

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
30-05-2024 AT 10:30 AM**

**CP No. 60/2006
TP No. 08/HDB/2016
AND
IA No. 268/2018 & CA No. 50/2021 in CP No. 60/2006
TP No. 08/HDB/2016
u/s. 397/398 of Companies Act, 2013**

IN THE MATTER OF:

Mr. Girish Gupta & 2 Others

...Petitioner

AND

Tirupathi Roller Hour Mills Pvt Ltd & 5 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. 60/2006

TP No. 08/HDB/2016

Orders pronounced. **In the result, this company petition is dismissed, without costs** subject to the observations mentioned in the order.

For report of Valuer, call the matter on 08.08.2024.

IA No. 268/2018 & CA No. 50/2021

Since the main company petition is disposed of all the IAs **if any pending shall stand disposed of.**

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD-1**

**CP No. 60/2006
(TP No. 08/HDB/2016)**

PETITIONS U/S 307, 398, 402, 403, 408, 111 & Schedule XI OF THE
COMPANIES ACT, 1956

IN THE MATTER OF
TIRUPATI ROLLER FLOUR MILLS PRIVATE LIMITED

AND IN THE MATTER OF

1. Mr. Girish Gupta,
12-2-713, Nanal Nagar,
Hyderabad-500 028
2. Mr. Miresh Gupta,
12-2-713, Nanal Nagar,
Hyderabad-500.028
3. Smt. Sheela Gupta
12-2-713, Nanal Nagar,
Hyderabad-500 028

...Petitioners

Versus

1. Tirupati Roller Flour Mills Private Limited
Having its Registered Office at 13-6-824/1,
Karwan Road, Hyderabad-500 067, Andhra Pradesh

2. Mr. Vijay Kumar Goyal,
No. 30, Rajasekharan Street,
Mylapore, Chennai 600004

3. Mr. Sat Narain Bansal,
9-4-86/286, Salarjung Colony,
Hyderabad-500 008

4. Mr. Bhushan Goyal,
No. 30, Rajasekharan Street,
Mylapore, Chennai-600 004

5. Mr. Vishal Goyal
No, 30, Rajasekharan Street,
Mylapore, Chennai-600 004

....Respondents

Date of order: 30.05.2024

Coram

Dr. N. Venkata Ramakrishna Badarinath, Member (Judicial)
Shri Charan Singh, Member (Technical)

Appearance

For Petitioners: Shri Y. Suryanarayana, Advocate

For Respondents: Shri Parthsarathy, Senior Advocate assisted by
Ms. Madhupreetha Elango, Advocate

PER BENCH
ORDER

1. The Company Petition is filed under section 397, 398, 402, 403, 406, 111 and Schedule XI of the Companies Act, 1956, praying for the following reliefs:-
 - 1) Declaring that the appointment of 4th and 5th Respondents as directors at the Board Meeting held on 21-3-05 is invalid, opposed to law and oppressive.
 - 2) Injunction restraining the respondents from increasing the paid up capital in any manner unless and otherwise the increase is warranted by the facts and circumstances and the proposed increase is bond fide and in such an event by allotting shares in the company in the ratio in which they held as on 31.03.2005
 - 3) To order investigation regarding the siphoning of funds from the company and directing the respondents to bring back the amounts to the company.
 - 4) Altering the articles of association and incorporating the clause for proportional representation in the Board of Directors.
 - 5) Directions to the Company to transmit 69570 shares to and in favour of the Petitioners in the manner specified by them in the letter dated 06.06.2006 and also to issue fresh share certificates to the petitioners in respect of their entire shareholding etc.
 - 6) Order the 1st Respondent Company to pay the Petitioners the pending remuneration of Late Shri Nirmal Kumar Gupta along with the payment of other entitlements.
 - 7) Such further and other orders as may be deemed fit and necessary.

2. This Company Petition was instituted on 30.10.2006 as CP No.60 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 re-numbered as Transfer Petition No. 08/HDB/2016.

3. **Description of Petitioners:-**

The Petitioners are the shareholders, collectively hold 1,05,790 equity shares of Rs. 10/- each out of the total paid up capital of 2,28,600 equity shares of Rs.10/- each of the 1st Respondent Company representing 46.28% of the total paid up share capital.

The Petitioners No.1 & 2 are sons and the Petitioner No.3 is the wife of of Late Shri Nirmal Kumar, who was the Director of the 1st Respondent Company right from its incorporation till his demise on 03.05.2006.

4. Description of Respondents:-

Respondent no.	Name	Relationship
1 st Respondent	M/s Tirupati Roller Flour Mills Private Limited is the Company.	The Company in question
2 nd Respondent	Mr. Vijay Kumar Goyal	One of the Directors of the 1 st Respondent Company.
3 rd Respondent	Mr Sat Narain Bansal	Brother-in-law of the 2 nd Respondent and paid executive Director of the 1 st Respondent Company.
4 th and 5 th Respondents	Mr. Bhushan Goyal & Mr. Vishal Goyal	Sons of the 2 nd Respondent.
6 th Respondent	Mr. Ghanshyam Bhati	Manager of the 1 st Respondent Company

5. The 1st Respondent Company was incorporated as Private Limited Company on 26.05.1980 with two Directors i.e. Late Shri Nirmal Kumar Gupta and Shri Nanda Kishore Goel.
6. It is submitted by the Petitioners their group hold 1,05,790 shares out of 2,28,600 shares, representing 46.28% of the total shares issued, subscribed and paid up, which is more than 10% of the paid up capital of the Company and thus satisfy the requirement of Section 399 of the Companies Act, 1956.

7. It is averred that the shares of the 1st Respondent Company were split in the year 1993 and each shareholder who held one share of Rs.100 each was issued 10 shares of Rs.10 each and the total paid up capital of the Company as on 31.03.1993 stood at Rs.12 lakhs comprising 1,20,000 equity shares of Rs.10 each. It is further averred that the Board made the last allotment of shares on 31.03.1993, thus raising the total paid up capital to Rs.22,86,000/-. The shareholding pattern of the 1st Respondent Company on **31.03.1993** are as under:-

Parties	No. of shares	% of shareholding
Petitioners group	72,610 shares	31.76%
Respondents Group	60,140 shares	26.31%
Others	95,850 shares	41.93%
Total	2,28,600 shares	100%

8. It is averred that, the share capital of the Company remained at 2,28,600 equity shares till filing of the Petition though several members transferred their shares from time to time during the

year 2001. Thus, the shareholding pattern of the 1st Respondent Company as on **09.11.2001** and as on the date of filing the present petition was as under:-

Parties	No. of shares	% of shareholding
Petitioners group	1,05,790 shares	46.28%
Respondents Group	1,18,110 shares	51.66%
Others	4,700 shares	02.06%
Total	2,28,600 shares	100%

9. The Petitioners and Respondents are biologically related parties and the Respondent No.1 Company is a family and quasi partnership Company. The disputes between both the groups have made it impractical to jointly manage the company and hence the Petitioners are praying for an exit mechanism.

BRIEF FACTS GERMANE TO THE PETITION:-

The averments in the petition in brief are:-

NON-TRANSMISSION OF SHARES OF SHRI NIRMAL KUMAR GUPTA TO THE PETITIONERS

- 10.1 The Petitioners submit that a letter dated 06.06.2006 was sent to the 1st Respondent Company, consequent to the death of Late

Shri Nirmal Kumar Gupta on 03.05.2006, requesting to transmit the shares in favour of Petitioner No.1 and the HUFs to 2nd and 3rd Petitioners.as the Petitioners were the legal representatives of Late Shri Nimral Kumar Gupta, who held substantial shares in the 1st Respondent Company individually and as the Karta of his various HUFs, to which the 1st Respondent Company vide reply dated 19.06.2006 (Annexure 5) sought the following clarification from the Petitioners 1 to 3:-

- (a) The nomination of Late Shri Nirmal Kumar Gupta was received by the company on 30.05.2006 i.e after the demise of Shri Nirmal Kumar Gupta and hence it was deemed to have not been acted upon by Shri Nirmal Kumar Gupta during his lifetime.
- (b) To explain as to how the nomination forms can be validly considered.
- (c) To send any family settlement deed or any specific understanding for apportionment of shares among the petitioners.
- (d) To surrender the existing share certificates to enable the company to issue fresh shares certificates.

- 10.2 The Petitioners submit that their share certificates were misplaced and not traced even as long back as June 2004, which fact was made known to the 1st Respondent Company vide letters dated 11.06.2004 (Annexure-6) while submitting the Affidavit cum Indemnity Bond and Affidavit Bond for the purpose of issue of fresh share certificates by the 1st Respondent Company.
- 10.3 It is further stated that the petitioners sent the attested copy of the notarised affidavit of Smt. Mukta Mangal, daughter of Late Mr. N.K. Gupta along with letter dated 06.06.2006 to the 1st Respondent Company, informing that she is relinquishing her interest in the shares of the 1st Respondent Company in favour of the Petitioners. Despite informing the same, the 1st Respondent vide letter dated 19.06.2006, asked the Petitioners to surrender the existing share certificates without giving any assurance of undertaking to transmit the shares despite the fact that Shri Nirmal Kumar Gupta vide his letter dated 29.11.2004 (Annexure 8) reminded the company, about the non-issuance of the fresh share certificates. Thus, according to the Petitioners, the respondents made a demand incapable of being performed as they cannot surrender a document which had lost.

- 10.4 Pursuant thereto, the Petitioner issued notice dated 03.10.2006, replying to the untenable contentions raised by the Respondents, to which the 1st Respondent Company vide its reply dated 10.10.2006 had assured to place the same before the Board of Directors.
- 10.5 It is stated that the Petitioners' group had paid monies in the name of 2nd Petitioner for allotting shares and the same is reflected in the balance sheet of the Company. Further, both parties have always agreed that the additional shares, if any, issued at any point of time shall be in proportion to the existing shareholding pattern.
- 10.6 It is further stated that the Balance sheet annexed to the annual report with the notice for the 25th AGM to be held on 03.11.2006, indicated that the total share application money as on 31.03.2006 is Rs. 31,33,000.00 as against the sum of Rs. 4,83,000.00 as on 31.03.2005, an apparent increase in the share application money, which fact the Petitioners were unaware of. Further, according to the Petitioners, if the shares are allotted, it would convert the Respondents into majority shareholders with 77.63% shareholding in the Company. The Petitioners contend that non-transmitting the shares in favour of the Petitioners by citing flimsy reasons was malafide,

deliberate, intentional with the sole objective to oppress, suppress and harass the Petitioners on the strength of a miniscule majority.

APPOINTMENT OF 4TH AND 5TH RESPONDENTS AS DIRECTORS OF R-1 COMPANY:-

- 10.7 The history of the 1st Respondent shows that earlier in 1980s there were four sets of shareholders i.e. (1) Late NKG Group, (2) VKG Group, (3) Sri Nand Kishore Goel Group and (4) Sri Sat Narain Bansal Group) and each group had one Director on the Board of the 1st Respondent No.1 Company.
- 10.8 It is stated that, following the exit of Sri Nand Kishore Goel from the Company, there were only three directors of the Company and practically two groups i.e. (1) Shri Nirmal Kumar Gupta (representing Late NKG Group) holding 46.28% shares, (2) Mr. Vijay Kumar Goyal (representing VKG Group) holding 51.66% shares in the 1st Respondent Company and (3) Sri Sat Narain Bansal who is the executive director of the Company.
- 10.9 It is averred that, the 1st Petitioner was appointed as a technical manager in the Family Company but was not appointed as a Director since each group was being represented by one Director on the Board.

10.10 The Petitioners protested the appointment of 4th and 5th Respondents, who are the sons of the 2nd Respondent, as Directors, pursuant to the decision taken in the Board Meeting held on 21.03.2005, that too in the absence of Shri Nirmal Kumar Gupta. Shri Nirmal Kumar Gupta on 10.05.2005 addressed a telegram to the Board of Directors of the 1st Respondent Company and to the Respondents No. 2 & 3 stating that induction of the 4th and 5th Respondents as Directors was illegal. Subsequently, the Petitioners received a notice dated 09.05.2005 indicating that an EGM is to be held on 11.06.2005 containing the following agenda items.

- (i) Appointment of 4th Respondent as Director of 1st Respondent Company.
- (ii) Appointment of 5th Respondent as Director of 1st Respondent Company.
- (iii) Removal of Shri Nirmal Kumar Gupta as Director of R-1 Company.

According to the Petitioners, no EGM was held on that date.

Further, according to the Petitioners, their appointment as Directors, has disturbed the fine equilibrium of representation of one Director from each family and the by doing so, the 2nd Respondent has attempted to oust the Petitioners' group from the Company in order to wrest the

control of the management of the Board, which till then was represented by the groups of Shri Nirmal Kumar Gupta and the 2nd Respondent equally. This action according to the Petitioners, constitute an act of oppression and intended to prejudice the interests of the petitioners that is against the unwritten understanding between the groups.

10.11 It is further stated that, after the demise of Shri Nirmal Kumar Gupta on 03.05.2006, there was no representative from NKG Group on the Board. As such, the Petitioners addressed two communication vide letters dated 31.05.2006 and 03.10.2006 requesting for their induction on to the Board of 1st Respondent Company. According to the Petitioners, their letter dated 31.05.2006 was never placed before the Board despite the Board meeting twice thereafter i.e. on 03.08.2006 and 07.10.2006, which demonstrates suppression of the right of the minority group and deny the legitimate right of one group in a family group.

