

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.304 - TP 119 of 2016
(CP 23 of 2015)

Under Section 397-398 of Co. Act, 1956

IN THE MATTER OF:

Dhiren Pratapmal Bhandari

V/s

DB Shapriya Construction Ltd & Ors

.....Applicant

.....Respondent

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)

MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

Order delivered on: 07/11/2025

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT - I, AHMEDABAD**

**TP No. 119 of 2016 (New)
CP No. 23 of 2015 (Old)**

In the matter of: DB Shapriya Construction Ltd.

TP No. 119 of 2016

[A Company Petition filed under Sections 397, 398, 402, 403, 406 of the Companies Act, 1956 and corresponding Sections 241, 246 & 177 of the Companies Act, 2013]

DHIREN PRATAPMAL BHANDARI

Having address at Flat No.203,
Twins Corner CHS Ltd.,
Plot No.1, Sector 17, Narul,
Navi Mumbai - 400706

.... Petitioner

VERSUS

- 1. DB SHAPRIYA CONSTRUCTION LIMITED**
310, Devpath Complex, Behind Lal Bunglow,
Off C.G.Road, Navrangpura,
Ahmedabad – 380009
- 2. MR. KISHOR D. SHAPRIYA**
C/o DB Shapriya Construction Ltd.,
C/o DB Shapriya & Co. Ltd.
27-28 Nyerere Road, P.O. Box 3221,
Der es Salaam, Tanzania.
- 3. MR. AMISH KISHORE SHAPRIYA**
9, Linden Lea, Westfield Park,
Pinner Middlesex,
HA 5 4 JH United Kingdom
- 4. MR. ASHISH LAXMISWARUP SRIVASTAVA**
972, Sector- A, Pocket 'B'
Vasant Kunj, New Delhi – 110070

5. **MR. DIPACKKUMAR CHANDRAKANT KOTAK**
Plot No. 872, Upanga,
Dar es Salaam, Na,
United Republic of Tanzania

6. **DR. B S SREEKUMAR**
254, Alykhan Road,
Upanga, Dar es Salaam,
948, Tanzania

.... Respondents

Order Pronounced on: 07.11.2025

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant	: Mr. Sudhir Mehta, Adv.
For the Respondent	: Mr. Kunjal Dalal, PCS for R-1
	: None for the Respondent Nos. 2 to 6

ORDER
(Per. Bench)

1. This order is being passed in the Petition Bearing No. **TP No. 119 of 2016**, which was originally filed as Company Petition bearing no. **CP No. 23 of 2016** on 05.10.2015 before the erstwhile Company Law Board, Mumbai Bench under Sections 397, 398, 402, 403, 406 of the Companies Act, 1956 and Corresponding Sections 241, 246 & 177 of the Companies Act, 2013 seeking directions to reinstate the petitioner as director of the Company, and has also sought

further reliefs as are mentioned herein below:-

- a. That the DIR-12 dated 13.05.2015 and DIR-12 dated 21-07-2015 in respect to Respondent No.4 DIN No. 01853126 and Respondent No.6 DIN No. 07231177 respectively filed for appointment as an Additional Directors in Respondent No. 1 be declared as null & void as the Respondent No. 1 failed to comply the requirements of Section 260 and Section 287 (2) of the Companies Act, 1956 and the corresponding Section of new Companies Act, 2013.
- b. That by an appropriate order the Petitioner be allowed to check and inspect the books of Accounts for the Financial Year 2014-15 of Respondent no. 1 before filing the annual returns & income tax returns of Respondent No 1.
- c. The Respondent No. 2 and Respondent No. 3 be compelled to repay or restore the money or properties which has been misapplied or siphoned off by them or pay compensation to the company in respect of misapplication, retainer, misfeasance or breach of trust as Hon'ble Bench of CLB make think just and proper pursuant to the provisions of Section 543 under Schedule XI read with Section 406 of the Companies Act, 1956 and appropriate Section available under New Companies Act, 2013.
- d. The Respondent No. 2, 3, 4, 5 as directors & 6 as shareholder in respondent no. 1 be directed to transfer/deposit the appropriate fund in the bank account operated at Indian Overseas Bank, Thaltej Road Branch, Ahmadabad to relive from the NPA Account operation from the bank.
- e. The Respondent No. 1 to 6 be directed to deposit the appropriate amount in the Indian Overseas Bank, Thaltej Road Branch, Ahmadabad for reliving the petitioner from the personal guarantee extended to the Respondent No. 1 and after reliving from the personal guarantee the Respondent no. 1 be directed to approach the Respondent No. 1 banker Indian

Overseas Bank, Thaltej Road Branch, Ahmedabad to relive& release the personal properties of the Petitioner situated at (a) Residential Flat no. 901, 9th Floor, Pratik Co-operative society Ltd., Plot No. 38, Sector 42, Behind Andhra Bank, Sea Wood, Nerul (West), Navi Mumbai 400076 and (b) Shop No. 6 Sai Sparsh CHS Ltd., Plot No. 74 / A Sector 19, Opp. Mahanagar Bank, Nerul East Navi Mumbai 400076 given by way of Collateral Securities offered to the bank Indian Overseas Bank, Thaltej Road Branch, Ahmedabad.

- f. By an appropriate order, RBI Mumbai Division Foreign Exchange Department be directed to investigated the Foreign Exchange Transaction took place between the company and Respondent No.2, 3 & 6 and compliance for fund transfer to the Respondent No.1 by the Respondent No.1 by the Respondent No.2, 3 & 6 in the interest of the Company.
- g. By an appropriate order the Respondent No.1 be directed not to carry out any operational in India till further order by submitting the Indemnity Bond or Guarantee tendered by the Respondent No.2 to 6.
- h. By an appropriate order any officer of the CLB may be appointed as Commissioner to investigate the affairs of the Respondent No.1 and submit to the Hon'ble CLB within the stipulated period of time.
- i. That the Respondent No. 2 to 6 be punished under Section 539 under XI read with Section 406 of the Companies Act, 1956 for falsification of books of accounts, directors' registers and shareholders register of the Company being Respondent No.1.
- j. Such other order or orders as the Hon'ble Bench of CLB may deem fit and proper.

2. Background of the Case:

2.1. It is stated that the Respondent No. 1, DB Shapriya Construction Limited being a company, was

incorporated on 20.04.2012 in the State of Gujarat vide CIN No. U45202GJ2012PLC069986. It was promoted by the present shareholder and directors. The petitioner Mr. Dhiren Pratapmal Bhandari was appointed as director of the Company. The shareholding pattern of the Respondent No.1 as on 31.03.2014 is as under:

Shareholding Pattern as on 31.03.2014

Sr. No.	Name of the Shareholder	Respondent/ Petitioner	Percentage of Holding
1.	Mr. Kishor Shapriya	Respondent No.2	68.18%
2.	Mr. Amish Shapriya	Respondent No.3	27.28%
3.	Mr. Shree Kumaran	Respondent No.6	4.52%
4.	Mr. Dhiren Pratapmal Bhandari	Petitioner	0.001%
5.	Mr. J.H. Tiwari & 3 others	Shareholder/s	0.001%

Accordingly, Annual Return containing above said shareholding ratio was filed with the MCA. (The copy of Annual Return in Form No. 20B for the FY 2013-14 filed to the MCA which is annexed as Annexure A-2 to the petition).

