.e. 29.11.1997. 3rd and 4th Respondent were appointed as directors on 21.04.2005 i.e 7-8 years after such mutation.

Ld. Counsel also submits that a case in C/389/2005 was filed by the elder brother of 1st petitioner and Sri NKG in the court of RDO, Ranga Reddy District, Rajendernagar Mandal challenging the above mutation. The said case was dismissed by order dated 05/09/2007 which has

become final as no appeal was preferred by any party to the case. If the Petitioners are indeed aggrieved by the above mutation they could have taken proper legal action for the same, before the appropriate forum. Another case in OS 158 of 2005 was filed by the brother-in-law of 1st petitioner and Sri NKG in OS No. 158 of 2005 before the XIV ADDL District & sessions Judge, Ranga Reddy District Court against the 1st respondent company, 4th petitioner and others, for the partition of the Company's Land, claiming it to be of partnership firm. In the said case it was held that the said Hon'ble court has no jurisdiction as the property is situated within the limits of Hyderabad. The said order has become final as no appeal was filed by any party to the case.

As regards the contention that the Balance Sheet for FY 31-03-2006 were finalized by a pre-approved Circulation Resolution, without giving any opportunity to 1st petitioner to go through the same, even though he was a director, Ld. Counsel while strongly refuting the allegations contends that there is no manipulation of accounts and notice dated 30.11.2005 for the Board meeting to be held on 04.12.2005 was sent to 1st petitioner by the 4th respondent along with an agenda item to consider and approve the Balance Sheet as at 31.03.2005. The same was received by the petitioners. Reply was given through telegram booked on 02.12.2005 received on 03.12.2005 acknowledging the receipt of the Board meeting notice. Ld. Counsel also raised the following contentions.

A) The 1st petitioner was disqualified by the auditors in the year 2005. The shareholders adopted the said auditors report. In spite of the same these respondents did not remove the 1st petitioner from the directorship of the Company

b). The 1st petitioner did not attend 3 consecutive board meetings held on 26.03.2006, 30.06.2006 and 05.09.2006.

c). No leave of absence was requested by the P1 in his replies dated 25.03.2006, 29.06.2006 & 04.09.2006 for the said board meetings.

d). First petitioner himself vacated the office of directorship under the provisions of Section 283(1)(g) of the Companies Act, 1956 and the Board took note of the same vide Resolution filed as Annexure 4 at page 43 of the counter.

e). The 1st petitioner attended a Board meeting on 09.02.2006 for which the notice was issued by 3rd respondent .

f). The 1st petitioner is well aware that he has vacated the office of the director of the 1st respondent company. It is for this reason that the Director Master Data of the P1 does not reflect his alleged directorship in the 1st respondent company. Despite not declaring to the Ministry of Corporate Affairs (ROC) as could be seen in the Director Master Data, he is still illegally representing himself as a director of the Company as could be seen from Annexure 12, 13 & 15 and Annexure 3, 5 & 8 at respectively.

40. Ld. Counsel stoutly denied the allegations of siphoning of funds by the respondents to the extent of about Rs.13.95 lakhs, illegally pilfering and selling off various movable assets of the company, non-disclosure of

loans given by VKG group to the company amounting to Rs.29.36 lakhs, wrongfully and arbitrarily debiting the 1st petitioner's loan account in the company's books, fudging of accounts and Balance Sheet for post 31-03-2006 and denial of Petitioners' participation in the Rights Issue in 2020 post filing the CP, as false and baseless. Ld. Counsel further contended that the petitioners have not placed any reliable piece of material in support of the above allegations.

Our analysis and findings.

At the outset, we wish to deal with the allegation that the property of the 1st respondent has been wrongfully mutated in the revenue records, for the simple reason that it is the only asset that has been registered in the name of the 1st respondent as per the registration records not so far *alienated* by either of the rival groups. There can be no

denial of the fact that land admeasuring Ac. 6.36 Gts situated at Attapur, Ranga Reddy District registered in the name of the 1st respondent was mutated in the name of Nirmal Kumar Gupta describing him as proprietor of the 1st respondent, vide proceedings No. A/7937/97 dated 29.11.1997 of the MRO, Rajendernagar Mandal, Ranga Reddy District (RR Dist.) When the petitioners questioned the same vide letters dated 04.0.2005 and 03.12.2005, Nirmal Kumar Gupta on 13.12.2005 sent the following reply.

41. The 2nd respondent is the wife and the respondents 3,4, &5, are the children of late Nirmal Kumar Gupta, in their counter have stated that, none of them were the directors at the time of mutation as the respondents 3&4 were appointed as directors on

21.04.2005 i.e. more than 7-8years after the mutation.