SIPHONING OF PETITIONERS' FUNDS BY THE RESPONDENTS:-

10.12. The Petitioners allege that, as on 31.03.2004, the 1st Respondent Company owed the following amount to the Petitioners' group:-

Sl.No.	Name of the Creditor	Amount due as on 31.0.2004
01	Nirmal Kumar Gupta	729808.00
02	Girish Gupta (1 st Pet)	531330.00
03	Mitesh Gupta (2 nd Pet)	10000.00
04	Sheela Gupta (3 rd Pet)	626618.00
05	Nirmal Kumar Gupta HUF	68,160.00

10.13 It is averred that, the Petitioners reposing confidence in the 2nd Respondent, had given authorization to the 2nd Respondent, who is the resident of Chennai, to operate their personal bank accounts maintained with Karur Vysya Bank, Whites Road Branch, Chennai, but was not authorised to route the funds of Late NKG group to his own or his family members account. But later when the gained knowledge that Respondent had carried out various transactions in their bank accounts, the Petitioners sought clarity, but the 2nd Respondent refused to provide the details. The Petitioners when obtained the information from the bank, were shocked to learn that all the Respondents conspired together with a malafide intention to deprive the

Late NKG Group, of the funds due to them from the 1st Respondent Company.

10.14. It is further alleged that, without the knowledge of the Petitioners and without any requisition from the Late NKG Group, the Respondents issued account payee cheques in favour of the Petitioners and Shri Nirmal Kumar Gupta and his HUF and showed the dues as cleared in the Books of Accounts of the 1st Respondent Company. Further, it is stated that the 2nd Respondent was also authorised to operate the bank account of M/s Goyal Finance Corporation, a proprietary concern of Shri Gajanandji Gupta, F/o the 2nd Respondent and Late Shri Nirmal Kumar Gupta.

10.15 The Petitioners contend that the authorisation given by Late NKG Group to the 2nd Respondent to operate the Bank account was misused by the 2nd Respondent under his

signature and all these transactions were carried out in a span of 1-2 days, in the following manner:-

- (i) The funds from the 1st respondent company travelled to the bank accounts of Late NKG group.
- (ii) From the said bank accounts of Late NKG group the funds were transferred to the account of M/s Goyal Finance Corporation.
- (iii) From the said bank account of M/s Goyal Finance Corporation the same funds were moved to the personal accounts of VKG group.
- (iv) And then from the said personal accounts of VKG group, the funds landed back with the 1st respondent company.

10.16. The Petitioners at para 18 of the Petition, has narrated the effect of the above routing of funds by the Respondents which is as under:-

- (i) The amounts due to late NKG group from the R1 company were shown as repaid without the funds remaining with late NKG group.
- (ii) The credits of late NKG group in R1 company was wiped out and replaced with the credits of VKG group.
- (iii) VKG group without actually parting away with any funds was able to manipulate the balance sheet of R1 company by showing as if additional amounts are due to VKG group from R1 company.

However, the late NKG group came to know about these transactions only after closure of their bank accounts in February / March 2005.

- 10.17. The Petitioners further submit that the siphoning of funds by the Respondents is more evident, as on one had the R-1 Company claims to be going through financial crunch and requested the Directors and their family members to infuse

additional funds (2nd para of minutes on page 118 of the Petition), and on the other hand and R-1 Company repays the amount due to Late NKG Group, without any demand or request from late NKG Group.

10.18. It is stated that the entire exercise of manipulation of the accounts and showing as if the loans of late NKG Group were repaid and fresh loans were given by VKG Group, originates by moving the funds of R-1 Company as detailed above, with the connivance of Respondents No. 3 & 6.

10.19. It is alleged that, similar modus operandi were adopted by the 2nd Respondent to wipe out the amounts due to the 1st Petitioner and Shri Nirmal Kumar Gupta from Chanda Softy Ice Creams, a proprietary concern of the 4th Respondent, M/s Chanda Business Associates, Chennai, a proprietary concern of 5th Respondent and M/s Chanda Ice Cream Industries, a proprietary concern of Mrs. Deepa Goyal, W/o 4th Respondent.

The Petitioners had filed a criminal complaint which is registered as FIR No. 659 of 2006 on 05.08.2006.

LOSS TO R-1 COMPANY THROUGH UNACCOUNTED SALES AND INFLATED EXPENSES CAUSED BY THE RESPONDENTS.

10.20. The Petitioners submit that during the year 2004-05, Shri Nirmal Kumar Gupta and the Petitioners noticed unaccounted sales of finished products as well as large quantities of scrap and gunny bags and the Petitioners' group during December 2004, came across certain gate passes of unaccounted sales by the 1st Respondent Company. However, despite advising Respondents 2 & 3 to account for all the sales, the same was not complied by the Respondents. Subsequently, a letter dated 31.12.2005 was sent by Shri Nirmal Kumar Gupta pointing out the illegal activity of unaccounted transactions indulged in by the Respondents.

ALLEGATION WITH REGARD TO POSSESSION OF RECORDS BY THE 1ST PETITIONER

10.21. It is alleged that by the Petitioners that the 6th Respondent has been indulging in correspondence with 1st Petitioner with a view to harass the 1st Petitioner at the behest of Respondent 2 & 3, calling upon the 1st Petitioner to return certain files and registers allegedly said to be in the possession of the 1st Petitioner, despite the fact that Shri Nirmal Kumar Gupta had informed in the Board Meeting held on 21.03.2005 that the statutory register and a file relating to the company that were handed over to him by the 1st Petitioner, would be returned subject to giving proper acknowledgement. Further, the 1st Petitioner had categorically informed that he is not in possession of any files or documents and the same were not available in the personal effects of Late Shri Nirmal Kumar Gupta.

DENYING LEGITIMATE REMUNERATION OF SHRI NIRMAL KUMAR GUPTA, PROMOTER/ SHARE- HOLDER CUM DIRECTOR

10.22. It is alleged that the Respondents also engaged in other harassments against the Petitioners and against Shri Nirmal Kumar Gupta by deliberately instructing 6th Respondent, the Manager of the Company, not to reimburse any amount towards petrol bills, telephone bills etc, who was entitled to the same as Director of the Company and was receipt of the same for the last several years. According to the Petitioners, the same is done in order to oust Shri N.K. Gupta and the Petitioners from the 1st Respondent Company. It is stated that Shri N.K. Gupta realising the same, requested for operating the bank account jointly along with the 2nd Respondent vide his letter dated 11.03.2005, which resulted in stoppage of remuneration with retrospective effect as Director citing that a resolution was passed by the Company on 21.03.2005. The Petitioners submit that Shri Nirmal Kumar Gupta even sent a letter dated 11.03.2005 seeking information relating to

financial statements of the Company for the period between 01.04.2004 to 31.12.2004 in his capacity as Director of the Company and suggested appointment of an internal auditor. But the Respondent No.1 vide letter dated 11.03.2005, informed the Petitioners that the Board took a decision to consult the statutory auditors M/s Dagliya and Co and failed to provide any financial statements of the Company to the Petitioners till date.

10.23. The Petitioners further submit that they received letters dated 30.03.2005 and 13.03.2006 from the 1st Respondent Company calling upon Late Shri Nirmal Kumar Gupta to return all the assets including those assets which were not in his custody. It is stated that after the demise of Late Shri Nirmal Kumar Gupta, another letter dated 22.05.2006 was sent by the 1st Respondent Company alleging to return the cars illegally retained by him, to which the 1st Petitioner got issued a reply dated 25.05.2006 through his Counsel denying the same.

10.24. While summing up the following acts of oppression and mismanagement by Respondents, the Petitioners submit that, grounds exist for the winding up of the Company under just and equitable clause but since it will have grave consequences and cause serious prejudice to the Petitioners as Members of the Company, the Petitioners opted to seek indulgence of this Tribunal under Section 397/398 of the Companies Act, 1956 as alternate remedy to winding up:-

The acts of oppression are:-

- (a) Failing to act in accordance with the articles of association in transmitting the shares of deceased Shri Nirmal Kumar Gupta amongst the petitioners and their duly constituted HUF and thereby create a void in respect of 30.45% shareholding

- b. Omitting to follow the principles of quasi partnership and allowing sufficient representation to the petitioners' group in the Board of Directors of the company.
- c. Dismissing the first petitioner who is the only qualified professional in the line in which the company is carrying on business in order to keep the petitioners' group away from management of the company.
- d. Omitting to send the Annual report to the petitioners in respect of the shares owned by Late Shri Nirmal Kumar Gupta.
- e. Manipulating the accounts by increasing the share application money by a huge margin with intend to allot shares to themselves and by manipulating the accounts of the petitioners group and transferring the unsecured loans in favour of the respondents with intent to allot shares to themselves with the said amount.

- f. Manipulating the accounts by wiping out the credits of the petitioners' group.
- g. Initiating criminal cases with the full knowledge that the Civil Court had granted a status quo in respect of the assets of the company, which include the cars used by Late Shri Nirmal Kumar Gupta
- h. Increasing the number of directors in the Board and thus packing the board with people who would support the respondents without any rhyme or reason.
- i. Failing to issue fresh share certificates.

The acts of mismanagement are as under:

- a. Siphoning of funds by failing to bring into account all the sales and taking cash component to themselves and thus causing depletion of assets of the company.
- b. Making the company to incur expenditure on construction of a building on a land not owned by the company and where the

company has no license or permission to build and thereby creating a dead asset.

- c. Omitting to evolve a procedure to standardize the accounts by appointing an internal auditor and create a system of internal check to prevent siphoning of funds.

11. Counter filed by the Respondent No.1,2,4,5 and 6:

- 11.1 Respondent No.2 is the Director of the Respondent No.1 Company i.e M/s.Tirupati Roller Flour Mills Pvt Ltd. Respondent No.4&5 are sons of Respondent No.2, Respondent No.3 is brother-in-law of Respondent No.2 and Respondent No.6 is the manager of the Respondent No.1 Company.
- 11.2 It is averred that Respondent No.1 Company is a going concern which is carrying on business and not defunct like other two companies of the Group namely M/s.BBC (Bhagyanagar Boards &Chemicals Pvt Ltd) and M/s.Krishna Metals

Industries. Respondent No.1 Company is prompt and regular in filing returns.

11.3 Respondents avers that, Petitioners group neither took any interest in the affairs of the Respondent no.1 Company nor did they contribute anything, but instead they are creating bad image with an objective of creating a deadlock in the Company and brought its affairs to a standstill. The actions of the petitioners have already resulted in the Company slowly getting paralyzed and faced with undue hardships and hurdles in its smooth running. It is averred that Respondent No.1 Company is prompt and regular in filing returns with all the statutory authorities like annual returns, balance sheets and other documents with the ROC, Hyderabad and necessary returns and documents with Commercial Tax Department, Income Tax Department, Service Tax Department etc., apart from various other authorities.

- 11.4 It is averred that Late Mr.Nirmal Kumar Gupta, father of 1st and 2nd petitioners and husband of third petitioner was Director of the 1st Respondent Company till the time of his death, but at no point of time, involved himself in the day to day affairs of the Company nor his make any effort for the growth of the Company.
- 11.5 It is averred that petitioners are illegally withholding the properties of the Company viz., three cares, computer system etc., despite the fact that, they are not entitled to do so under law. In addition, the Petitioner No.1 has illegally taken away the statutory books, registers, records and files of the 1st Respondent Company from Respondent No.6, Manager of the 1st Respondent Company who has been serving in the Company for more than two decades. The books, registers, records and filed were not returned for which the Respondent No.1 has filed criminal case bearing C.No.231 of 2006 against

the 1st petitioner in the Court of Hon'ble VI Chief Metropolitan Magistrate, Hyderabad and the matter is pending adjudication.

11.6 The Respondent contends that it is the apprehension of the Petitioners that the Respondents have illegally converted them into a miniscule minority, around which they have attempted to build a story just to make out the case under Section 397 and 398 of the Act.

11.7 The allegation of the petitioner that respondents have entered into transactions outside the books of accounts and siphoned off the amounts of the Company by misusing the power is not correct, if that is so, the Company would not have sustained growth in the last two decades and would not have earned the profits for last 26 years.

11.8 On one side petitioners allege that the 1st petitioner transferred his shares on 15.10.2002 in favour of the respondents on a promise that, they will be reverted to them, but on the other

hand, they could not bring out any agreement or understanding or a scrap of paper to prove their contention.