- 2.2. It is stated that the Petitioner was also appointed as 'Chief Executive Officer' (CEO) of the Respondent No. 1 and his appointment was confirmed by the Memorandum of Understanding dated 10.12.2011 which was executed at Mumbai by the Petitioner and the Respondent No. 2 for and on behalf of Respondent No.1 and signed as Chairman & Managing Director of

DB Shapriya & Co. Limited, Dar es Salaam, Tanzania. It is further submitted that as per the MoU the Petitioner was allowed to draw a monthly salary of USD 10,000 US Dollar and/ or equivalent to in Indian Currency and other perks as per the terms of appointment in the said MoU. (Copy of the MoU which is enclosed as Annexure A-6 to the Petition). The Petitioner was also allowed to carry out day to day activities of the Respondent No. 1, which is engaged in the business of Engineering Construction Business. The construction business have been carried out at 3 (three) locations viz. Kanpur (UP), Araah/ Buxar (Bihar) and Alwar (Rajasthan) after receiving 4 (four) different tender from the client A2Z Group of companies located at Gurgaon, Haryana.

2.3. It is submitted that after accepting appointment as CEO of the Respondent No. 1, the business activities of the company achieved good turnover. The Respondent No. 1 also took the business activities at Alwar in state of Rajasthan (A2Z MES & Satya Builders- AOP) with a Contract Value of Rs. 5.82 Crores and at Kanpur in State of Uttar Pradesh (A2Z Infrastructure Ltd.) with a Contract Value of Rs. 18.10 Crores. It is further submitted that because of the efforts put by the Petitioner as CEO in the Company, the company achieved good turn over and resulted as profit making company and this can be verified from the Balance Sheet ended, on 31st March 2014. The company has

filed From No. 23ACA and Form No. 23AC for the accounting year 2013-14 on dated 07/02/2015 (copy of the 23ACA & 23AC is endorsed as Annexure A-7 to the petition).

2.4. Falsification of Books of Accounts of the Company at the instance of Respondent No.2 for their personal gains: It is stated that Form No. 23 AC and Form No. 23 ACA for the FY 2013-14 have been filed on different dated by mentioning the Board Resolution No.1. This can be verified from the records and it was done with full intention to falsify the books of Accounts and other papers related to the Balance Sheet and Profit & Loss Account. It is submitted that these changes in the Form No.23 AC & 23 ACA are not in correlation with the Audited Balance Sheet, in spite of the Petitioner's objection and this has been reported to the Respondent No. 2. The falsification of the Books of Account could have been avoided if Respondent No. 2 would have directed to the Statutory auditor of the company not to carry out any bogus entry or false entry which may not be relevant to the company and this compliant has been unheeded without application of mind and it was done intentionally.

2.5. It is submitted that to continue the work at Alwar (Rajasthan) & Kanpur (UP), the Respondent No. 1 was in need of Rs. 19.72 Crores to complete the project in time and this fund was supposed to be infused by the

Respondent No. 2 so that work should not be hampered and to be completed as per the schedule. It is stated that the Respondent No. 2 failed to infuse the requisite funds in time and in requisite quantum as promised so ultimately the work at Alwar (Rajasthan) & Kanpur in time, the Statutory Auditor cum Book Keeper cum Accountant cum Statutory Advisor cum ROC Advisor cum Finance Consultant of Company Mr. Tejas Chokshi, on receiving advise of the Respondent No. 2, approached the banker/s for providing/ extending term loan or CC loan facility for which the banker Indian Overseas Bank, Thaltej Brach, Ahmedabad became ready to extend the CC facilities provided appropriate securities are offered against the CC facilities; and the entire procedure was done without due process of law.

2.6. It is submitted that Respondent No. 2 in connivance with said Mr. Amogh Gore, CFO, produced falsified Board Resolution entered in Dar es Salaam (Tanzania) and with single signature of Respondent No. 2, authorizing said Mr. Amogh Gore, CFO to open and get facilities from two other banks viz. State Bank of Travancore & Union Bank of India situated at New Delhi and Gurgaon respectively. On 28.03.2015, despite petitioner objecting, the current accounts were opened with these banks and facilities were granted to Respondent No. 1 after discounting the Letter of Credit of huge amounts of upto Rs. 3.2 Crores, the amount

was not deposited or credited with the prime bank of Respondent No. 1 i.e. Indian Overseas Bank, Thaltej Road, Ahmedabad. The Respondent No. 2 defrauded the Respondent No. 1, bank Indian Overseas Bank and other stake holders in connivance with Mr. Amogh Gore, CFO by not informing the prime bank of opening new current accounts and obtaining such new facilities and not bringing the amount so obtained in the Cash Credit Account of Respondent No. 1 and it was used for siphoning the huge amount so obtained by discounting the L/C facilities. The Respondent No.2 commissioned falsified Board Resolution passed at Dar es Salaam, Tanzania, which carries single signature of Respondent No.2 thereby contradicting the earlier MCA filed Board Resolution dated 31.03.2014 in its letter and spirit. (Copy of the purported Board Resolution, Bank Account Opening Forms, Bill of Exchanges are annexed as Annexure A-8 to the petition.)

- 2.7. SIPHONING OF FUNDS OF THE COMPANY: It is submitted that the Respondent No. 1 appointed Indian Overseas Bank, Thaltej Branch, Ahmadabad as Respondent No. 1 Banker. The Respondent No 2 advised the company's Statutory Auditor Mr. Tejas Chokshi to submit the application to the Respondent Banker Indian Overseas Bank for sanctioning Credit facilities. The Respondent Banker Indian Overseas Bank sanctioned Cash Credit Limit of Rs. 15.00 Crores to Respondent No 1. The Banker granted loan amount

against the hypothecation of Stock, Debtors and Immovable Properties of the Respondent No.1. As per credit sanction advice dated 02.05.2015, the Petitioner has submitted that as Respondent No. 2 & 3 were unable to arrange co-lateral securities for offering to bank, Respondent No. 2 made plea and requested Petitioner to offer Petitioner's personal property as security to the bank. It is stated that the Respondent No. 2 assured the Petitioner that he will replace the securities, if offered by the Petitioner, within 6 months by offering the properties of equivalent amount of Respondent No. 2 and also agreed to pay interest thereon. On assurance and promise from Respondent No. 2, the Petitioner executed his own personal properties located at Navi Mumbai as co-lateral security for securing the loan to the Respondent No. 1. (Copy of the Credit Sanction advice showing the details of the properties mortgage under collateral securities as Annexure A-9 to the petition). It is stated that when the co-lateral security property amount was not satisfying the loan amount then Respondent No 2 requested the Petitioner to offer if any available additional property as security to the bank for obtaining the loan amount to avoid non-completion of the projects in hand. The Petitioner in good faith and as per promise and assurance of Respondent No 2, the Petitioner became ready to provide wife's property located at Nerul, Navi Mumbai, which the banker has

agreed to do so. The Petitioner on personal assurance of Respondent No 2, did all these transaction in good faith and in the interest of the company.

- 2.8. Misappropriation of Funds of the Company: It is submitted that the Respondent No. 2 after obtaining Loan in the said Company and without the knowledge of the Petitioner applied for purchasing non-operational luxurious properties for his personal use valued at Rs 3.00 Crores at Ahmadabad, Gujarat. This shows that the action of the Respondent No. 2 & 3 along with Mr. Tejas Chokshi, Statutory Auditor cum Book Keeper cum Accountant cum Statutory Advisor cum ROC Advisor cum Finance Consultant siphon off huge amounts from the bank and from the working capital account of Respondent No 1 & ultimately ongoing projects of the company got severely affected and could not come out from the financial crunch till the date of filing of present Petition. This can be verified from the books of accounts which had been altered to suit the requirements of Respondent No. 2, 3 & the Statutory Auditor Mr. Tejas Chokshi. The Petitioner was directed by Respondent no. 2 that the Petitioner should not interfere in the functions of the company as the Petitioner is a Technical person as employee of the company. The Statutory Auditor informed the Petitioner that petitioner's role in the Respondent no 1 is stick to the Technical areas not to the financial matters. Hence the Petitioner's objection

in this regard was over looked to have the personal gains of Respondent No. 2. By this method funds available in the bank is siphoned.