The very same respondents further stated in their counter that, the 1st petitioner being the director as on the date of mutation, shall answer for the wrong done.

42. Admittedly the 2nd Respondent is the wife and Respondents 3 & 4 are the children of Late Nirmal Kumar Gupta. These Respondents 2,3 & 4 represent the NKG Group. Having specifically pleaded in their counter ‘that mutation of the name of the 1st respondent Company in the name of Nirmal Kumar Gupta was a wrong’ nothing prevented the Respondents 2, 3 & 4 from submitting a representation to the Revenue Authorities to cancel the mutation proceedings or passing a resolution and thus restore the name of the 1st Respondent in the revenue records as the owner of the said property. Instead of

doing the same, these Respondents are strangely contending that the case 398/2005 filed by the elder brother of the 1st Petitioner and Late Nirmal Kumar Gupta in the court of RDO, Ranga Reddy District, has been dismissed and the said order became final, as no appeal was preferred by any party and that the land of the 1st Respondent does not fall under the territory of Rajendra Nagar Mandal, Ranga Reddy etc. The inaction on the part of the 2nd, 3rd and 4th Respondents in not taking any steps to restore the name of the 1st Respondent in the revenue records, in our opinion constitutes an act of oppression as against 1st Respondent.

43. Be it as it may, Hon'ble Supreme Court in Jitendra Singh vs. State of Madhya Pradesh and Ors, 2021 SCC OnLine SC 802 , held that;

“this Court after considering a catena of judgments, reiterated the principle of law as follows”:

“mutation entry does not confer any right, title or interest in favors of the person and the mutation entry in the revenue record is only for the fiscal purpose.”

Therefore, irrespective of the validity of the mutation proceedings, *supra*, the right, title and interest over the said property remains only with the 1st respondent only, as such the same continues to be the property of the 1st respondent.

POINT (3)

Whether the Petitioners have made out a case warranting the appointment of a Chartered Accountant or such other competent person to conduct an investigative audit into the affairs of the 1st respondent and to surcharge such of those who have caused loss to the 1st respondent?

44 The respondents have strongly refuted these allegations and contended that the lease agreement with M/s Jairaj Ispat Limited, Hyderabad, and others cannot be considered under law as the same were not registered. The

petitioners have also stated that the leases of the machinery does not contain any date as such the same cannot be relied upon. It is further stated that the 1st respondent was leased out from July 1992 to December 1995 and again to another lessee, namely, M/s Adilaxmi Steel Industries Ltd. from May 1007 to 1998. The respondents contend that petitioners have not filed any list of machines confirming the machineries were handed over or received back from the lessee. The respondents further contended that the 1st petitioner being director of the company also sold away certain machineries and other items of the 1st respondent/ company as can be seen from the balance sheet ended on 31.03.1997. It is stated that more than 18% of the machineries were sold. The respondents also claimed that some of the items were sold as scrap and value realized has been accounted for. It is further contended that sales claimed to have been made were when

the respondents 3 and 4 were not the directors of the 1st respondent/ company and relate to the period when the 1st petitioner was one of the directors.

45. The respondents further contended that there is also an order of status quo from the Court of the learned III Additional Chief Judge, City Civil Court, Hyderabad, vide order dated 05.10.2005 regarding the properties of the respondents including the plant and machinery. The respondents also contended that book value of the machineries as mentioned is false and incorrect.

46. We have heard the learned counsels for both the sides on these allegations and also perused the record. Both the petitioners' group and the respondents' group contend that certain machineries and other items of the 1st respondent were sold away. The respondents 3&4 are also denying the

book value of the plant and machinery. It is pertinent to note that respondents 3 and 4, who are in control of the 1st respondent/ company, have not filed the asset register or any other record to show what were the items/movables that were lying in the premises of the 1st respondent/ company when they took over the reins and how many were sold by them and at what value. The 1st petitioner also sold away some assets as per the respondents 3&4.

47. Therefore, we are of the view that in the interest of the 1st respondent/ company which is paramount, there shall be an investigative audit regarding movable assets of the 1st respondent/ company, basing on the records, if any, available, and the balance sheets, etc. to enable us to know whether the parties to this case have wrongfully sold away the movable

assets of the 1st respondent , and if so, to surcharge those persons/ officers, who have caused loss to the company.

The Point is answered accordingly.

48. Therefore, in view of our findings on the points above, discussed above, we are fully satisfied that the affairs of the 1st respondent company are being conducted in a manner prejudicial to the overall interests of the 1st respondent Company. We also found that both the petitioners and respondents' groups do not see eye to eye with each other. Hence, under these circumstances we are of the firm view that liquidation of the 1st respondent upon completion of audit, and distribution of its movable and immovable assets to the shareholders is the only equitable option available that would meet the ends of justice.