11.9 The further contention of the petitioner is that respondents did not act upon the nomination given by late Sri Nirmal Kumar Gupta and their consequential request for transfer/transmission of the Shares held by Late Sri Nirmal Kumar Gupta as karta of – Nirmal Kumar Gupta HUF, NK Gupta(S) HUF, Nirmalkumar Girish Gupta HUF, Nirmal Kumar Mitesh Gupta HUF. The so-called nomination was dated 21.02.2006 and late Sri Nirmal Kumar Gupta died on 03.05.2006 and the nomination was received by the Company only on 30.05.2006. Upon co-relation of the above dates, firstly the nomination is invalid, and secondly the very nomination itself becomes suspicious and it could be an untrue nomination, or nomination obtained during the semi-conscious or subconscious state of mind of nominator, who according to the petitioners was bedridden and ailing with

cancer as on the date of the nomination. Secondly, the Petitioners while sending the nomination, wanted the Board to act and transmit even the shares held by - Nirmal Kumar Gupta HUF, N K Gupta (S) HUF, Nirmalkumar Girish Gupta HUF & Nirmalkumar Mitesh Gupta HUF - also for which, the nomination in question cannot be applied. Thirdly, the Petitioners wanted the shares to be transferred without being transmitted properly. After the demise of late Sri Nirmal Kumar Gupta, some of his family members wanted to shuffle the shareholdings only among themselves, which apparently included a general transfer more in the nature of a family understanding, but sought to affect the same as a consequence of nomination given by Late Shri Nirmal Kumar Gupta.

- 11.10 It is averred that the in the first place, it was they, who did not bother to send the so-called nomination in time, and in the second place it was again they, who remained quiet without

giving essential clarifications that were legally and *bona fidely* required by the 1st Respondent Company for effecting transfers. It is further contended that they themselves are pretty aware that, the nomination and the proposed transfers are not valid and the Board is under no obligation to act upon such nomination. Precisely for these reasons, the Petitioners were dead silent for four months and now attribute and delays to the 1st Respondent Company and its Directors for not acting upon their request. It is therefore the Petitioners who are negligent in the whole exercise.

11.11 It is averred that after lapse of more than 4 months, the Petitioners vide their letter dated 3.10.2006 (**Annexure 9 of the Petition**) received by the 1st Respondent Company on 7.10.2006 simply evaded the direct reply and stated that, the nomination is not invalid and their request is as per the provisions of Hindu law. The Board of Directors of the 1st Respondent Company in the meeting held on 23-11-2006

considered the pending issue of transmission of shares of late Sri Nirmal Kumar Gupta and their irresponsible behaviour and vague replies. Though the Petitioners have been acting against the interest of the Company and not complied with the procedural and legal requirements under Section 108 of the Act, to enable the 1st Respondent Company to act through its Board of Directors to register the transfer of shares by transmission; the Board in its meeting held on 23-11-2006 considered the fact that, late Sri Nirmal Kumar Gupta was the shareholder of the company in his individual capacity as also, in the capacity of Karta of the four HUFs, and conceded to the facts that his legal heirs are entitled for his shares anyway, and resolved to effect the transfer of shares as sought by them.

11.12 It is an undeniable fact that as on the date of the Petition, the amount of funds pumped into the 1st Respondent Company by the 2'd Respondent and his family members ("VKG group") was about Rs.84 lakhs either by way of subscription to Equity

shares, share application money or low interest unsecured loans; and the amount of funds pumped in by "NKG group" (Petitioner's group) was only about 12 lakhs. Considering these requirements, the Board of Directors have since resolved, in its meeting held on 25-11-2006, to issue part of the unissued capital by way of an offer to the existing shareholders in proportion to the shares held by them and this by no means can be considered to be one sided action of the Respondents or an attempt to dilute the shareholdings of the Petitioners. The Respondents in a way are acting as trustees and discharging their fiduciary duty to the shareholders of the Company in a fair and transparent manner without any prejudice or bias. Pursuant to the Board resolution dated 25-11-2006 the 1st Respondent Company gave a fair offer to the Petitioners and others, to prove their interest in the company by pumping in urgently needed funds in proportion to their shareholding. However, the Petitioners who have no interest in pumping in

and contributing funds for the Company, filed C.A.No. 214 of 2006 in the above Company Petition before this Hon'ble Bench seeking an order restraining the respondents from increasing the issued and paid up share capital of the Company. By order dated 01/02/2007, this Hon'ble Bench was pleased to note the bonafide actions of the Respondents and reject the contentions of the Petitioners as motivated; and permitted the Company to increase its paid up share capital and granted 12 months time to the Petitioners to bring in their share of the capital. By another order dated 15/05/2007 in C.A.No.51/2007 (subsequently amended on 21/05/2007) this Hon'ble Bench was pleased to permit the respondents, either by themselves or through their relatives or friends, to bring in additional funds for the company to the extent of the funds that the petitioners are expected to bring towards their share capital as mentioned in the order dated 01/02/2007.

11.13 It is averred that the appointment and co-option of Sri Bhushan Goyal and Sri Vishal Goyal as Directors, was done in a fair and transparent manner and, therefore, the allegations of the Petitioners that, Respondent No.4 and 5 were illegally and highhandedly inducted as Directors of the Company is nothing but a biased and false statement. Relevant form intimating their appointment as Additional Directors was duly filed with the Registrar of Companies, Ministry of Company Affairs, Andhra Pradesh, Hyderabad on 27.04.2005. Further, Mr.Vishal Goyal and Mr.Bhushan Goyal were regularized as Directors by the members in the Annual General Meeting of the company held on 31-12-2005, under due and proper notice, which was attended by the 1st and 2nd Petitioners themselves, and the said resolution was passed as a Special Business in the said AGM. The relevant Form No. 32 was duly filed with the ROC by the 1st Respondent Company on 28.03.2006 intimating the

appointment of 4th and 5th Respondents as Directors by the members.

11.14 It is averred that first of all, it is not clear whether they have initiated this litigation concerning the affairs of the Company or loss or any damage caused personally to them on account of the alleged prejudicial acts of the 2nd Respondent, or their whole endeavor is for settlement of their personal and individual disputes in which case, this Hon'ble Bench is not the appropriate forum for adjudication of such matters. The Company Petition is therefore liable to be dismissed on this count alone.

11.15 The disputes raised by the Petitioners itself is not clear to suggest whether it is a monetary claim, or a claim for damages, or claim for compensation. The Petitioners have also intentionally suppressed about the money remitted into their accounts by 1st, 2nd and 4th or 5th respondents, or other firms, companies, individuals or HUFs; before and after the 3-day

period under subject; without which, the correctness or otherwise of the transactions cannot be put to any test.

11.16 The matter involves addressing the issues concerning the Petitioners in their individual capacity and also some of the other persons who are not parties. Therefore, the disputes raised by the Petitioners require considerable length of trial, evidence, examination and compliance of complete and strict procedure under C.P.C., which will only be possible in the case of a civil action. The whole exercise of the Petitioners is to circumvent the law and therefore, the Petitioners have not come with clean hands and fair play before this Hon'ble Court for adjudication of the disputes.

11.17 It is averred that showing the unsecured loans due to others and shareholders in the balance sheet for the year ended 31.3.2005 is false and it is an assumption of the petitioner that, the 1st Respondent Company owes them several lacs of rupees. 1st Respondent Company in its letter dated 24.1.2006

(Annexure R5) clearly advised late Sri Nirmal Kumar Gupta to give his statement of account so that, the same will be reconciled and further details can be furnished, for which there was no reply. Despite there being no reply, the Company, on its own initiative, has followed up the same with late Sri Nirmal Kumar Gupta by a further letter dated 13.4.2006 **(Annexure R8)** and furnished complete details of **all** the payments made to the Petitioners including Cheque numbers, Date of payment, Amount per cheque etc. Even this letter went unanswered. In case, the 1st Respondent Company owes money to the Petitioners as claimed by them, what really prevented them from giving those details as sought for by the Company is beyond any possible imagination.

11.18 As regards the averments in para No.28, it is submitted that, the Respondents have never indulged in any construction activities in the premises of M/s. KMI. The Petitioners have failed to furnish any proof in support of their allegation. The 1st

Respondent Company vide its letter dated 23.4.2005 **(Annexure R12)** made it clear to the Petitioners that; no construction activity was carried out by it. The intention of the Petitioners is to 1st Respondent Company tenant from the premises and deny its tenancy right and the whole matter is sub-judice before the Rent Control Court in the eviction petition filed by the Petitioners themselves against the 1st Respondent Company.

11.19 As regards the averments and allegations of the Petitioners in relation to the Board Meeting held on 21.3.2005, the same are also contrary to facts. The meeting was held by following due process of law and under notice to all. Late Sri Nirmal Kumar Gupta was present at the meeting but did not raise any objection for the agenda items except that, he insisted on adjourning the meeting.

11.20 As regards the averments and allegations of the Petitioners in relation to cash balance of Rs.4 lacs as on 31.3.2005, it was

clarified to them that, it was not a big amount when compared to the annual turnover of about Rs.20 crores of the 1st Respondent Company. It was also clarified that, these amounts were received on the last or one day before the closure of the financial year and were therefore described as "cash-in-hand".

11.21 The respondents have not made out any case of mis-management of the affairs of the 1st Respondent Company by the other respondents nor have they made out even any trace of case of the respondents acting prejudicial to the interest of the petitioners. It is also submitted that, an isolated act not coupled with acts of mis-management, oppression or suppression of the interest of the shareholders does not constitute a case U/s 397/398 of the Act. Incidentally, it is also submitted that, the petitioners raised issues concerning other company's individuals and proprietary concerns etc., which are all outside the ambit of Sec 397/398 of the Act. As such,

the petitioners through their petition seek to get the matters outside the purview of jurisdiction of this Hon'ble Bench adjudicated in the process.

11.22 Thus, respondents pray for dismissal of this Petition with exemplary costs and also grant other reliefs to those respondents may deemed it fit.

12. **REJOINDER IS FILED BY THE PETITIONERS**

The Petitioners filed rejoinder denying the contentions raised by the Respondents in the Counter, inter-alia reiterating the averments made in the Petition and contested as under:-

12.1 That the allegations made in the counter are false and the Petitioners deny the same. The Petitioners submit that Respondent No.2 has been grossly mismanaging the affairs of the Company with the support of all other Respondents.

12.2 In response to the Respondents submissions that the 1st Respondent is well managed by the Respondents and that

Petitioners' group did not take any interest in the affairs of the Company, the Petitioners submit that the performance of the Company is bleak and till date no dividend was declared by the Company. The Petitioners further deny the allegations of the Respondents that M/s Bhagyanagar Boards and Chemicals (P) Ltd and M/s Krishna Metal Industries (P) Ltd have become defunct due to Petitioners. The Petitioners further reiterate that the Respondent Company was not prompt in filing returns with statutory authorities and that the Annual Report for the year 2005-06 was filed by paying late fees.

- 12.3 With regard to allegations that Petitioner No.1 was appointed as Technical Manager by Respondent No.2, despite opposition from other Respondents and that he did not contribute anything noteworthy to the Company, the Petitioners contend that, if that was so, the Company would not have continued him as Technical Manager for eight years. According to the Petitioners, the Petitioner No.1 was removed from the

Company in an oppressive manner without providing him the details of his settlement.

12.4 The petitioners in order to substantiate their allegation that the Respondents have entered into transaction outside the books of account of 1st Respondent Company, has annexed some gate passes that are marked as annexure-1 to the rejoinder, relating to unaccounted sales carried on by the Respondents. Further it is contended that the 2nd Respondent acted in collusion with the 3rd and 6th Respondents (the Executive Director and Manager of the Company respectively) who were aware of the misconduct of other respondents and abetted the other respondents in siphoning away the funds to the tune of almost Rs. 10 crores from the Company over the years.

12.5 In response to the contentions raised in the counter at para 15 that Shri Girish Gupta had taken away all the records, files and registers of the Company and that Petitioner No.1 and Shri

Nirmal Kumar Gupta have admitted that the registers are in their possession, the Petitioners submit that Late Shri Nirmal Kumar Gupta offered to return the same to the 1st Respondent Company on receipt of proper acknowledgement but according to the Petitioners, the Respondent group seemed more interested in litigating on the matter and harass the Petitioners' group.

12.6 The Petitioners in their rejoinder admitted that the shares held by late Shri Nirmal Kumar Gupta in his individual capacity and as karta of various HUFs in the 1st Respondent Company has since been transmitted by the Company in favour of the Petitioners group and new share certificates were issued to the Petitioners, subsequent to the filing of the company petition.

12.7 In response to the Respondents contention that the share application money was increased from 31.03.2005 to 31.03.2006 consequent upon bringing in the urgently required

funds into the Company, the Petitioners contradicted the same and submits that it was done by the Respondents with the malafide intention, without calling for additional share capital from the Petitioners group. However, later the petitioners were offered to pump in additional funds proportionate to their shareholdings pursuant to the resolution passed in the Board meeting held on 25.11.2006.

12.8 In response to the submissions of the Respondents that the appointment of 4th and 5th Respondents as Directors, was done in a fair and transparent manner, the Petitioners reiterate that their induction was decided in the absence of Shri Nirmal Kumar Gupta in the Board meeting on 21.03.2005.

12.9 In response to the contentions of the Respondents that all the payments to the Petitioners' group (NKG Group) were given in the form of account payee cheques and duly reflected in the bank account statement of the Company, the Petitioners in the

rejoinder submitted that the cheques were issued without their knowledge and passed it on the 2nd Respondent, who is not authorised to receive the same on behalf of the Petitioners' group, thus cheating the Petitioners group.

12.10 As regards to the denial by the Respondents *viz-a-viz* amount due from the Company to the various members of NKG Group as stated at para 17 of the Company petition, the Petitioners submit that the amount due to them are as per the books of accounts of the Company and Respondents by merely stating that the figures are incorrect, will not deprive the Petitioners of their right over the amounts.