- 2.9. It is submitted that the Petitioner has brought to the notice of the Respondent No. 2 that some financial irregularities are on in the company and some frauds have been carried out by submitting forged Board Resolutions and other papers to the MCA for which the Petitioner has not consented at all. (Copy of the letter email is annexed as Annexure A-10 and Copy of the Board Resolution as Annexure A-11 to the petition).
- 2.10. It is submitted that the Statutory Auditor cum Accountant cum Book Keeper cum Statutory Advisor cum ROC Advisor cum Finance Consultant Mr. Tejas Chokshi flouted various rules & regulations which are totally prohibited by the ICAI and ICSI. Mr. Tejas Chokshi reported to the Petitioner that he has been appointed by the Respondent No. 2 as Respondent No. 2 is located outside India - Tanzania, therefore he has to control the affairs of the Respondent No. 1 in the interest of the Company and directors who are outside India. It is further submitted that the Statutory Auditor cum Accountant cum Book Keeper cum Statutory Advisor cum ROC Advisor cum Finance Consultant Mr. Tejas Chokshi was warned by the Petitioner that he should work within the Four corners of the applicable law to the Company. It is stated that at the instance of

the Respondent No 2, Mr. Tejas Chokshi filed the Board Resolution dated 31-03-2014 on August 2014, wherein the powers were given not to carry out the transaction exceeding Rs 15.00 lacs and above without the signature & approval of any two directors i.e. Respondent no. 2 & 3. It is further submitted by the Petitioner that this purported Board Resolution which was passed at Dar es Salaam, Tanzania have not been reported to the banker of the Respondent No. 1 (Copy of the said Board Resolution is annexed as Annexure A-12 to the Petition). It is stated that Mr. Tejas Chokshi is maintaining the Books of Accounts of the Respondent No. 1 in the name of Tejas Chokshi & Associates. Mr. Tejas Chokshi was also advising the Respondent No. 1 for the financial matters as he was directly indirectly related with Respondent No. 2. The Petitioner has submitted that the Petitioner had objected to this that Statutory auditor cannot act in the company in different capacities which are prohibited under the Companies Act, but the Respondent No. 2 ignored all information given by the Petitioner and Mr. Tejas Chokshi was allowed to continue in the company as Statutory Auditor cum Accountant cum Book Keeper cum Statutory Advisor cum ROC Advisor cum Finance Consultant. It is further submitted that Respondent No. 2 did not allow to discuss the approval of the appointment as Statutory Auditor in Board Meeting but he was

appointed as the Statutory Auditor cum Accountant cum Book Keeper cum Statutory Advisor cum ROC Advisor cum Finance Consultant for Respondent No. 1. It is stated that these acts were done for the convenience of the siphoning of funds of Respondent No. 1.

- 2.11. IRREGULARITIES IN ALLOTMENT OF SHARES WITH EXORBITANT PREMIUM PRICE OF A NEWLY REGISTERED COMPANY: It is stated that the Petitioner has also bought to the knowledge of Respondent No. 2 about the other irregularities committed in allotting the shares of the Respondent No. 1 to Respondent No. 2, 3 & 6, without following due process, laws and guidelines laid down by RBI and under the Companies Act, 2013. The Petitioner informed to Respondent No. 2 about the huge premium @ Rs. 5261.13/- charged while allocating the equity shares of Respondent No. 1 to the incoming shareholders and it was manipulated by the company without complying with applicable Acts and Regulations, thereby defrauding the stakeholders, bank, employees and the Government of India. The Petitioner has submitted that the Respondent No. 1 being a new company formed under Indian Companies Act, 1956, the equity shares should have been availed at par but the shares were allotted at exorbitant price i.e. the premium @ Rs. 5263.13/-, just to grab the unaccounted money.

2.12. It is submitted that with continuous pressure of Petitioner on the company, the Respondent No. 2 deputed Mr. Amogh Gore, CFO of DB Shapriya & Co. Ltd. (Tanzania Company) to assist the Respondent No. 1 in getting additional funds & carrying out Accounts and Finance functions in end October 2014. (Copy of the letter from Respondent No. 2 is annexed as Annexure A-13 to the Petition). The Petitioner has submitted that the said Mr. Amogh Gore, CFO commissioned search on the Respondent No. 1 through appointed Company Secretarial firm viz. Kanitkar S & Associates. The said Company Secretary submitted his Report on the findings (Copy of the Report of Kanitkar S & Associates is annexed as Annexure A-14 to the petition). The Petitioner has submitted that the Report submitted by the firm Kanitkar S & Associates containing various lapses and non-compliances of various documents by the Respondent No. 1, so that conveniently Respondent No. 2, 3 & others related with Respondent No. 2 carry out illegal activities such as siphoning of funds, defrauding of creditors, not paying the bank's dues in time and various government agencies. The Petitioner pointed out the fraud signatures commissioned by company's Statutory Auditor cum Accountant cum Book Keeper cum Statutory Advisor cum ROC Advisor cum Finance Consultant Mr. Tejas Chokshi on few Board Resolutions, which were not signed or consented by

the Petitioner.

- 2.13. The Petitioner has submitted that Respondent No. 1, 2, 3 have carried out malpractices, frauds and non-compliances in the affairs of Respondent No. 1 and no decision taken by the Respondent. No. 2 in time even after alerting situations at various times by letters/emails by the Petitioner. The project where the work to be completed got delayed therefore the Petitioner had made correspondence with Respondent No. 2 and highlighted the details of such non-compliances & malpractices (Copy of the letter dated 30.03.2015 is enclosed and Annexed A-15 to the petition).
- 2.14. MALPRACTICES, FRAUD AND NON COMPLIANCES: It is submitted that the Petitioner as CEO and Director of the Respondent No. 1 was responsible to carry out the work of the Respondent No 1. Therefore the Petitioner infused his own funds and it was brought to the knowledge of Respondent No. 2, but has not been refunded his deposits and to which the Respondent No. 2 ignored. (Copy of the letter for unpaid dues & Respondent No. 2 reply is annexed as Annexure A-16 to the Petition). The Petitioner after receiving no positive action from the Respondent No. 2, the Petitioner stopped infusing his own funds in the company. The Petitioner to safe guard the interest of Respondent No. 1, the Petitioner requested the

Respondent No. 2 to come to India immediately and sort out all financial difficulties and shortage of funds faced by the Respondent No. 1 and the project work also stalled as it is. It is submitted that instead of infusing the funds on time in the company, the Respondent No. 2 & 3 used bank loan and project receipts for purchasing luxurious residential property & personal gains, without paying attention and safeguarding the interest of the stakeholders and also the Petitioner. The Petitioner has submitted that the letter dated 30.03.2015 highlighted the affairs of company, have been overlooked by the Respondent No. 2 and no action is initiated by Respondent No. 2 to safeguard the interest of the company. If the action had been taken in time, the bank Indian Overseas Bank, would not have declared the account as NPA Account of Respondent No 1. The non-action of Respondent No. 2 in time has resulted into sending the Notice under SARFASIE Act, 2013 to Company as well as to the Petitioner. (SARFAESI Notice dated 13-08-2015 attached herewith as Annexure A-17 to the petition).