49. Hence we hereby, invoke the powers of this Tribunal under Section 397 of the Companies Act, 1956, and pass the following order.

(a) This Tribunal appoints **Mr. Vatsa Kumar** having:

IBBI/IPA-002/IP-N00922/2019-2020/12980,

Phone No.906164003

e-mail: kvkumar[dot]ip[at]gmail[dot]co

address: Flat No. 101, First Floor,

A S Rao Enclave ,Road No. 2, Snehapuri Colony

Nacharam, Hyderabad-500076

His AFA is valid upto 03.05.2024,

as Liquidator of the Company for an initial period of six months commencing from the date of acceptance of this appointment. The Liquidator is directed to file an acceptance-cum-consent letter to the above order before the Tribunal within a week from the date of receipt of copy of this Order.

(b) Upon the Liquidator assuming charge, the Board of the 1st Respondent Company shall stand superseded.

- (c) The members of the erstwhile board are directed to provide all required support to the Liquidator, and provide him the required details and documents of the Company within 3 (three) days of his assuming the charge.
- (d) The Liquidator is directed to appoint two independent registered valuers for valuing the movable and immovable assets of the 1st respondent separately, and before putting the assets to public sale, offer in writing and allow the petitioner and respondents groups, or any of the member or members of the petitioner or the respondent's groups to submit bids as per the terms and conditions of bidding to be fixed by the Liquidator.
- (e) If there is no response from the parties as above stated for the *inter se*, bidding or the *inter se*, bidding fails due to noncompliance/breach of any of the terms of bidding, the liquidator shall sell the same by way of public action by following the procedure laid down in respect of sale of movable and immovable properties by public auction.
- (f) The sale proceeds or any other proceeds so received shall be deposited in a 'liquidation Account' to be

opened in a Nationalised/Scheduled Bank and operated by the liquidator himself.

- (g) The Liquidator shall after meeting the expenses of liquidation, statutory dues of the 1st respondent if any, distribute the same to parties herein, as per the shareholding ratio.
- (h) Upon completion of sale and distribution of the assets of the company, the Liquidator shall file his final report and can seek dissolution of the 1st respondent.
- (i) The Liquidator shall be paid a monthly remuneration/compensation of INR 1,50,000/- (Rupees one lac and fifty thousand only) by the Company. The Liquidator will also be entitled to get reimbursement of out-of-pocket expenses on actual basis and reimbursement of actual travel expenses.
- (j) The Liquidator shall submit a monthly report regarding the steps taken to liquidate the 1st respondent Company to the Tribunal.
- (k) We direct that the Liquidator shall enjoy complete immunity from any kind of civil and criminal proceedings already launched or to be launched in or

outside the country against the 1st respondent and its directors for all acts done prior to and subsequent to the date of appointment as Liquidator with an additional immunity and protection during all such legal proceedings for and against 1st respondent Company.

(l) None of the state or Central Government agencies shall initiate any actions, civil or criminal, punitive or coercive, against the Liquidator for the acts of omission or commission in 1st respondent Company, in exercise of regulatory, enforcement and the like powers.

(m) We hereby appoint **Mr. Nethi Mallikarjuna Setty**, having :

IBBI/IPA-001/IP-P01251/2018-2019/11958

e-mail: malliknethi[at]gmail[dot]com

Phone No.9963606444

address: Flat No. 101, Laurel Residency,

Road no. 18, Panchavati colony,

Manikonda Hyderabad ,Telangana ,500089

AFA valid upto 04.10.2024,

as Auditor to conduct the investigation of the books of account and financials of the 1st respondent from the

Financial Year 2005 onwards with special focus on the entries relating to the sale of movables of the 1st respondent, their book value, realisable value and the realised value and identify such of those who have caused loss to the 1st respondent, so as to surcharge them.

- (n) The Auditor shall be paid a monthly remuneration of INR 1,00,000/- only (Rupees one lac only) by the Company. The Auditor will also be entitled to get reimbursement of out-of-pocket expenses on actual basis and reimbursement of actual travel expenses.
- (o) The members of the erstwhile Board are directed to provide all required records to the Auditor and within 3 (three) days of his assuming the charge.
- (p) The Auditor shall submit a monthly report regarding the work progress.

50. The company petition is accordingly allowed and disposed of with the above directions. No costs.

In the result, this Company Petition is allowed to the extent indicated above. However, without costs.

SD/-
CHARAN SINGH
MEMBER (TECHNICAL)

SD/-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

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