12.11 In response to the statement by Respondent No.2 that over the last two decades and above, there was no disagreement as regards to the operation of any of the bank accounts in Chennai by Respondent No.2 and that all of a sudden the Petitioners are highlighting a few transactions spanning over a period of just

three days i.e. from 20.12.2004 to 22.12.2004 to show that Respondent No.2 in connivance with Respondents 3, 4, 5 & 6 have siphoned off their funds, the Petitioners in their rejoinder at para 27 submitted that the 2nd Respondent manipulated and siphoned off the personal funds of the Petitioners' group for the relevant period for which criminal cases are pending in various courts.

12.12 As regards to the justification given by the Respondents for non-payment of remuneration to Shri Nirmal Kumar Gupta, the Petitioners submit that the so-called decision taken in the Board Meeting of 21.03.2005 is nothing but the handiwork of 2nd and 3rd Respondents based on falsehood and the averments made in the counter are denied and misleading. It is stated that the 1st Petitioner vide letter dated 25.05.2006 informed the 1st Respondent Company that the Petitioners would deliver the cars, provided the portion of land of Late Shri Nirmal Kumar Gupta under the occupation of the 1st

Respondent Company, is handed back to the petitioners or as an alternative if the Company executed a lease deed in respect of the land after the vacation of the status quo order of the Court pending before Hon'ble Court of III Additional Chief Judge, City Civil Court, Hyderabad.

12.13 In response to the averments in the counter that the share holding pattern of the Company, as admitted by the Petitioners, remained unchanged, the allegations of the petitioners are only based on presumptions and without any basis and thus the Petitioners failed to make out any case of mismanagement of the affairs of the company, the Petitioners submit that the averments are false and baseless and prayed this Tribunal to allow the reliefs as prayed for in Company Petition.

13. A sur-rejoinder is filed by the Respondents to the rejoinder filed by the Petitioners reiterating that the Petitioners have failed in

making out any case against the Respondents and prayed for dismissal of the Petition.

14. The Petitioners filed brief synopsis of submissions reiterating that the Petitioners have clearly made out a case of oppression and mismanagement against the Respondents and further in view of the orders of erstwhile Company Law Board, Chennai passed in IA 214 of 2006, the petitioners pray that the allotment of shares under the Rights issue is set aside and the Petitioners are provided with a reasonable exit mechanism from R-1 Company based on the shareholding as on the date of filing the Petition.
15. The Respondents 1,2,4,5&6 filed brief note of written submissions by reiterating the same facts mentioned in the counter and further submitted that the averments made against the respondents are baseless and consequently, the petitioner are not entitled to the reliefs sought for.

- (1) With regard to the appointment of R.4 & R.5 as Directors at Board Meeting held on 21.03.2005 is invalid; It is averred that as the Board of Directors has the power to appoint additional Directors by virtue of Clause 23 of the AOA, which provides that “*Further Directors may be co-opted at the discretion of the Board, the term being as decided by the Board from time to time*”(CCI). The meeting was held as per the process and was further confirmed by the members at the AGM held on 31.12.2005 under proper notice, which was attended by the petitioner themselves. Hence the appointment of R.4&R.5 is valid.
- (2) Injunction restraining the respondents from increasing paid-up capital: It is averred that in the year, 2006, there was an urgent need of funds for the Company to viably procure Wheat. In order to meet the immediate working capital and financial requirement of the Company and to avoid expensive borrowing, the Company proposed to issue further shares by

way of Rights issue. As the respondents had infused funds, their shareholding was increased in proportion to the contribution made by them.

(3) Investigation regarding siphoning of funds from the Company and directing the Respondents to bring back the amounts to the Company. It is averred that with regard to the allegation that an amount of Rs.19.66 Lacs has been siphoned off by the respondents is not correct and petitioners have not furnished any proof with regard to the same even along with their rejoinder.

(4) Altering Articles of Association to incorporate Proportional representation in the Board of Directors: It is averred that petitioner have not made any case to alter the Articles of Association in order to incorporate proportional representation in the Board. It is the Respondents case that petitioners are consistently acting against the interest of the Company and are unfit to be its directors.

(5) Direct the Company to transmit 69570 shares in favour of petitioners: After death of Late NKG, the petitioners sought transmission of shareholding of Late NKG. and also Shareholding of various HUFs in which Late NKG was a Karta. Initially the said shares could not be transmitted because Late NKG's alleged nomination request letter dt 21-02-2006 was received 27 days after death of Late NKG i.e. on 30-05-2006. Further the Petitioners sought the transfer of shareholding of HUFs in a peculiar manner without submitting any family settlement deed or other legal document. The correspondence in this regard is detailed at Paras 18 to 21 of the Counter(CC82-87). However, ultimately and in good faith, 69570 shares standing in the name of Late NKG and/or his HUFs were transmitted by the Company to the petitioners in the manner sought for by them and fresh share certificates were also issued as demanded. The Petitioners have admitted

the same in Para 19.2 of Rejoinder(CC88). Thus this relief has become infructuous.

(6) Pay the pending remuneration of Late NKG 24: Except a vague, unquantified demand to pay the pending remuneration to Late NKG, the Petitioners have not specified how much amount is sought for and the amounts that are pending. It is matter of record that non-executive directors were not entitled to remuneration as per Board Resolution dated 21.03.2005 (Pg 116 of Petition Docs) (CC89) and the same was communicated to Late NKG in 2005 itself, vide letter dated 30.03.2005. Late NKG did not protest against the same before any judicial forum, during his lifetime.

(7) The other allegations with regard to increase in the 'Share Application money' as on 31.03.2006 is oppressive which is completely baseless. Petitioners further allege that the Respondents failed to consider their request for appointment of directors is oppressive. It is further alleged that there is an

abnormal increase in sundry creditors and sundry debtors for the year ended 31.03.2006 as compared to the previous year, which is flawed. Further respondent vehemently denied the allegation in Para 18 of the rejoinder that there was a purported personal tax planning involving re-transfer of shares held by the respondent group to the petitioner group. With regard to the allegation of termination of Petitioner no.1 as a technical manager is oppressive. The said allegation is baseless in as much as it is in the nature of agitating a dispute between an employer and employee, which is not within the jurisdiction of this Tribunal.

(8) In view of the above, Respondents prayed to dismiss the present petition with costs.

16. In the light of the contest as above the Points that arise for our consideration are;

1. Whether the acts complained against the respondents 2 to 6, *namely*, wrongful appointment of the respondents 4 & 5 as the directors of the 1st respondent, malicious rights issue, denial of transmission of the shares of late Nirmal Kumar Gupta as well as the remuneration legitimately payable to him, and siphoning of funds, constitute the acts of oppression & mismanagement causing prejudice to the interest of the petitioners or the 1st respondent? If so, whether the petitioners have established the same and to what relief?
 2. Whether it is equitable to direct the respondents 2 to 6 to buyout the shareholding of the petitioners at fair value to be arrived at by a Registered Valuer, based on the shareholding of both the groups as on the date of filing of the present petition?
17. We have heard Mr. Y. Suryanarayana, learned Counsel for the petitioners and Mr. Parthasarathy, learned Senior Counsel for the respondents. Perused the record and the case laws presented before us.

Point.1

Whether the acts complained against the respondents 2 to 6, *namely*, wrongful appointment of the respondents 4 & 5 as the directors of the 1st respondent, malicious rights issue, denial of transmission of the shares of late Nirmal Kumar Gupta as well as the remuneration legitimately payable to him, and siphoning of funds, constitute the acts of oppression & mismanagement causing prejudice to the interest of the petitioners or the 1st respondent? If so, whether the petitioners have established the same and to what relief?

The submissions.

18. Mr. Y V Suryanarayana, Ld. Counsel for the applicants, at the outset, contended that, the 1st respondent is a 'Quasi Partnership' Company, and the respondents 2 to 6 have been 'harassing' and 'oppressing' the petitioners taking undue advantage of its miniscule majority and thus, abusing the principles of quasi partnership. According to the Ld. Counsel, it is a settled proposition that a minority shareholder in a 'quasi-partnership' has a right to claim protection from being ousted or excluded from the ongoing management of the business.

19. As regards the appointment of the respondents 4&5 as the directors of the 1st respondent company is concerned, Ld. Counsel would contend that, after the exit of Nand Kishore Goel who passed away on 03.05.2006, there were only three directors in the 1st respondent Company, namely, Nirmal Kumar Gupta(representing the Late Nand Kishore Goel group), 2. Vijay Kumar Goyal (representing the Vijay Kumar Goyal group) and 3. Sat Narain Bansal, the executive director of the Company. Thus, practically there are only two group of shareholders viz. Late Nirmal Kumar, (Petitioners group) holding 46.28% shares and Vijay Kumar Goyal (Respondents group) holding 51.66% shares of the 1st respondent company as on the date of filing of the present company petition.
20. According to the Ld. Counsel, the above equilibrium of representation of one director from each family was disturbed intentionally by the respondents 2&3, by calling for a board meeting on 21.03.2005, for appointing the respondents 4 and

5 as the directors of the 1st respondent, despite strong protest by late Nirmal Kumar, vide his telegram 10.05.2005. Ld. Counsel further states that soon after commencement of the Board meeting at 10:00 AM, on 21.03.2005, late Nirmal Kumar, since had an appointment with his doctor was required to leave the board meeting at 10:50 AM, it self, requested the Board to adjourn the meeting to next day which request was unreasonably declined on the pretext that the adjournment will be detrimental to the interest of the other directors, shareholders and the Company besides some urgent items of agenda were to be considered at the said meeting, even while there was no such teething urgency and the meeting could not have been adjourned to the next day. Ld. Counsel submits that after Late Nirmal Kumar Gupta left the meeting, the rest of the agenda items particularly the items relating to the appointment of 4th and 5th Respondents as directors was taken up and the resolutions were passed in his absence.

According to the Ld. Counsel the minutes of the above-board meeting clearly manifest the tyrannical conduct of the Respondents and also establish that the Petitioners were subjected to a treatment which is burdensome, harsh and unjust and that there was blatant violation of the conditions of fair play.

21. Therefore, according to the Ld. Counsel, the appointment of the 4th & 5th Respondents as directors in a family company having the characteristics of quasi-partnership with the sole intent of gaining majority by one group in order to oust the other group by violating the unwritten understanding which was in vogue for a period of almost 25 years since incorporation, hence the same being a brazen act of oppression is liable to be set aside.
22. On denial of request for transmission of the shares of late Nirmal Kumar Gupta who passed away on 03.05.2006 is concerned, Ld. Counsel for the Petitioners submits that the

share transmission has been done during the pendency of this Company Petition.

23. On the plea of siphoning of funds of the 1st respondent by the respondents 2 to 6 is concerned, Ld. Counsel submits that, as on 31.03.2004 the 1st respondent company owed several lakhs of Rupees to late Nirmal Kumar Gupta group as mentioned in the table and without any requisition from the Late Nirmal Kumar Gupta group, and more importantly without any information to the late Nirmal Kumar Gupta group, obviously on the instructions of the 2nd Respondent, the amounts mentioned in the table, were shown to have been repaid to the late Nirmal Kumar Gupta group through account payee cheques by depositing the said cheques into the bank accounts of late Nirmal Kumar Gupta group without their knowledge or any consent by mis using the 'authorization' given to the 2nd Respondent as bank accounts were maintained in Chennai, and the 2nd respondent is a resident

of Chennai. According to the Ld. Counsel, the 2nd Respondent was not authorized to route the funds of late Nirmal Kumar Gupta group to his own or his family member's account.

24. Ld. Counsel further states that, the 2nd Respondent was also authorized to operate the bank account of M/s Goyal Finance Corporation, a proprietary concern of Shri Gajanandji Gupta, father of the 2nd Respondent and late Nirmal Kumar, and the said authorization was misused by the 2nd Respondent in the following manner:

- i. The funds from the 1st respondent company travelled to the bank accounts of Nirmal Kumar Gupta group
- ii. From the said bank accounts of Nirmal Kumar Gupta group the funds were transferred to the account of M/s Goyal Finance Corporation
- iii. From the said bank account of M/s Goyal Finance Corporation the same funds were moved to the personal accounts of Vijay Kumar Goel group
- iv. And then from the said personal accounts of Vijay Kumar Goel group the funds landed back with the 1st respondent company.
- v. All these transfers were made under the signature of the 2nd Respondent and perhaps the 3rd Respondent.

25. In support of the above submission, Ld. Counsel relied on Annexures 20 and 21, besides on the individual affidavits of Late Nirmal Kumar Gupta and late Gajanandji Gupta, proprietor of M/s Goyal Finance Corporation Annexure 5 & Annexure 6.
26. Ld. Counsel further submits that the effect of the above routing of funds by the Respondents was as under:
- i. The amounts due to Late Nirmal Kumar Gupta group from the 1st respondent company were shown as repaid without the funds remaining with late Nirmal Kumar Gupta group
 - ii. The credits of Late Nirmal Kumar Gupta group in 1st respondent company were wiped out and replaced with the credits of Vijay Kumar Goel group
 - iii. Vijay Kumar Goel group without actually parting away with any funds was able to manipulate the balance sheet of R1 company by showing as if additional amounts are due to Vijay Kumar Goel group from the 1st respondent company.