- 2.15. The petitioner removal from the Directorship of the Company: It is stated that the Petitioner came to know from the site of MCA on the morning of 14.05.2015 that the petitioner has been removed from the Directorship and entire responsibility and authority as CEO is taken away by the Respondent No. 2 without

complying the provisions of MOA dated 10.12.2011 which is referred in Petition. It is submitted that before removing from directorship, the petitioner was not allowed to submit say in writing or opportunity being heard and the same is against the natural justice as per the law of the land. The said inspection of MCA Site was following the malicious and dubious email from the Respondent No. 2 of 13.05.2015 transmitted at around 11.52PM (late night) (Copy of the letter from Respondent No 2 dated 13.05.2015 is annexed as Annexure A-18 to the Petition). The Petitioner has submitted that no Notice was served for the purported so called Board Meeting held on 31.03.2015 at Dar es Salaam, Tanzania to discuss the issues raised by the Petitioner in his letter of 30.03.2015. It is submitted that Respondent No. 4 has been appointed as an Additional Director of the company with effect from 31.03.2015 and DIR-12 was filed with late fees on 13.05.2015. The same is without complying due process of Law such as Board Meeting Notice not circulated, no passing of Minutes by the majority Shareholders, no quorum in the Board Meeting, non-presence of independent director, non-circulation of the decision to be ratified by other director/s. It is further submitted that on confronting the malicious act of Respondent No. 2 vide Petitioner's letter of 14.05.2015 and pointing out the non-compliances committed for removal as Director, the Respondent No.

2 then tried to rectify the process by uploading the purported so called resignation (of resigned director) of the Petitioner on 19.05.2015. The mandatory resignation letter of a removed the director was never uploaded on MCA Portal. But a Declaration of Respondent No. 2 was uploaded on 19.05.2015 showing that the Petitioner has resigned. The Petitioner submits that the Declaration filed by Respondent No. 2 for the Petitioner as 'Resigned' is illegal and bad in law.

2.16. WHISTLEBLOWER IN THE COMPANY: It is stated that even after continuous alerts and letters, Respondent No. 2 have not acted. No positive action was forthcoming. The running projects at Alwar and Kanpur were to be foreclosed as per the advice of Respondent No. 2, because of insufficient and shortage of funds. This action of Respondent No. 2 has resulted in financial losses of Respondent No. 1. Also, the 3rd project also in Bihar delayed inordinately because of legal cases by the service providers and workers on Respondent No.1. (Copy of the Labour Court Notice & reply submitted by the Petitioner is annexed as Annexure A-19 to the Petition).

2.17. It is submitted that as Respondent No. 2 was evasive in responding to protect the interest of Respondent No.1 in time, the Petitioner finally used his discretion as whistle as whistle blower and director of the company

and called upon Respondent No. 2 & 3 for attending a Board Meeting in the month of April and May attending a Board Meeting in the month of April & May 2015. (Copy of letters and notice for Board Meeting annexed as Annexure A-20 to the petition). It is also stated that he has followed due process of law for calling a Board Meeting at Mumbai with proper agenda for the meeting and served upon a notice to the directors of the company.

2.18. It is stated that with serious concerns for the health of the company and no action initiated by the Respondent No. 2 to heed the letters and issues highlighted by the Petitioner, the Petitioner served notice on the existing directors, Mr. Amogh Gore, CFO and Mr. Tushar Shah, new Finance Consultant cum Advisor to attend a Board Meeting on 18.05.2015 at Mumbai Corporate Office. The notice in this respect was served on 07.05.2015 to all concerned with Agenda for the Board Meeting. (Copy of the said Notice & Agenda dated 17.05.2015 annexed as Annexure A-21 to the petition).

2.19. The Petitioner has submitted that after removing of the Petitioner from the Director's post of the Respondent No.1, the bank Indian Overseas Bank has issued notice dated 13.08.2015 under Section 13(2) of the SARFAESI Act, 2002 to the Petitioner (as Guarantor cum Mortgagee) and to the Respondent No. 1.

2.20. Appointment of an ADDITIONAL DIRECTOR without

due process of law: It is submitted that Respondent No. 2 and Respondent No. 3 without holding legitimate Board Meetings, appointed Mr. Ashish Srivastava, Respondent No. 4, and Mr. Dipak Kumar Kotak Respondent No. 5, as Additional Directors of the company. It is stated that for appointment of Respondent No. 4 and Respondent No. 5 as an Additional Directors in the Respondent No. 1, due-process of law was not complied. The Petitioner has submitted that Respondent No. 2 has unheeded the Rules & Regulations as prescribed under the Companies Act. The Respondent No. 2 & 3 being directors with foreign nationality have passed the Board Resolutions in Tanzania and the said Board Resolutions were implemented in India without the knowledge of the Petitioner being Indian Director.

- 2.21. There was no notice served, no quorum in the Board meeting and no attendance record for board meeting was recorded. The petitioner has submitted that the Respondent No. 2 and 3 are the foreign Nationals and foreign Directors and Form no. DIR 12 for appointment as an Additional Directors of Respondent No. 4 filed on 13.05.2015 which was illegal and improper as per the Provisions of Companies Act, 2013. As per the Provisions of Companies Act, 2013, proper Quorum of present Directors in the called meeting 'proposed' and 'seconded' is required and one of the directors at the time of passing Board Resolution should be one

Resident Director. The Quorum is also required which were not followed for appointment of Respondent No.4 and Respondent No. 5. This shows that Respondent No. 2 and Respondent No. 3 have appointed Respondent No. 4 and Respondent No. 5 for carrying out their illegal and unlawful activities at the behest of Respondent No. 2 and also to defraud the Respondent No. 1 and other stakeholders of the company.

- 2.22. It is submitted that under the directions of Respondent No. 2 & 3, the so-called Company Secretary Ms. Dhara Suresh Chandra Shah have filed Form no. 23ACA and Form 23AC along with Form no. 20B for the Financial year 2013-14 without consent and approval of the Petitioner. It is further stated that no Annual General Meeting for the FY 2013-14 was called and held and no Board Resolution for the audited balance sheet and profit and loss account for the year ended on 31.03.2013 was carried out. No minutes have been prepared for the board meeting as well as for Annual General Meeting. The respondents have failed and neglected to comply the requirement of the Companies Act. The inaction & delay in filling and submitting the audited balance sheet and profit and loss account with authorities & to the bank of Respondent No. 1 by Mr. Tejas Chokshi, the bank Indian Overseas Bank, Ahmedabad has slapped heavy penalties on Respondent No. 1 for non-compliance as per the sanctioned terms. It is stated that despite authority

given by Respondent No. 1, 2 & 3, Mr. Tejas Chokshi, Statutory Auditor has not acted diligently & carried out his duties and services at the behest of Respondent No. 2, so as the Respondent No. 1 suffered heavily financially and meeting with various compliances. The Petitioner has also alerted to Mr. Tejas Chokshi for not complying under Service Tax Act, VAT Tax, CST & other statutory acts. It is stated that the Petitioner feels that Mr. Tejas Chokshi must have been stopped by the Respondent No. 2 without knowing the repercussion of the law of the land, India.

2.23. It is submitted that the Respondent No. 2 and 4 have not allowed the Petitioner to check book of accounts, balance sheet and audited balance sheet and profit and loss account for the year ended March 2015 so that Respondent No. 2 and Respondent No. 3 can use power for misappropriation of funds and property of the company and falsification of books of accounts including Register of Members and Register of Directors so that Petitioner and Creditors can be easily deceived, cheated and defrauded.