27. Ld. Counsel further states that Late Nirmal Kumar Gupta and his group came to know of this transaction only after closure of their bank accounts in February / March 2005 and hence late Nirmal Kumar Gupta addressed letter dated 12.04.2005 to the 1st respondent company asking for the statement of accounts of his group members in the book of 1st respondent company. He again reminded the 1st respondent company to send the statements vide his two reminder letters dated 02.05.2005 and 30.05.2005 but the 1st respondent company till date did not provide the statement of accounts. Ld. Counsel further states that the above systematic siphoning of funds by the respondents is more evident as on one hand the R1 company claims to be going through financial crunch and asked its directors and their family members to pour in additional funds as stated in the 2nd para of minutes which reads as under:

“Further the Chairman, Mr. Sat Narain Bansal, informed the Board of Directors that on account of inconsistent poor quality production, fueled by cut throat competition in the market, the Company is reeling under financial constraints, He suggested that the Directors and their family members should pour in some more capital to facilitate the Company to improve its working, He appreciated and thanked Mr. Vijay Kumar Goyal for sending Rupees Five Lakhs recently, which was utilized to repay some of the creditors of the Company.”

and on the other hand, the 1st respondent company repays the amount due to Nirmal Kumar Gupta group without any demand or request from Nirmal Kumar Gupta group. All these transactions were carried out in a span of 1-2 days between 20.12.2004 and 22.12.2004. Ld. Counsel states that the 3rd Respondent did not deny the above siphoning of funds. Ld. Counsel further submits that the loans of Nirmal Kumar Gupta group were repaid and fresh loans were given by Vijay Kumar Goel group, by moving the funds of R1 company as depicted above. Ld. Counsel further submits that thus, the 2nd Respondent acting in collusion with the 3rd & 6th respondents,

abetted the other respondents in siphoning away the funds to the tune of almost Rs.10 crores from the company over the years as is evident from **Annexure 1**.

28. Ld. Counsel further states that, during the year 2004-05 Nirmal Kumar Gupta and the Petitioners have noticed unaccounted sales of finished products like maida (wheat flour) as well as large quantities of scrap and gunny bags when the petitioners came across certain gate passes of unaccounted sales by 1st Respondent Company and when confronted the 2nd & 3rd respondents as to why the same were not accounted for and advised them to account for all the sales. However, as the Respondents did not heed to their advice Nirmal Kumar Gupta vide his letter dated 31.12.2005 to the 2nd Respondent as director of the 1st Respondent Company enclosing his letter dated 31.12.2005 besides vide letter dated 13.02.2006 to the 1st Respondent pointed out the

illegal activity of unaccounted transactions indulged in by the respondents.

29. Ld. Counsel also contended that, the respondents also resorted to inflation of expenditure under various heads and were never in the habit of not accounting the real sales of the company. According to the Ld. Counsel on the basis of limited information available to the petitioners due to the brutal dominance of the respondent group in the company, it could be fairly derived that the worth of the material through unaccounted gate passes would amount to at least 15 to 20 % of the turnover. Hence thorough and independent investigation shall be ordered in order to unravel the true picture of the quantum of unaccounted transactions and inflated expenditure. In support of this plea Ld. Counsel relied on the two gate passes of the unaccounted sales carried out by the Respondents, Salary sheets reflecting the inflation of expenditure and unaccounted salaries, besides IA No. 203 of

2007 for appointment of independent auditor to verify the books of the R1 company and take custody of records. According to the Ld. Counsel the Respondents till date have not filed any counter in the said IA No. 203 of 2007. The said IA No. 203 of 2007 is pending adjudication.

30. On Rights Issue, Ld. Counsel submits that, immediately after the filing of the present petition the Respondents had come out with the Rights issue and these Petitioners filed and IA No. 214 of 2006 against the said Rights Issue and the same was disposed of observing inter alia, as below:

“For these reasons, the Company is permitted to raise the issued and paid up capital as resolved by the board of directors and allot further shares to all the shareholders including the petitioners according to their entitlement on payment of necessary consideration. The petitioners are at liberty to bring in funds towards their share of capital over a period of 12 months. However, considering the apprehension expressed on behalf of the petitioners that their interest will be jeopardised on account of the proposed increase of share capital, it is hereby directed that the respondents will not exercise their voting rights in respect of the additional shares, which may be allotted to them, during the interregnum period, until disposal of the company petition. With this safeguard, the proposed

increase of share capital when implemented cannot cause any prejudice to the petitioners, as feared by them. Any allotment of shares, pursuant to this order will be subject to the outcome of the company petition, whereby among other things, the purported violation of the provisions of Section 92 while taking share application will also be considered.

31. Ld. Counsel further submits that the intentions of the Respondents were even more evident from the Annual report for the FY ending 31.03.2006 as the Respondents had increased the share application money by almost 650% i.e. from Rs. 4,83,000/- (which was lying with the R1 company for past several years) as on 31.03.2005 to Rs. 31,33,000/- as on 31.03.2006 which was not in the knowledge of late Nirmal Kumar, he received the copy of the Annual report for the FY ending 31.03.2006. Therefore, according to the Ld. Counsel, the intentions of the Respondents group was to illegally increase their shareholding in R1 company by bringing in the share application money without the knowledge of Late Nirmal Kumar Gupta group, especially as the same amount could

have brought as an unsecured loan or under any other head. Ld. Counsel submits that, the sudden proposed Rights issue was not due to any economic or commercial consideration but was one propelled by the plea raised in the company petition and the apprehension that the Respondents would alter the shareholding pattern. It is also contended that the respondents through the Rights Issue wanted to issue additionally three times the existing paid-up shares without any proposed capital expenditure. There was no substantial increase either in the quantity or quantum of turnover.

32. According to the Ld. Counsel, when compared to last financial year, the Sundry Creditors as per the Balance sheet as on 31.03.2006 have increased by Rs.77,34,023-00, compared to previous year. It shows that the company was enjoying good credit from the market and can well reduce its working capital limits from the Bank. Hence the claim of the Board to increase the Share capital is not tenable. The Sundry Debtors for more

than six months as on 31.03.2006 when compared to last financial year had also come down by Rs.16,19,492-00 (Rupees Sixteen Lacs Nineteen Thousand Four Hundred and Ninety-two only) Hence the Company was having additional funds at its disposal. In spite of the all these the Respondents chose to come out with the Rights issue since if the Petitioners do not subscribe they will subscribe and increase their shareholding to a brutal level and if the Petitioners subscribe to the Rights Issue the Respondents can siphon away those funds as they have done it in the past.

33. Therefore, according to the Ld. Counsel the allotment of shares under the said Rights issue is liable to be set aside and the Petitioners be provided with a reasonable exit mechanism from 1st respondent company based on the shareholding as on date of filing of the petition.

34. Ld. Counsel also submits that the Respondents even violated the provisions of Companies Act, 1956 while proposing the Rights Issue as under.

- i. In the letter for the Rights issue, it is nowhere stated that in which Board meeting did the Board of directors of the R1 company resolved to raise money through increase in share capital.
- ii. Share Application FORM was not sent along with the proposed letter
- iii. The mandatory FORM for renunciation was not annexed to the offer letter.

35. Therefore, according to the Ld. Counsel, it is evident from the above facts and submissions that there is a total lack of trust and confidence between the petitioners and respondents and that the petitioners are being subjected to undue hardship on account of ruthless dictatorial conduct of the respondents. Since the law postulates that when a complaint is made the tribunal under sec 241 (397 & 398 of the Companies Act, 1956) the tribunal may make such order as it think fit to put an end to the matters complained of. In the instant case in view of

complete lack of trust and confidence between both the groups and absolute lack of probity of fair dealings on the part of the respondents qua the minority shareholders i.e., the petitioners, it is most humbly urged and submitted that the most practicable and pragmatic manner of resolution of dispute between both the groups would be to direct the respondents to buyout the shareholding of the petitioners by the respondents at a present fair value based on the shareholding of both the groups as on the date of filing of the present petition, which may be arrived at by appointing a registered valuer.

36. Mr. Parthasarathy, Ld. Sr. Counsel for the respondents, while vehemently refuting the afore mentioned, contentions of the Ld. Counsel for the petitioners would contend that, by virtue of Clause 23 of the AOA, which provides that,
- “Further Directors may be co-opted at the discretion of the Board; the term being as decided by the Board from time to time”.

the Board of Directors of the 1st respondent has the power to appoint directors.

37. Therefore, according to the Ld. Sr. Counsel, when the notice dated 16-03-2005 of the meeting of the Board of Directors of 1st respondent scheduled to be held on 21.03.2005, was admittedly served on Late Nirmal Kumar Gupta, who was one of the directors of the Board of the 1st respondent and Late Nirmal Kumar Gupta attended the meeting on the said date, the allegation being that attendance by Late Nirmal Kumar Gupta, was not meaningful, in as much as he was to leave the meeting midway due to doctor's appointment, which allegation according to the Ld. Sr. Counsel, conveniently omits to consider three crucial factors viz. i) Copy of Board meeting held on 21.03.2005 minutes were sent to Nirmal Kumar Gupta, vide letter dated 15-04-2005 and once again on 07-05- 2005 ii). The meeting validly continued as there was a

quorum; and iii). The appointment of R4 and R5 as directors was further confirmed by the members at the AGM held on 31-12-2005, under proper notice, which was attended by the Petitioners themselves, is wholly untenable and unsustainable.

38. Therefore, according to the Ld. Sr. Counsel, the appointment of the respondents 4&5 as the directors of the 1st respondent in the Board Meeting held on 21-03-2005 is perfectly valid under law. Hence, no case is made out in the Petition to invalidate the appointments of the respondents 4 & 5.

39. On the Rights issue Ld. Sr. Counsel would submit that, in the year 2006, there was an urgent need of funds for the Company to viably procure wheat, besides to meet the immediate working capital and financial requirement of the Company and to avoid expensive borrowing, the Company proposed to issue further shares by way of Rights Issue and in furtherance thereof, the Respondents sought to make a rights issue after

affording a fair opportunity to the Petitioners to participate in the same. However, the Petitioners resisted the same and filed CA No. 214 of 2006 before this Tribunal, and the same was disposed of vide order dated 01.02.2007, inter alia, with the following observations:

“It cannot, therefore, be ruled out that the resistance on the part of the petitioners (Petitioners herein) for the proposed increase of share capital is prima facie, found to be motivated. Furthermore, bona fides, of the respondents cannot be doubted especially when additional equity shares are being allotted to the shareholders, including the petitioners in proportionate to their holdings in the Company. In view of this, the apprehension of the petitioners that their shareholding will be destabilised, to my mind, is misconceived.”

...“For these reasons, the Company is permitted to raise the issued and paid up capital as resolved by the board of directors and allot further shares to all the shareholders including the petitioners according to their entitlement on payment of necessary consideration. The petitioners are at liberty to bring in funds towards their share of capital over a period of 12 months. However, considering the apprehension expressed on behalf of the petitioners that their interest will be jeopardised on account of the proposed increase of share capital, it is hereby directed that the respondents

will not exercise their voting rights in respect of the additional shares, which may be allotted to them, during the interregnum period, until disposal of the company petition. With this safeguard, the proposed increase of share capital when implemented cannot cause any prejudice to the petitioners, as feared by them.”

40. However, instead of availing this opportunity and/ or infusing funds, the Petitioners filed an appeal against the aforesaid Order before the Hon’ble High Court of Andhra Pradesh, Hyderabad in Company Appeal No. 13/2007 and same was dismissed as withdrawn by the Hon’ble High Court on 14-09-2007.
41. Therefore, according to the Ld. Sr. Counsel, from the above, it is evident that the Petitioners were not interested in the welfare of the Company as they failed to contribute resources at a time when the Company was in dire need of these funds and as the Respondents had infused funds, their shareholding was increased in proportion to the contribution made by them.

Ld. Sr. Counsel also denied any procedural violation as alleged while proposing the Rights Issue.

42. As regards the allegation that an amount of Rs.19.66 lacs has been siphoned off by the Respondents from the Company as such there is a need to order investigation regarding the alleged siphoning of funds from the company in order to bring back the amounts to the company, Ld. Sr. Counsel contends that the Petitioners have not furnished any proof despite the Respondents specifically denying these allegations, stating, inter alia, that,

“In fact, the various amounts mentioned in the table under Para 17, which are purportedly the amounts due from the Company to the various members of ‘NKG Group’, as on 31-03-2004, are all incorrect, except for S.no.4, which is Rs.68160/- to Nirmal Kumar Gupta HUF. Further, the petitioners are put to strict proof of the correctness of these amounts alleged to be due to them.”

hence, the allegation being devoid of any basis is liable to be dismissed.

43. Ld. Sr. Counsel further states that the allegation of siphoning of funds by Respondents is absurd as funds were brought in by Respondents themselves in 2004, at the time when there were no disputes. The specific dates and amounts in the sum of Rs. 13.3 lakhs, brought into the company by Respondent group is tabulated at Para 36 of counter. According to the Ld. Sr. Counsel the said tabulation was not denied by Petitioners, therefore, there arises no question of 'siphoning' of funds by the respondents. Ld. Sr. Counsel further states that, it is not out of place to mention that the Petitioners have deliberately avoided mentioning these amounts in the so-called self-serving flowcharts prepared by them, which evinces their oblique motive of misleading this Hon'ble Tribunal.

44. As regards the payments made to the petitioners through their Bank Accounts is concerned, Ld. SR. Counsel, submits that the Petitioners themselves have admitted that payments were made by the company to them through account payee cheques

which was towards repayment of loans advanced by the petitioners' group, therefore, **the** dispute, if any, is regarding the subsequent transactions carried out by the 2nd respondent in the personal bank accounts of the Petitioners. Thus, the issue raised by the Petitioner appears to be whether the Petitioners had given 'consent' to the 2nd respondent to transfer amounts from their personal bank accounts in his capacity as an authorized signatory, which is nothing but a private dispute between the parties and the 1st respondent Company has nothing to do with the same. Therefore, the said allegations cannot form the subject matter of a *lis* before this Tribunal under any provisions of the Companies Act, 1956.

45. Ld. Sr. Counsel, further submits that, the allegation that the banking transactions that were carried out in 2004 were without the consent of petitioners, is nothing but an afterthought as there was no protest towards alleged non-consensual operation in 2004 of the personal bank accounts

of Petitioner group, till the present CP was filed in October 2006; that too after the death of Late Nirmal Kumar Gupta. Moreover, these allegations formed part of FIR no.659/2006 dt 05-08-2006 filed by the Petitioners with Central Crime Branch, Tamil Nadu, which was closed and no charges were framed in the matter, more so when a protest-petition was filed by the 1st Petitioner (the complainant in the matter) against the closure of the FIR, the Additional Chief Metropolitan Magistrate dismissed the Protest-petition as baseless with the finding which reads: -

“8. When the defacto-complainant (1st Petitioner herein) has himself admitted that the A1 (2nd Respondent herein) had been authorized to operate the bank accounts of the defacto-complainant and issue cheques to withdraw the amounts, the act of withdrawal or transfer of amounts from the bank accounts by the A1 (2nd Respondent herein) does not prima-facie reveal the alleged commission of the offence by the A1 to A4.

... Further a perusal of the sworn statement of the complainant and other material records shows that there is no prima-facie case and valid reasons to proceed further by taking cognizance of the case. Therefore, this court holds

that the de facto-complainant (1st Petitioner herein) is not entitled to get the relief as prayed for.”

46. Ld. Sr. Counsel, therefore, contends that the above order demonstrates the litigative and vindictive conduct of the Petitioners beyond doubt. Having not obtained any relief from other Courts, the petitioners suppressing the above facts have raised baseless allegations in their petition.

47. As regards the Petitioners’ allegations that the Respondents’ purported failure to furnish proper information regarding the accounts of the Company Ld. Sr. Counsel submits that, the 1st respondent Company issued statement of closing balances in the Company’s books vide its letter dated 08-12-2005 (Annexure R7) and also gave details of Cheque numbers, Dates and amounts of individual payments made by the Company to the Petitioners vide letter dated 13-04-2006 Annexure R8. On the contrary, it is the Petitioners who have been opaque in their affairs in as much as the Company

sought for their statement of accounts showing balances payable to them from the Petitioners vide its letter dated 24-01-2006 but the Petitioners never provided the same.

48. On the affidavits of Late Nirmal Kumar Gupta and Gajanand Gupta, Ld. Sr. Counsel contends that the so-called affidavits of Late Nirmal Kumar Gupta and Gajanand Gupta dated 22.04.2006, 07.04.2006 and 12.04.2006 are not only belated but an afterthought, prepared by Petitioners after facing rebuttal in the Counter- Statement, purely for the purposes of this litigation, fabricated and ought to be disregarded as being documents post-litem. Further, according to the Ld. Sr. Counsel there is a serious mismatch in the alleged signatures of Gajanand Gupta in the documents furnished by the Petitioners and alleged to have been signed by him.

49. In so far as the plea that the Respondents have inflated expenditure and also failed to account for the revenue from sales transactions which is allegedly proven by so-called

'Gate-passes', Ld. Sr. Counsel contends that the Petitioners even while contending in Para 13 that they mysteriously 'came across' alleged 'gate-passes' way back in the year 2004 in relation to the unaccounted sales, curiously have agitated their alleged grievance only in 2006. Likewise, the Petitioners even while claiming to be in possession of these alleged 'gate-passes' since 2004 did not choose to file them with the main Petition nor with their Rejoinder which was filed on 20-09-2007. Further, the same were once again not filed along- with C.A. 203 of 2007. Shockingly, the petitioners have filed the alleged documents purportedly pertaining to the year 2004 in 2019 through an 'Additional affidavit' in CA 203/2007.

50. Ld. Sr. Counsel submits that while the Petitioners' Group wrote numerous letters to the directors of the Company between 2004 and 2005 viz. letters dated 12-04-2005, 02-05-2005, 30-05-2005, 12-11-2005, 21-03-2005, 30-05-2005, 18-05-2005, 11-03-2005, 07-02-2005, 25-04-2005,

10-05-2005 and 03-12- 2005 raising various trivial and frivolous issues regarding the affairs of the Company, they did not find it fit to utter even a single word about the so-called 'unaccounted sales' or 'gate passes' or 'inflated expenditure' till 31-12-2005. Therefore, according to the Ld. Sr. Counsel, the entire allegation is nothing but an afterthought. Ld Sr. Counsel further states that the fact that the Petitioners have no explanation as to how they came in possession of the alleged gate passes/salary sheets itself is evidence of their fabrication, there is no proof that the alleged documents pertain to the Company, in fact the alleged documents don't contain signature of the Respondents nor they are on the company stamp or letterhead, as such, the genuineness and veracity of these documents are highly suspect. Ld. Sr. Counsel, also submits that for the first time vide letter dated 31-12-200, late Nirmal Kumar Gupta made vague allegations of 'unaccounted sales' wherein, pertinently, there is not even

a whisper of 'inflated expenditure' or 'salary sheets' or even 'gate passes' in his letter, which letter was replied to the satisfaction by the 1st respondent Company vide letter dated 24-01-2006 and there was no reply from him.

51. Ld. Sr. Counsel also submits that even though the letter dated 31.12.2005 indicates that Late Nirmal Kumar, came to know of the so-called unaccounted sales only in late 2005, the Petitioners' claim in Para 13 of the Petition is that Late Nirmal Kumar Gupta confronted the Respondents with alleged 'gate-passes' in December 2004 itself, which clearly exposes the falsehood of the Petitioners. According to the Ld. Sr. Counsel, the above-mentioned submissions clearly prove that all the allegations relating to 'suspicious gate-passes', 'unaccounted sales' and 'inflated expenditure' are all false, belated afterthoughts and the alleged documents filed by them in this regard are fabricated.

52. As regards the plea relating to altering of Articles of Association in order to incorporate proportional representation in the Board of Directors, Ld. Sr. Counsel submits that, the Petitioners have not made out any case and on the other hand the petitioners made frivolous complaints to Municipal Authorities for closure of mill and office and the said motivated action of the Petitioner group was observed by this Tribunal in its Order dated 01.02.2007, as under:

“The challenge posed by the petitioners against the decision of the board of directors, in the present case, for the increase of share capital in order to commence wheat procurement, must be seen in the light of the strained relationship between the parties, as brought out by the complaints made with Municipal Corporation of Hyderabad by the petitioners for closure of the mills run by the Company and also eviction proceedings initiated against the Company to vacate the office premises rented out by the petitioners.

It cannot, therefore, be ruled out that the resistance on the part of the petitioners for the proposed increase of share capital is prima facie, found to be motivated.”

53. Ld. Sr. Counsel also contended that the Petitioners, in collusion with Late Nirmal Kumar Gupta, illegally took away the statutory records, files and documents of the Company

and have never returned on flimsy grounds, despite many reminders, such 'acknowledgement' should be given in advance before the returning of record. Having thus, refused the records, the petitioners ultimately took a stand that the records, files and documents are lost and not traceable after the death of Nirmal Kumar.

54. Ld Sr. Counsel submits that the Petitioner's group forcibly took away the three cars belonging to the company in March 2005 and never returned them citing flimsy reasons, despite several reminders including letters dated 30-03-2005, 12-05-2005 and 13-03-2006. The Company had filed an FIR for recovery of the cars but nothing further happened and now the cars have still not been returned to the Company till date.

55. Ld. Sr. Counsel also referred to the undermentioned cases filed by the Petitioners group and contended that the same are false and frivolous.

1). Eviction proceedings vide R.C. 85/2006 before the First

Additional Rent Controller, City Civil Court, Hyderabad.
CRP 5982 of 2010 in the High Court of Andhra Pradesh,
Hyderabad

- 2). R.C. No.292 of 2013 before the Hon'ble IV Additional Rent Controller, City Civil Court at Hyderabad.
- 3). R.A. No. 57 of 2019 before the Additional Chief Judge, City Small causes court at Hyderabad.
- 4). OS 77 of 2020 before XVII Additional Senior Chief Judge, City Civil Court at Hyderabad.
- 5). Criminal complaint in FIR 659/2006 against the wife of 4th Respondent.

56. As regards the transmission of 69570 shares of late Nirmal Kumar Gupta in favour of Petitioners is concerned, Ld. Sr. Counsel submits that the petitioners sought transmission of shareholding of Late Nirmal Kumar Gupta, and also the shareholding of various HUFs in which Late Nirmal Kumar Gupta was a Karta, initially could not be transmitted because Late Nirmal Kumar Gupta's alleged nomination request letter dt 21-02-2006 was received 27 days after death of Late Nirmal Kumar Gupta i.e. on 30-05-2006. Further the Petitioners sought the transfer of shareholding of HUFs in a

peculiar manner without submitting any family settlement deed or other legal document. However, ultimately and in good faith, 69570 shares standing in the name of Late Nirmal Kumar Gupta and/ or his HUFs were transmitted by the Company to the petitioners in the manner sought for by them and fresh share certificates were also issued as demanded. The Petitioners have admitted the same. Thus, this relief has become infructuous.

57. As regards the plea of pending remuneration of Late Nirmal Kumar, Ld. Sr. Counsel submits that except a vague, unquantified demand to pay the pending remuneration, the Petitioners have not specified how much amount is sought for and the amounts that are pending. According to the Ld. Sr. Counsel, it is a matter of record that non-executive directors are not entitled to remuneration as per Board Resolution dated 21-03-2005 and the same was communicated to Late Nirmal Kumar, himself, in 2005 itself, vide letter dated 30-03-

2005 and the same was not protested by him before any judicial forum, during his lifetime.

58. In respect of the allegation that increase in the 'share application money' as on 31.03.2006, is oppressive to the Petitioners Group and shows the mala fide, intention of the Respondents, Ld. Sr. Counsel submits that the same is completely baseless, as according to the Ld. Sr. Counsel, the Respondents had infused funds into the Company at a time when the Company was in dire needs of funds to procure wheat in a financially viable manner and without charging any interest, which is clearly borne out in the Minutes of the Meeting dated 21.03.2005. Ld. Sr. Counsel further states that the Respondents proposed to go for a Rights Issues in order to ensure that all parties are provided with a fair opportunity, which opportunity was never availed of by the Petitioners as explained hereinabove.

59. According to the Ld. Sr. Counsel the above aspects have been considered by this Tribunal while passing the Order dated 01-02-2007, observing, inter alia, as below.

ORDER

“ 1. In this company petition filed under sections 397 & 398 of the Companies Act, 1956 ("the Act") alleging a series of acts of oppression and mismanagement in the affairs of M/s Tirupati Roller Flour Mills Private Limited ("the Company"), the petitioners have come out with the present application (C.A. No.214 of 2006) for an order of injunction restraining the respondents from increasing the issued and paid up share capital of the Company pending disposal of the main petition, in support which Shri R. Shankaranarayanan, learned Counsel submitted as under:-

- The Company has proposed to increase the issued and paid up share capital of the Company from 2,28,600 equity shares which remained unchanged ever since 1993 to 9,14,400 shares of Rs. 10/- each in order to meet the increase in wheat prices and transportation costs and to avoid payment of interest on the loans availed for procurement of wheat. However, wheat prices are likely to decline during this year on account of higher crop estimates and a possible export ban extension.
- The reasons attributed by the Company for the proposed increase of capital are motivated whereby the respondents would acquire the additional shares directly or indirectly to increase their holdings to the exclusion of the petitioners, thereby destabilising the existing shareholding pattern of 46.28% held by the petitioners. The Company's inability to realise its receivables cannot be a ground to increase the share capital.
- While wheat prices and transportation charges have been increasing almost annually, the rate of interest charged by the Bank

has been declining. The existing working capital facilities are adequate to meet the increase in wheat and transport prices. The Company has not utilised the entire credit limits extended by its bankers and there is still scope to exhaust the unutilised credit facilities to meet the financial needs. There is, therefore, no need for the increase in share capital of the Company. The applicants would be irreparably injured, if the proposed increase of issued and paid up capital is implemented.

- In commercial practice, any company would increase its issued share capital to meet its long term capital requirements, in the form of acquiring any assets or new machineries but not for the purpose of meeting its raising input costs. The respondents have omitted to mention the fact that when there is increase in input costs, there will also be increase in sale price. While wheat prices have gone up by 33% over the past one year, prices of wheat products are up by 35%. No details in this behalf are furnished by the Company.

- The third respondent, being Chairman of the Company at the board meeting held on 21.03.2005, as brought out by the minutes, pointed out the financial constraints faced by the Company and returned the amounts due to the petitioners group unasked for, but subsequently accepted deposits from the second respondent. This shows the mischievous intentions of the respondents group.