2.24. It is stated that as per the Annual Returns filed for 2013-14 by Respondent No. 1, there were 7 member shareholders & in all 8 shareholders. At the time of filing petition Annual Return for the period subsequent to 2013 -14 were neither due nor filed. The position of the Member Shareholder of the Company is stated on

Page No. 5 of the Petition. Further, Page No. 46, 47 and Page No. 106, 107 of the Petition are the relevant pages of the Company's MOA & AOA respectively, which also shows the position & status of the Proper Member Shareholders of the Company. At Page No. 211 of the Petition is again the depiction of the Member Proposer Shareholder of the Company, which is as per the Search Report conducted by PCS Kanitkar S & Associates.

- 2.25. It is stated that subsequently, one Dr. B. S. Sreekumar (Shree BhavanBalakrishnaPillai Shree Kumar), a Tanzania citizen, was allotted 2502 shares of faced value of Rs. 10/- by subscription on premium of Rs. 5386.68. This position is on Page No. 218 of the Petition which is part of the Search Report of PCS Kantikar's & Associates. Dr. B.S. Sreekumar, being a foreign national having Tanzanian Passport and who had 2502 shares, sold/transferred 10 shares each to 5 other persons of Indian citizen, contrary to the prevailing RBI Rules for direct companies, total shares sold/transferred 50 nos., with a mala-fide motive to defeat the Petitioner's right to file this petition. The so-called transfer of 50 shares allegedly effected through board resolution allegedly passed on 31.03.2015 in a board meeting held at Dar es Salaam, Tanzania, but the effect of which was maliciously and mysteriously uploaded on 30.10.2018 much after the impugned order of NCLT, Ahmedabad of dated 27.10.2017 by

filing MGT-7 Form with ROC for FY 2015-16 and naturally the said fact was not within the knowledge of the Petitioner. Moreover, the fact is that mandatory Notice for Board Meeting of 31.03.2015 was never served on the Petitioner nor Minutes were circulated/recorded. In this regard, the Petitioner filed a Complaint No. DC/549/2020 with ICSI (The Institute of Company Secretaries of India, New Delhi), and the apex institute wide its detailed opinion 26.03.2021 dated 05.12.2022 held the Respondent (PCS Bharatkumar Prajapat) 'Guilty of professional misconduct under Clause (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 (the Act). Further, on a query raised by the Reserve Bank of India through letter dated 12.0.2015 regarding allotment of shares to Dr. BS Sreekumar, they responded by their reply dated 23.10.2015 (which is subsequent to the filing of the company petition) mentioned the shareholding of Dr. B S Sreekumar as 2502 shares, without indicating the so-called transfer of 50 shares is bogus and with malafide intention to defeat the Petitioner's right to file this petition. The effect of this mala-fide and mischievous transfer were field in Annual Report for the FY 2015-16. Noteworthy is the fact the company has not filed any repeat any Annual Report for the FY 2014-15, FY 2015-16, FY 2016-17 and FY 2017-18, and so on, exception being only MGT 7 Annual Report for the FY 2015-16,

filed/uploaded on MCA Portal on 30.10.2017 late hours on payment of late fees, Accordingly, the Petitioner submits that he was and is more than a 1/10th of total members and so the Petition is maintainable, and again continual and glaring instance of oppression and mismanagement in the affairs of the company.

2.26. It is submitted that the company, i.e. Respondent No.1 has borrowed huge long term secured and unsecured loan sanctioned amount to Rs. 12,50,00,000/- as on 31.03.2015 from the Company Banker – Indian Overseas Bank, Thaltej Road Branch, Ahmedabad and other financial institutions and unsecured loans amount to Rs.1,44,28,796.00/- from other persons or Corporate Debtor.

2.27. Grounds for Petition: -

- i) The company, Respondent No.1, has filed Form No. DIR 12 dated 13.05.2015 and 21.07.2015 without complying due process of law, it is clear that Respondents have not followed the procedure of Quorum and other law procedures for passing Board Resolution under Section 161. Therefore, Form No. DIR-12 dated 13.05.2015 and 21.07.2015 for appointment of additional directors Respondent No.4 & 5 respectively filed by the Respondent No.1 be declared as null and void. The petitioner has submitted that in view of the Provisions of the Companies Act, Respondent No.4 and Respondent No.5 should have not continue as additional directors. The petitioner further submits that when appointment of additional director is not legal then that additional directors cannot participate in the Board Meeting and hence all procedures carried out in the Respondent No.1 have become illegal and against

the law prescribed under the Companies Act, 1956 and under the new Companies Act, 2013. The appointment of Respondent No.4 and 5 as an additional director in Respondent No.1 was without due process of law as it is required in Section 260 of the Companies Act, 1956 and corresponding Section 161 under the new Companies Act, 2013. There was no Quorum in the Board Meeting for approval of appointment as an Additional Director of Respondent No. 4 and Respondent No. 5. The Petitioner has not attended any meeting where matters relating to (i) the necessary issues raised by the Petitioner and (ii) the appointment of Respondent No.4 and Respondent No. 5, were to be considered. The Respondent No. 2 and Respondent No. 3 have manipulated the Quorum procedure for appointment of Respondent No. 4 and Respondent No. 5 as of Additional Director. It means there was no Quorum in the Board Meeting and no valid Board Resolution passed for appointing as additional Director in the company. The Petitioner submits that the Respondent no. 2 & 3 have flouted all above provisions without considering the implications such as No Notice for calling the Board Meeting was given and no proper Board Resolution was passed. In the held Board Meeting by the present directors Respondent No. 2 & 3 who were outside India & the Board Resolution for of appointment as an additional director Respondent No. 4 and 5 was signed from outside India and necessary Forms filed with MCA. Therefore appointment is illegal and void.

- ii) That for appointing a Company Secretary and Statutory auditor of the Company with authority to have the compliances in time a necessary Board Resolution to that effect was to be passed which was not done in the company. It shows that Respondent no. 2 was having culprit mind to have mismanagement of the Company in connivance with his trusted statutory Auditor and Company Secretaries. In spite of repeatedly highlighting such deficiencies by the Petitioner in all correspondence/emails to the Respondent No 2, nothing is materialized on time. Respondent No 2 ignored the alerts & nothing is reported to the RBI for mandatory yearly compliances & other statutory compliances with authorities' viz. Service Tax, VAT, CST, Income Tax,

Provident Funds etc. The Respondents have committed the set of mismanagement under section 398 of the Companies Act, 1956.