- The respondents with malafide intention started subscribing to share application money to the tune of Rs.29.75 lakh from 14.06.2005 onwards, even without calling for share application money in compliance with the requirements of section 92 from the petitioners group and utilised the said sum for the Company's operations. The respondents will have to contribute Rs. 35.43 lakhs towards their entitlement of shares, whereas the petitioners are required to pump in only Rs.5.68 lakhs towards their share of the increased capital. In view of this, the Company's operations will not be affected in any way by non-allotment of additional shares. The Company is already enjoying enhanced credit from the market and there is, therefore, no necessity for the increased capital for

procurement of wheat. Hence, the allotment per se will not increase the money under the given circumstances. In these circumstances, there is no explanation in regard to the benefit, which may accrue to the Company and its shareholders by virtue of the proposed increase in the share capital.

2. Shri P.H. Arvinth Pandian, learned Counsel, opposed the prayer for an order of injunction against the Company and reiterated the need for additional issue of share capital, as under:-

- The sole object of the present application is to paralyse operations of the Company and bring its affairs to a standstill. The applicants have not denied the increase in wheat prices and transportation costs. The increase in wheat prices is borne out by copies of the invoices for wheat procurement over the past few years and historical data of spot purchases of wheat on National Commodities Exchange, New Delhi for the past one year and articles published on wheat prices. ING Vysya Bank and other Banks have declined the credit facilities to be availed by the Company. There is an urgent need for funds to commence wheat procurement and the Company would be put to loss, if the proposed issue of shares is delayed.

- The Company has offered shares to the applicants also in proportion to their existing shareholding in the Company in terms of the communications dated 28.11.2006 sent to the applicants even though section 81 is not applicable. The option of adjusting the share application money lying in the Company towards the rights issue has been offered to all persons who have contributed such share application money, which includes the second applicant herein.

- The petitioners are not interested in the welfare of the Company, as could be seen from their various communications forwarded to Municipal Corporation of Hyderabad for closure of the mills for allegedly carrying on the trading activities without a valid and existing trade licence. The petitioners have initiated Court proceedings before the Principal Rent Controller, Hyderabad for

eviction of the Company from the office premises rented out by them.

- There is considerable delay in recovering the sale proceeds of wheat commodities and therefore, the Company needs additional funds. Though the respondents have brought in share application money, they never treated the same as loan amounts and charged any interest. The Company is a running company and funds are required to meet the day-to-day requirements and hence, share capital is required to be increased.

3. I have considered the arguments of learned Counsel for the parties. While the respondents are in favour of increase in the issued and paid up share capital of the Company from 2,28,600 equity shares to 9,14,400 shares of Rs.10/- each, in order to meet the increase in wheat prices and transportation costs, the petitioners are against any such increase mainly on the premise that increase of share capital is always necessitated to meet the long term requirements of the Company. It is on record that the board of directors of the Company resolved to increase the paid up capital and bring in funds into the Company, for the reasons set out in the communication dated 28.11.2006 addressed to the petitioners, offering additional shares in proportion of three equity shares for every one equity share held by them, relevant portion of which runs as follows:-

"With regard to the subject cited, I am to state that, due to expensive availability of what on credit basis costing interest burden of around 2/ to 3% p.m. and also increase in the cost of raw material by 25 to 30% during the last 1 to 1% years, your company is finding it difficult to sustain regular cash flow which is in turn hampering the liquidity and growth of the company. Coupled with the above, the government's procurement of wheat is less by 5-10% this year and there was a general decline in the production by the wheat producing states like Punjab and Haryana. Moreover there is no denial of the fact that, there is steep increase in transport cost of the material. All the above events are turning out to be a big financial burden on the company, which required immediate solution else the

company would suffer on production. You are aware borrowing is costly and servicing the same would be difficult. In view of these reasons your Board of director after due discussion and thought, resolved to increase the paid up capital of the company and bring in funds into the company. I am therefore glad to inform you that. in order to meet the immediate working capital and financial requirement of the company, and avoid expensive borrowing, the board has resolved to issue further equity shares to the existing shareholders in proportion of three equity shares for every one equity share held by them".

According to Shri R. Shankaranarayanan, learned Counsel, wheat prices are likely to decline during this year on account of higher crop estimates and a possible export ban extension and further any increase in the share capital should be only for the purpose of meeting the long term requirements. It has to be borne in mind that the CLB shall recognise the corporate democracy of a company in managing its affairs and the powers of board of directors cannot in normal course be restricted. It is neither open to the CLB to interfere with the collective wisdom of the board of directors to increase the paid up capital of the Company. There is, therefore, no merit in the arguments advanced against any increase of the share capital. 'n this connection, beneficial reference is invited to **Hanuman Prasad Bagri Vs. Bagress Cereals (P) Limited (2007) 73 SCL 57**, wherein the Calcutta High Court held that "If it is established that only for the benefit of the company increase of share capital is required by any means such decision cannot be interfered with under any circumstances even if it changes the shareholding pattern or for that matter the majority shareholders are reduced to minority one". It is not under dispute that the Company has already enjoyed the benefit of share application money brought in by the respondent group. The challenge posed by the petitioners against the decision of the board of directors, in the present case, for the increase of share capital in order to commence wheat procurement, must be seen in the light of the strained relationship between the parties, as brought out by the complaints made with Municipal Corporation of Hyderabad by the petitioners for closure of the mills run by the Company and also

eviction proceedings initiated against the Company to vacate the office premises rented out by the petitioners.

It cannot, therefore, be ruled out that the resistance on the part of the petitioners for the proposed increase of share capital is prima facie, found to be motivated. Furthermore, bonafides of the respondents cannot be doubted especially when additional equity shares are being allotted to all the shareholders including the petitioners in proportionate to their holdings in the Company. In view of this, the apprehension of the petitioners that their shareholding will be destabilised, to my mind, is misconceived. While the respondents have already brought in Rs.29.75 lakh by way of share application money reportedly over a period of more than 15 months and are required to invest only an amount of Rs.5.68 lakh towards their share of increased capital, the petitioners however, will have to forthwith bring in more than Rs.35 lakh towards additional shares to which they are entitled, in terms of their present holding in the Company. In view of this, the petitioners must be afforded adequate time to bring in additional funds towards the increase of share capital. For these reasons, the Company is permitted to raise the issued and paid up capital as resolved by the board of directors and allot further shares to all the share holders including the petitioners according to their entitlement on payment of necessary consideration. The petitioners are at liberty to bring in funds towards their share of capital over a period of 12 months. However, considering the apprehension expressed on behalf of the petitioners that their interest will be jeopardised on account of the proposed increase of share capital, it is hereby directed that the respondents will not exercise their voting rights in respect of the additional shares, which may be allotted to them, during the interregnum period, until disposal of the company petition. With this safeguard, the proposed increase of share capital when implemented cannot cause any prejudice to the petitioners, as feared by them. Any allotment of shares, pursuant to this order will be subject to the outcome of the company petition, whereby among other things, the purported violation of the provisions of section 92 while taking share application will also be considered. With these directions the company application stands disposed of. In view of this, the interim order made on 11.01.2007 is vacated. In the meanwhile, the

respondents will file counter to the main petition by **28.02.2007** and rejoinder to be filed by **15.03.2007**. The company petition will be heard on **30.03.2007 at 2.30 P.M.**”

60. Ld. Sr. Counsel further submits that, the Petitioners herein had already transferred unlawfully the entire shareholding of the Vijay Kumar Goyal Group in M/s. Bhagyanagar Boards and Chemicals Pvt. Ltd, which was the subject matter of Company Petition No.26/2005, on the file of this Tribunal, in their name, besides taken away the Company's records & assets and made frivolous complaints to municipal authorities to shut down the 1st respondent.
61. In so far as the allegation that there was an abnormal increase in the sundry creditors and sundry debtors for the year ended 31.03.2006 as compared to the previous year, Ld. Sr. Counsel submits that the increase was due to increase in turnover for the particular year and as such there was no abnormality. According to the Ld. Sr. Counsel, the Petitioners are misleading this Tribunal by comparing unequal factors, i.e.,

the total amount of raw material purchased for the entire year on the one hand and closing balance as on one date, i.e., 31.03.2006 on the other hand.

62. Ld. Sr. Counsel further submits that, the Petitioners have falsely alleged that there was a purported personal tax planning, involving re-transfer of shares held by the Respondent Group to the Petitioner group and in fact, these allegations are wholly unsubstantiated besides in stark contradiction to the Petitioners case that disputes arose between the parties in 2002 itself. As regards the plea that the termination of the services of the 1st Petitioner as a Technical Manager is oppressive, Ld. Sr. Counsel states that the same is baseless and is in the nature of agitating a dispute between an employer and employee, which cannot fall within the jurisdiction of this Tribunal.

Our analysis and finding

63. Before we proceed with our discussion on the point supra, we wish to refer to the legal position on the 'acts of oppression and mismanagement' as held by Hon'ble Supreme Court of India, Hon'ble High Courts and also the erstwhile Company Law Board.

1. Hon'ble Supreme Court in ***Chatterjee Petrochem (I) Private Limited vs Haldia Petrochemicals Limited*** 2014 14 SCC 574 that;

“the law has not defined as to what amounts to 'oppressive' for the purposes of Section 397 and it is for the courts to decide on the facts of each case as to whether such oppression exists which would call for action under Section 397 of Companies Act 1957. At the same time, it was clearly stated in the said ruling that, the alleged oppressive conduct of the majority of the shareholders to the minority must be burdensome, operating harshly and should be up to the date of the petition”.

2. Hon'ble Supreme Court in ***Shanti Prasad Jain vs Kalinga Tubes Limited*** AIR 1965 SC 1535 held that

“in the case of 'oppression', the majority shareholders must be oppressing the minority as members and the events have to be considered not in isolation but as part of a consecutive story. Hence, there must be continuous acts on the part of the majority shareholders and the conduct must be burdensome, harsh and wrongful. Mere lack of confidence between the majority shareholders and minority shareholders would not be enough unless the lack of

confidence springs from oppression of a minority by a majority in management of the affairs of the company”.

3. Hon’ble Supreme Court, in ***Needle Industries (India) Limited vs Needle Industries Newey (India) Holding Limited***, 1981 3 SCC 333 held that

“an unwise, inefficient or careless conduct of a director cannot give rise to a claim for relief under Section 397 of CA, 1956 (now under Section 241 of CA, 2013). A conduct which lacks in probity, which is unfair and which causes prejudice to the member who is the petitioner in exercise of his legal and proprietary rights as a shareholder must be shown to exist”.

4. ***In Rao (V.M.) vs Rajeshwari Ramakrishnan, 1987 61 Comp Case 20 (Mad), it was held that;***

“firstly, it was observed 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 is outside the scope of the section. Secondly, there must be continuous acts constituting oppression up to the date of the petition. Thirdly, the events have to be considered in a continuous story and not in isolation. Fourthly, it must be shown as a preliminary to the application of Section 397 of CA, 1956 [now Section 241 read with Section 242(1) of the CA, 2013] that there is a just and equitable ground for winding up the company. Fifthly, the conduct complained of can be said to be 'oppression' only when it could be said that it is burdensome, harsh and wrongful”.

64. We therefore proceed to decide the point above, in the light of the *legal frame, supra*, basing on the *factual matrix* of this case.
65. The foremost of the acts of oppression and mismanagement complained by the petitioners in this case, is the appointment of the 4th and 5th respondents as directors of the 1st respondent in the board meeting held on 21.03.2005. Here it is pertinent to note that it is not the case of the petitioners that there was no due notice of the said meeting to the directors or that there was no quorum for the said meeting. In disputably, the Article of the 1st respondent says that, *further Directors may be co-opted at the discretion of the Board, the term being as decided by the Board from time to time*. Therefore, it is clear that the Board of Directors of the 1st respondent has the power to appoint directors. It is not in dispute that the, copy of Board meeting held on 21.03.2005 minutes were sent to late Nanda Kishore Goel, vide letter dated 15-04-2005 and once

again on 07-05- 2005. The appointment of R4 and R5 as directors was further confirmed by the members at the AGM held on 31-12-2005, under proper notice, which was attended by the Petitioners themselves.

66. Therefore, when there is no *illegality* what so ever, either in calling or conducting the Board meeting dated 21.03.2005, the *belated* plea of the petitioners that, the appointment of the respondents 4 and 5 as directors of the 1st respondent in the said Board meeting *amounts* an act of *oppression and mismanagement* by the respondents, is devoid of any merit or substance as such the same is wholly unsustainable and untenable.

67. As regards the plea of 'syphoning' of funds of the 1st respondent by the respondents 2 to 6 is concerned, as rightly submitted by the Ld. Sr. Counsel for the respondents the same is founded on the plea that that as on 31.03.2004 the 1st respondent company *owed several lakhs of Rupees to late*

Nirmal Kumar Gupta group as mentioned in the table and without any requisition from the late Nirmal Kumar Gupta group and more importantly without any information to the late Nirmal Kumar Gupta group, obviously on the instructions of the 2nd Respondent, the said amounts were repaid to the late Nirmal Kumar's group, through account payee cheques by depositing the said cheques into the bank accounts of late Nirmal Kumar's group without their knowledge or consent of the members of the said group, by misusing the 'authorization' given to the 2nd Respondent. Therefore, when the petitioners themselves have pleaded an act of 'misuse' of the authorisation given to the 2nd respondent, even assuming that there was misuse of the authorisation by the 2nd respondent, the said act cannot be called/amounts to or construed as an act of 'syphoning' of the funds of the 1st respondent, as admittedly the funds were deposited in the accounts of the members of Late Nanda Kishore Group. Moreover, Petitioners

failed in stating what amount was syphoned and by whom and in furnishing any proof of the so called syphoning , despite the Respondents specifically denying these allegations, stating, *inter alia*, that, “In fact, the various amounts mentioned in the table under Para 17, which are purportedly the amounts due from the Company to the various members of ‘NKG Group’, as on 31-03-2004, are all incorrect, except for S.no.4, which is Rs.68160/- to Nirmal Kumar Gupta HUF. Further, the petitioners are put to strict proof of the correctness of these amounts alleged to be due to them.” More over there is no denial of the fact that the funds were brought in by Respondents themselves in 2004, at the time when there were no disputes. The specific dates and amounts in the sum of Rs. 13.3 lakhs, brought into the company by Respondent group is tabulated at Para 36 of counter was not denied by Petitioners, therefore, we are not at all convinced by the submission a of ‘siphoning’ of funds by the respondents.

68. Moreover, these allegations also formed part of FIR no.659/2006 dt 05-08-2006 filed by the Petitioners with Central Crime Branch, Tamil Nadu, which was closed and no charges framed in the matter, more so when a protest-petition was filed by the 1st Petitioner (the complainant in the matter) against the closure of the FIR, the Additional Chief Metropolitan Magistrate dismissed the Protest-petition as baseless with the finding which reads: -

“8. When the defacto-complainant (1st Petitioner herein) has himself admitted that the A1 (2nd Respondent herein) had been authorized to operate the bank accounts of the defacto-complainant and issue cheques to withdraw the amounts, the act of withdrawal or transfer of amounts from the bank accounts by the A1 (2nd Respondent herein) does not prima-facie reveal the alleged commission of the offence by the A1 to A4.

... Further a perusal of the sworn statement of the complainant and other material records shows that there is no prima-facie case and valid reasons to proceed further by taking cognizance of the case. Therefore, this court holds that the de facto-complainant (1st Petitioner herein) is not

entitled to get the relief as prayed for”

69. On the Rights issue it is the submission of the respondents that , in the year 2006, there was an urgent need of funds for the Company to viably procure wheat, besides to meet the immediate working capital and financial requirement of the Company and to avoid expensive borrowing, the Company proposed to issue further shares by way of Rights Issue and in furtherance thereof, the Respondents sought to make a rights issue after affording a fair opportunity to the Petitioners to participate in the same. However, the Petitioners resisted the same and filed CA No. 214 of 2006 before the erstwhile Ld. C.LB Tribunal, and the same was disposed of vide order dated 01.02.2007, inter alia, with the following observations:

“It cannot, therefore, be ruled out that the resistance on the part of the petitioners (Petitioners herein) for the proposed increase of share capital is prima facie, found to be motivated. Furthermore, bona fides, of the respondents cannot be doubted especially when additional equity shares are being allotted to the shareholders, including the petitioners in proportionate to their holdings in the Company. In view of this, the apprehension

of the petitioners that their shareholding will be destabilised, to my mind, is misconceived.”

...“For these reasons, the Company is permitted to raise the issued and paid up capital as resolved by the board of directors and allot further shares to all the shareholders including the petitioners according to their entitlement on payment of necessary consideration. The petitioners are at liberty to bring in funds towards their share of capital over a period of 12 months. However, considering the apprehension expressed on behalf of the petitioners that their interest will be jeopardised on account of the proposed increase of share capital, it is hereby directed that the respondents will not exercise their voting rights in respect of the additional shares, which may be allotted to them, during the interregnum period, until disposal of the company petition. With this safeguard, the proposed increase of share capital when implemented cannot cause any prejudice to the petitioners, as feared by them.”

70. However, instead of availing this opportunity and/ or infusing funds, the Petitioners filed an appeal against the aforesaid Order before the Hon’ble High Court of Andhra Pradesh, Hyderabad, in Company Appeal No. 13/2007 and same was dismissed as withdrawn by the Hon’ble High Court on 14-09-2007.
71. Therefore, it is quite clear from the afore mentioned facts and circumstances that the resistance on the part of the

Petitioners for the proposed increase of share capital was motivated. Furthermore, the bona fides, of the respondents in this regard cannot be doubted since the additional equity shares were being allotted to the shareholders, including the petitioners in proportionate to their holdings in the Company. The petitioners also failed in pointing out any specific violation of the relevant provisions of law or the Article of Association of the 1st respondent in the impugned Rights Issue by the respondents.

72. It is pertinent to state herein that admittedly, the Petitioners' Group wrote numerous letters to the directors of the Company between 2004 and 2005 viz. letters dated 12-04-2005, 02-05-2005, 30-05-2005, 12-11-2005, 21-03-2005, 30-05-2005, 18-05-2005, 11-03-2005, 07-02-2005, 25-04-2005, 10-05-2005 and 03-12-2005 raising various trivial and frivolous issues regarding the affairs of the Company, they did not find it fit to utter even a single word about the so-called

‘unaccounted sales’ or ‘gate passes’ or ‘inflated expenditure’ till 31-12-2005. Moreover, in the letter dated 31-12-2000, from late Nirmal Kumar, there is not even a whisper of ‘inflated expenditure’ or ‘salary sheets’ or even ‘gate passes’.

73. Ld. Sr. Counsel also referred to the undermentioned cases filed by the Petitioners group and contended that the same are false and frivolous.

- 1) Eviction proceedings vide R.C. 85/2006 before the First Additional Rent Controller, City Civil Court, Hyderabad. CRP 5982 of 2010 in the High Court of Andhra Pradesh, Hyderabad
- 2) R.C. No.292 of 2013 before the Hon’ble IV Additional Rent Controller, City Civil Court at Hyderabad.
- 3) R.A. No. 57 of 2019 before the Additional Chief Judge, City Small causes court at Hyderabad.
- 4) OS 77 of 2020 before XVII Additional Senior Chief Judge, City Civil Court at Hyderabad.
- 5) Criminal complaint in FIR 659/2006 against the wife of 4th Respondent.

74. As regards the plea of pending remuneration of Late Nirmal Kumar, we have noticed that the Petitioners have not specified the quantum of the so-called due amount in the petition.

According to the Ld. Sr. Counsel, it is a matter of record that non-executive directors are not entitled to remuneration as per Board Resolution dated 21-03-2005 and the same was communicated to Late Nirmal Kumar, himself, in 2005 itself, vide letter dated 30-03-2005 and the same was not protested by him before any judicial forum, during his lifetime. We have verified the record and found no protest or claim from Late Nanda Krishna Gupta as regards the claim for remuneration. Therefore, under these circumstances we do not find any force in the above plea of the petitioners, hence we hereby reject the same.

75. Needless to say, that in a petition filed alleging the acts of oppression and mismanagement, it is not sufficient for the petitioners to merely plead that there has been “oppression” of any shareholders and it is essential to establish that the affairs of the company are prejudicial to the interests of the petitioners, the company or the public being conducted in an

oppressive manner. The petitioner allegations as regards oppression and mis-management in this case are mere general and isolated act or incident. Therefore, the present Petition filed under Section 397 of the Companies Act, is certainly devoid of the particulars as well as the basis as regards the alleged acts of oppression and mismanagement on the part of the respondents herein, leave alone any acceptable proof. We therefore hold that the petitioners have failed in establishing the acts of commission of oppression and mis-management by the respondent nos 2 to 6 as against the petitioner or the first respondent.

The point is answered accordingly.

Point.2.

Whether it is *equitable* to direct the respondents 2 to 6 to *buyout* the shareholding of the petitioners at fair value to be arrived at by a Registered Valuer, based on the shareholding of both the groups as on the date of filing of the present petition?

76. A three-Judge Bench of Hon'ble Supreme Court in Needle Industries (India) Ltd. Vs. Needle Industries Newey (India) Holding Ltd, upon considering a large number of decisions of Hon'ble Supreme Court and also the English Courts including, in re, 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)

77. Ld. Counsel for the petitioners strenuously submitted that, there is total lack of trust and confidence between the petitioners and respondents 2 to 6 and absolute lack of probity of fair dealings on the part of the respondents *qua* the minority shareholders i.e., the petitioners, and the petitioners are being subjected to undue hardship on account of *ruthless dictatorial conduct* of the respondents, hence, the *most practicable and pragmatic* manner of resolution of disputes between both the groups would be to direct the respondents to *buyout* the shareholding of the petitioners by the respondents at the present fair value, *based on the shareholding of both the groups as on the date of filing of the present petition*, which

may be arrived at by appointing a registered valuer. Ld. Counsel further submitted that when a complaint is made, this Tribunal under sections 397 & 398 of the Companies Act, 1956, is fully empowered to make such order it think fit to put an end to the matters complained of.

78. According to the Ld. Counsel for the petitioners, Petitioners Group, i.e. Late Nirmal Kumar Gupta group has 46.28% share, the respondents Vijay Kumar Goyal group has 51.66% share and others are having 02.06% and thus, there are only two group of shareholders viz., (Petitioners group) holding 46.28% shares and) holding 51.66% shares of the 1st respondent company as on the date of filing of the present company petition. However, this claim is disputed by the respondents as, according to the respondents post rights issue the petitioners shareholding is 17.72 only.
79. Be it as it may, admittedly there are only two major groups of shareholders viz., and the respondents group holds majority of

shares of the 1st respondent company. The respondents 2 to 6 are also in control and management of the 1st respondent which is a going Company. Records disclose that disputes have cropped up between the two groups much prior to filing of this company petition. Ld. Sr. Counsel for the respondent also referred to the various civil and criminal cases filed by the Petitioners group against the respondents. Therefore, from the above narrated fact situation though it can be firmly said that there is no “functional deadlock” in so far as the management of the affairs of the 1st respondent is concerned, it is clearer than crystal that mutual trust and confidence between the petitioners and the respondent’s group has broken down irretrievably.

80. 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.

81. In our discussion *supra*, we have clearly held one out of the ‘twin tests’, *supra*, namely, irretrievable breakdown of trust and confidence between the participating members has taken place in the case on hand. The petitioners categorically sought a direction to the respondents to *buyout* the shareholding of the petitioners by the respondents at the present fair value, however based on the shareholding of both the groups as on the date of filing of the present petition. Therefore, under these facts and circumstances we are satisfied that interests of justice require that an ‘*exit scheme*’ directing the respondents 2 to 6 to *buyout* the shareholding of the petitioners at a fair

value to be arrived at by appointing a Registered Valuer, can be ordered in the case on hand. However, since the petitioner's group is claiming 46.28% share as on the date of filing the present company petition, which claim is seriously disputed by the respondents, it is *imperative* for us to find whether the petitioners claim of having 46.28% share as on the date of filing the present company petition is correct or not.

82. There cannot be any dispute that as on date of filing this petition the petitioners share holding in the first respondent company was 46.28 however on account of the rights issue carried out during the pendency of the present proceedings, the petitioners there a proportionate decrease in the petitioners shareholding to 17.72 as on date. In our discussion on the validity of the subject rights issue we have hold that there is no violation in carrying out the said process. The petitioners having challenged the order allowing the rights issue, by the then learned "CLB", before the Hon'ble High

Court, Andhra Pradesh have withdrawn the same. Therefore, when the rights issue having being properly carried out the petitioners, are not entitled to claim their claim of having 46.28 shares post rights issue. We therefore hold that as on date the petitioner share holding in the first respondent company is 17.72 only.

Point is answered accordingly.

83. Therefore, in the light of our discussion as above, hereby we hold that the petitioners have failed in making out a case of oppression and mismanagement by the respondents causing prejudice to the interests of the petitioners or the 1st respondent. The present company petition thus, is devoid of any merit or substance, hence is liable to be dismissed. However, as the petitioners have been praying for an exit mechanism by way of buy out of their shares by the respondent Nos 2 to 6 following the ruling in re, Needle

Industries (India) Ltd. Vs. Needle Industries Newey (India) Holding Ltd, supra, we hereby, direct the respondents 2 to 6 to buy the 17.72% shareholding of the petitioners, at a value as on the date of filing the present company petition and for the purpose of arriving at fair value of the said shareholding of the petitioners, we here by appoint Mr Ahalada Rao Vummenthala, mobile No. 9849027041 email id No. cs.ahaladarao@gmail.com, ICSI Registered Valuer having registration no. IBBI/RV/03/2020/13035, for conducting the valuation and to submit his report within two months from the date of receipt of this order. His fee is fixed at Rs. 1,50,000/- (One lakh fifty thousand only) and the expenses are payable as per actuals, by the petitioners and the respondents 2 to 6 in equal proportion. Subject to the above directions this Company petition is dismissed, however, without costs.

84. In the result the company petition is dismissed subject to the observation as above, without costs.

SD/-

(Charan Singh)
Member (Technical)

SD/-

(Dr. N.Venkata Ramakrishna Badarinath)
Member (Judicial)

Binnu/pavani