- iii) The Respondents have indulged in siphoning of Funds of the Company amounting to breach of Trust and mismanagement under section 398 of the Companies Act, 1956. The details of siphoning -funds of Rs. 3.2 Crores from the bank account referred in para VII of this petition. The Defendant acts and actions of the Respondents, the companies banker has already issued notice under Section 13 of SARFAESI Act, 2002. The Respondent have committed the acts of mismanagement U/s 398 of the Companies Act, 1956.
- iv) The Respondent No. 2 & 3 have removed the Petitioner as Director without following procedure of law under the Companies Act, 2013. The Respondent no. 2 & 3 appointed Mr. Amogh Gore CFO with this object that Mr. Amogh Gore will manage the affairs of the Company. At the instance of Respondent no. 2 false and fabricated documents have been filed with MCA this has been explained in para no. XV of their petition it is cleared that Respondents have not followed the procedure laid down under of the Companies Act, 2013. The letter dated 30.03.2015 written by the Petitioner to the Respondent no. 2 as whistle blower has been used for removal as Director from the Company. The act of the removal of the Petitioner as director is an act of oppression under section 397 and mismanagement under section 398 of the Companies Act, 1956.
- v) The Respondent No. 2 & 3 in connivance with Mr. Tejas Chokshi, have indulged in siphoning of precious funds of the company which is amounting to breach of trust and mismanagement under Section 398 of the Companies Act, 1956 and under Section corresponding new Companies act, 2013. Till date of Petition, the Respondent No.2 and 3 are unable to supply the copy of financial statements, Minutes books and other papers which were demanded by the Petitioner. The Petitioner submits that delay in submission of the papers, balance sheet, Minutes books, Register of Members, Loan Registers, Fixed Asset

Registers and other documents to the Petitioner and not allowing the Petitioner to inspect the papers & books of accounts and other documents with the sole objective that Respondents 2 and 3 can doctor & falsify the papers, documents and registers. The Petitioner has also sent a notice dated 27.07.2015 through his Advocate Mr. Kirit Hakkani but there is no response till the date of filing of present petition before the honorable CLB (copy of the said Notice dated 27-07-2015 is annexed as Annexure A-22). The Respondent No. 2 had appointed Mr. Tejas Chokshi as Statutory Auditor cum Accountant cum Book Keeper cum Statutory Advisor cum ROC Advisor cum Finance Consultant for siphoning of the company's funds by submitting exorbitant bills to the company and on the pretext of various services which were never served to the company but claimed. Expenses for reimbursement. The details of siphoning of funds of Rs. 3.2 Crores from the Bank Account of the Company are given in this Petition. The Respondent no. 2 & 3 along with Mr. Tejas Choksi are guilty of mismanagement under section 398 of the Companies Act, 1956 corresponding Section 241 of the Companies Act, 2013.

- vi) The Respondents nos. 2 & 3 without any base allowed the Respondent no. 1 to issue the shares at exorbitant premium price of Rs. 5000/- and more for the face value of equity share of Rs. 10/- of a newly formed and registered Company. Ultimately the Respondent no. 2 & 3 had mismanaged the affairs of the Company. The practicing Company Secretary Kanitkar S & Associates has pointed out in their report submitted to the Company. The Report which is referred in this Company Petition has reported about exorbitant premium price of the shares. In view of the aforesaid position the Respondents have committed acts of mismanagement u/s 398 of the Companies Act, 1956.
- vii) The Respondents in view of their acts of their mismanagement explained in para herein above are liable for penal actions by virtue of Section 406 r/w Section 539 and Section 543.

3. To the above averments, an affidavit-in-**reply** was filed by

the authorised Representative of Respondent No. 1, one Mr. Bharat Mundra on 19.08.2021 vide e-mode, denying all the allegations raised by the Petitioner and further making following submissions: -

- 3.1. At the outset is submitted that the present petition is not maintainable pursuant to provisions of The Act. The petition is nothing but an abuse of process of Law with intention to harass the respondents. The petitioner having initiated civil and criminal proceedings by making a complaint before police authorities and issuance of notice from advocates on similar grounds has approached these Board/Tribunal with unclean hands to get ulterior/undue benefits. The petitioner is not entitled to make petition on grounds mentioned in succeeding paragraphs. The petitioner has made general and vague allegations without specifying/identifying any act of oppression or mismanagement justifying the petition. The petition deserves to be dismissed at threshold. In absence of eligibility of petitioner to make present petition and since the petitioner has failed to demonstrate the specific acts of oppression or mismanagement we restrict our reply to eligibility of petitioner to make application and certain other issues raised reserve our rights to file further reply on specific acts of oppression or mismanagement if any that come up during

pleadings.

- 3.2. The present petition is made in 05/10/2015 under sections 397 & 398, 402, 403, 406 of the Companies Act 1956 before Company Law Board Mumbai, Bench pursuant to CLB Regulations 1992. The petitioner has mischievously and with intention to abuse the process of law referred to Sections 241, 246 and 117(10) and Rule 7 of The Companies Act, 2013 in the title. It is respectfully submitted that on date of making of petition the said sections 241 and 246 of the Companies Act, 2013 was not notified. Petition cannot be made under said sections prior to their coming in force.
- 3.3. Section 399 of The Companies Act, 1956 relating to right to apply under section 397 and 398 of the Companies Act, 1956 requires that in case of a company having share capital the eligibility criteria under section 399(1) should be complied with. Under the said section it is required that the petitioner(s) should hold not less than 1/10 of the paid up share capital of the company. It has been admitted in the petition that the (refer paragraph 3 on page 3) of the petition that the paid up share capital of company is Rs. 5,52,740/- divided in to equity shares of Rs. 10/- each). It has also been admitted in the petition (refer paragraph 1 on page 2) that the petitioner holds 1 equity shares of face value Rs. 10/- each constituting

0.001% of shareholding of the company. The petitioner thus does not hold the required number of shares for making present petition and is thus not entitled to make the petition. The petition has been made without authority and should be dismissed on threshold. The petitioner has failed to demonstrate in the petition as to authority under which the petition has been made. The paragraph wise reply is as under.

- 3.4. The statements made in paragraph 2(b) require no comments except that respondent No. 2 association with Tanzania registered Dae Es Salaam based Company namely DB Shapriya & Co. Limited has no relevance to the present petition and has been referred to in the petition to mislead the Board/Tribunal.
- 3.5. The statements in paragraph 2(d) are denied. It is submitted that respondent Number 4 is not a director of company on date of petition. As per form DIR-11, available on MCA21 portal, respondent No. 4 has resigned as director of company with effect from 30.05.2015. Copy of said form DIR-11 as down loaded from MCA21 website Annexed to the reply as Annexure C'. The petitioner has made a wrong statement to mislead the Board/Tribunal.
- 3.6. The statements made in paragraph 7 are denied. The petitioner initiated legal process in the subject matter of present petition and has already issue a notice dated 27.07.2015 (refer Annexure A-22 page 290 to 316 of

the Petition) through advocate Kirit J Hakani and has not confirmed further action taken in the matter. The petitioner has also made criminal complaint against some of the respondents and others vide letter dated 14.05.2015 (refer page 273 to 279 of the petition) and has not confirmed the status of the complaint. The petitioner having already filed a complaint in the matter related to present petition has not come with clean hands.

3.7. As regards statement made in paragraph (8)(ii) it is submitted that petitioners has with a intend to mislead Board/tribunal not furnished the share holding pattern as on date of petition and relied on share holding pattern of Annual return for year 2013-14. Petitioner who was director of company up to 31.03.2015 has failed to disclose the latest share holding pattern.

3.8. Statements made in paragraph 8(iii) are denied to the extent that petitioner was never appointed as Chief Executive Officer and was never allowed to draw monthly salary of US \$ 10000. The MoU was entered in to by Respondent No. 2 with the petitioner in his personal capacity before incorporation of the Respondent No. 1 Company. The petitioner has not produced any evidence confirming his remuneration by Respondent No. 1 Company. The petitioner was however allowed to carry out activities of Respondent

No. 1 Company as resident director and CEO of Respondent Company. Besides as per terms of MoU the petitioner was to work as CEO on full time basis and dedicate full weeks' time to the company but the petitioner had suppressed the fact that he was already working as managing director of three other companies namely (1) Fabcon Consultants and Engineers private Limited (2) Vikram Equipments India Private Limited and (3) Ladji Polycraft Private Limited. The petitioner suppressed the fact and fraudulently induced respondent to enter in to MoU. Copy of view Director Details down loaded from MCA21 website confirming other directorship of petitioner as on date of MoU is annexed to the reply as Annexure-'D'. The petitioners has been defrauding the companies by becoming shareholder and director and taking making undue advantage by frivolous petitions.

- 3.9. Statement made in paragraph No. 8(iv) are denied. The Total turnover of company has decreased to Rs. 32,66,54,176/- for the year ended 31.03.2014 as compared to Rs. 37,60,70,761/- in the previous year ended on 31.03.2013. Even the profit before tax has decreased Rs. 25,08,990/- for the year ended 31/03/2014 as compared to profits of Rs. 44,91,452/- in previous year ended 31.03.2013. Thus after accepting appointment as CEO the turnover and profits of company has gone down. This on account of petitioner's misuse of his position as CEO activities

against interest of company. Copy of Balance sheet and statement of profit and loss account of Respondent No. 1 Company for the year ended 31.03.2014 which also gives previous year's figures for year 31.03.2013 is annexed to the reply as Annexure-E colly. The statement has been attached to form 23AC_23ACA and downloaded from MCA21 portal. The statement has been signed by petitioners.

- 3.10. Statements made in paragraph 8(v) are denied. The Balance sheet, profit and Loss Account of respondent No.1 Company has been signed by petitioner himself along with respondent No. 2. The Balance sheet and profit and loss account was finalized only after considering the views of all directors at the meeting of Board of Directors. There is no question of falsification of Books of Accounts since the Balance sheet and profit and loss accounts have been approved and signed by directors including petitioner. The petitioners has not pointed out the items of balance sheet and profit and loss account as per form 23AC and 23ACA which are not in correlation with audited balance sheet and profit and loss account and how it amounts to falsification of books of accounts. The petitioner has no right to challenge the books of accounts which has been approved and signed by himself as director of company. Copy of Balance sheet and Profit and Loss account for year ended 31.03.2014 signed by petitioner is already attached as Annexure-E.

- 3.11. Statements made in paragraph No. 8 (vii) are denied. The resolutions have been passed and bank accounts opened in ordinary course of business in the interest of company. The petitioner who was aware of all developments has been making false allegations after cessation of his director ship with effect from 31.03.2015. The petitioner has failed to demonstrate how opening of LC facility in favor of business associate with whom company is doing business amounts to siphoning of funds.
- 3.12. Statements made in paragraph 8(viii) are denied. Petitioner has made a general and vague statement without producing any basis or evidence to support the same. It is normal practice of banks to call for collateral securities from the directors. The petitioner being only resident director and in charge of working of company has given collateral security in ordinary course of business. It is very difficult to believe that petitioner who is also Managing Director of other 3 companies and conversant with business practices has given collateral security on oral assurance and promise of respondents.
- 3.13. Statements made in paragraph 8(ix) are denied. Petitioner has been making vague statements without any supporting evidence. The petitioner has not identified any financial transaction by company which amounts to misappropriation of funds by respondents.

- 3.14. Statements made in paragraph No.8(x) are denied. In fact the letter email (Annexure A-10 of petition) and Copy of Board resolution (Annexure A-11 of petition) do not refer to any financial irregularity. The petitioner who was only resident director looking after affairs of company cannot plead ignorance about developments in company after having ceased to be director particularly when he has almost no stake in the capital of company.
- 3.15. Statements made in paragraph 8(xi) are denied. The petitioner has not specified the particulars of Rules and regulations of ICSI and ICAI has been violated by the Auditors of the company. The petitioner has not produced any evidence to substantiate the statements made in the paragraph. If Mr. Tejas Chokshi is taking action to protect the interest of respondent company either at instance of Respondent no. 2 the matter should be appreciated and such an initiative cannot be an act of oppression or mismanagement. Similarly if petitioner who is director but not having any stake except one share of Rs.10/- in shareholding is asked to work within four corners of law cannot be considered as an act of oppression or mismanagement. It is also submitted that resolution requiring approval of two directors in respect of expenditure above Rs. 15/- lacs is for internal control and is in the interest of company and to protect misuse of funds of company. The company is not required to report the internal control

measures or systems to the Bankers. The appointment of statutory auditors is made at General Meeting of members of company and petitioner as members holding 1 (one) equity share has never questioned the resolution of appointment of statutory auditors. The petitioners has failed to establish how the allegations made in paragraph 8(xi) amount to oppression as shareholder or mismanagement of company.

3.16. The allegation made in paragraph 8(xii) is nothing but ignorance of petitioner and desperate attempt to classify all acts as improper or irregular. It has been alleged that The company has made allotment of shares to Respondent Nos. 2, 3 and 6 at huge premium of Rs. 5261.13 per share. It must be appreciated that allotments of share at premium do not amount to oppression or mismanagement of company. It is in fact an action in interest of company. It is submitted that all compliances under RBI regulations has been made and same has been reported in Balance sheet. The allotment of shares at premium is made after receipt of monies from respondents and cannot be classified as unaccounted monies.

3.17. It has been alleged in paragraph 8(xiii) that report submitted by Kanitkar and Associates, Company secretaries contains various lapses and non-compliances. It has been admitted in beginning of paragraph 8(xiii) that report for independent company

secretary Kanitkar and Associates was obtained by Mr. Amogh Ghore who was deputed by Respondent No.2. The report was called for only to ensure that compliances are made. It was necessary since respondents, who are promoters, are residing outside India and management and compliances was the responsibility of Petitioner who was resident director. It is also submitted that the remark as in report of Kanitkar and Associates, Company secretary is by way of observations and recommendations. The report has been prepared on basis of details available on ROC records (refer page 211 of the petition). It has been clarified that the report is subject to revision after tallying the contents of forms filed with Books of Accounts, statutory records and Registers maintained by company. (refer page 221 of petition) The Petitioner being resident director has not taken efforts to obtain the revised report after furnishing required company records to Kanitkar and Associates and made allegations to mislead the Tribunal. As stated earlier all necessary RBI compliances have been made. The petitioner has also not demonstrated how the alleged lapses have resulted in illegal activities and siphoning of funds. The petitioner has also not produced any document on which his signature has been forged.

- 3.18. The petitioner has not pointed out any specific act of Malpractice or Fraud by the respondents in paragraph 8(xiv) of the petition or in Annexure A-15 of the

petition. Only by making a statement that respondents have carried out mal practice or fraud does not make out a case for oppression or mismanagement. As regards non-compliances it was duty of petitioner who was only resident director and CEO of respondent No. 1 company to ensure compliances of law. The petitioner cannot escape his responsibility of compliances by sending email to other directors and holding them responsible.

- 3.19. As regards statement in paragraph 8 (xv) it is submitted that though the petitioner as CEO and non-promoter director was responsible for carrying out work of respondent No. 1 company it was never expected from him to infuse his own funds. The respondents being promoter directors never asked the petitioner to infuse his funds in respondent no. 1 company business. The petitioner has not identified any entry which funds have been infused by him except subscription of 10 equity shares of Rs.10/- each. The copy of unpaid dues at Annexure A-16 of the petition mainly refers to pending remuneration, interest on collaterals and vehicle rent which was never committed to the petitioner as being payable. The petitioner has not produced any evidence confirming his entitlement to Salary in USD, or Interest on collaterals or Vehicle Rent as claimed. pleadings. It is on record that respondents have infused huge funds by subscribing to shares at heavy premiums. It cannot be

believed that respondents who have subscribed to almost entire share capital (except 1 share of Rs.10/- each subscribed by petitioner) will use the funds of the company for personal gains and purchase of luxurious accommodations. It is pertinent to note that petitioners have infused more than 100 lacs by way of share capital and share premium against an amount of Rs. 10/- infused by petitioner. The respondent No. 1 company could not service the loans raised by bank and the account was declared NPA only because the petitioner did not manage the company as CEO and resident director. It has been admitted in paragraph 8(xv) by the petitioner that he was responsible for carrying out work of respondent no. 1 company.

- 3.20. The allegations that the petitioner has been removed as director of Respondent No. 1 Company are denied. As per form filed for cessation of director ship of petitioner it has been specifically stated that the cessation is on account of resignation by petitioner. The petitioner has vide email dated 30.03.2015 (refer page 225 of petition) has conveyed his resignation as director of company with immediate effect. Based on email the from for cessation of directorship of petitioner from respondent number 1 with effect from 31.03.2015. The petitioner has not objected to his cessation of his directorship till filing of present petition. The allegations made in paragraph 8 (xvi) are baseless. The petitioner having resigned as director vide email dated 30.03.2015 was

not required to be sent notice of meeting of Board meeting called on 31.03.2015 called at shorter notice after email dated 30.03.2015 was received. Additional director was appointed at meeting held on 31.03.2015 to meet the statutory requirements of minimum 3 directors for a public limited company. The number of directors was reduced to 2 on account of resignation of petitioner and immediate appointment of one more director was necessary to meet legal requirements.

3.21. The allegations made in paragraph 8(xvii) are denied. It is denied that running projects were foreclosed as per advise of respondent no. 2. The petitioner has not furnished any document supporting the statement. It was the duty of the petitioner as CEO of company to run the company and its projects and to make necessary arrangement for funds. It was also duty of the petitioner to make legal compliances in respect of applicable labour laws. The petitioner did not properly attend the notice from labour commissioner but put up his false claim for dues from company and ran away from his responsibility. The allegations do not lead to may oppression of petitioner as shareholder and if there is ant any mismanagement in this regard it was on account of negligence of petitioner to perform his duties as resident director and CEO.

3.22. The statements in paragraph 8(xix) require no comments at present. However it is submitted that the

petitioner has been calling the board meetings only to escape his responsibilities as CEO and resident director. The petitioner was expected to manage the company profitably however has failed to meet the expectation and when the trouble arose has preferred to call board meeting to escape his liabilities.

3.23. The statements in paragraph 8(xx) is statement of fact and requires no comments. It is however submitted that the petitioner had given guarantee cum mortgage in ordinary course of business. The bankers normally call for guarantee and mortgage from directors of company. It may be added that petitioner as CEO and Director was responsible to run the business in a way that the liabilities of banks are fulfilled from time to time.

3.24. The statement in paragraph 8(xxi) are denied. The appointment of additional directors was made at Board meetings and the petitioner was having knowledge of the appointments. It is surprising that the issue was never raised earlier has come up by way of present petition. It is further submitted that Mr. Ashish Srivastava was appointed as additional director on 31.03.2015 since petitioner has resigned as director and it was necessary for respondent no. 1 company to have minimum 3 directors. Similarly Mr. Dipackumar Kotak was appointed as additional director on 01.06.2015 since Mr. Ashish Srivastava resigned as

director with effect from 30.05.2015. The appointments were necessary since company ought to have 3 directors minimum. The petitioner having resigned as director is not entitled to any notice of meeting of board of directors issued thereafter and cannot challenge such board meetings in capacity of ex director of company.

3.25. The statements made in paragraph 8(xxiii) are denied. The petitioner has himself signed the Balance sheet of respondent No. 1 company as on 31.03.2014. The balance sheet was approved at meeting of Board of Directors held on 04.09.2014. As per normal practice the Report of Board of Directors and Notice of AGM is finalized at meeting of Board of Directors along with approval of Balance Sheet. The petitioner who signed the balance sheet as on 31.03.2014 cannot claim that no resolution was passed or legal requirements have not been complied with. It is further submitted that the petitioner as CEO and resident Director was responsible for legal compliances. His duty is not only to alert the professional appointed for purpose but to ensure compliance. The compliance of law is the responsibility of company and if any professional has failed to make compliance immediate action is expected from CEO who is responsible for compliance.

3.26. The allegation in paragraph 8(xxv) are denied. Board resolution for borrowing dated 24.01.2014 duly signed

by petitioner as certified true copy is annexed to the reply as Annexure-F. It is also stated that even equitable mortgage of properties was executed by petitioner on behalf of company.

3.27. Denying the allegations in paragraph 9(ii) it is submitted that how can appointment of Company secretary of statutory Auditors can be a ground for oppression and Mismanagement. It is further submitted that company has not appointed any full time company secretary and services of company secretary in practice are availed for limited purpose of filing forms required to be submitted. The appointment of statutory auditors is made by members at general meeting. The petitioner having signed the Audited Balance sheet as on 31.03.2014 is now challenging appointment of auditors. As stated earlier the responsibility of legal compliances for respondent No. 1 company is with the petitioner who was CEO and resident director and any mismanagement on account of non-compliance is the mismanagement by petitioner himself and petitioner should compensate the respondent no. 1 company for any loss or damage for non-compliance.

3.28. In paragraph 9(iii) under the head grounds for petition it has been stated that respondents have siphoned off funds amounting to Rs. 3.2 Crores. The allegation is made since the respondents opened bank account with

State Bank of Travancore, New Delhi and Union Bank of India, Gurgaon. It is very common for construction companies to open bank accounts for different projects and avail financial facilities including bill discounting facilities for individual projects. The amounts received under Bill Discounting facility is to be used for the working capital and other requirements of the business of company and is not meant for repayment of Loan or other facilities from other banks. Availing of such facilities do not amount of siphoning of funds per se. The petitioner has failed to identify any financial transaction which has amounted to siphoning of funds. The allegations made are baseless. The SARFAESI notice issued is on account of negligence and failure of petitioner being CEO and resident Director to manage the business of respondent no. 1 profitably and to ensure timely repayment of bank dues.

- 3.29. The allegation that petitioner has been removed as director in paragraph 9(iv) is denied. The petitioner has resigned as director vide email dated 30.03.2015 (refer page 225 of petition) where in it has been clearly stated that he has only one option of putting his resignation with immediate effect. Under the circumstance the company has no option but to take necessary steps to file necessary form for cessation of directorship of petitioner on account of resignation. Copy of form DIR-12 confirming the cessation of directorship by way of

resignation and not removal is annexed as Annexure G. It is also pertinent to note that vide letter dated 26.07.2015 to The Assistant Labour Commissioner (refer page 247 of the petition) the petitioner has admitted that his term as CEO of respondent no. 1 company has expired on 31.12.2014.

4. To the above arguments made by the Respondent No. 1 Company, a **rejoinder** was filed by the Petitioner on 10.02.2017 vide Inward Diary No. 417, making following submissions: -

4.1. The petitioner is holding one share in the Respondent No.1 and also was a promoter director in Respondent No.1. Due to deadlock and mistrust in management in Respondent No.1, the petitioner filed the petition under Sections 397 and 398 of the Companies Act, 1956. The Petitioner knows very well his position under Section 399 of the Companies Act, 1956. The Petitioner submits that his petition cannot be rejected on the ground of technical requirement of Section 399 of the Companies Act, 1956. The Petitioner has come to this NCLT for getting much needed justice and settling his grievances. The Petitioner heavily suffered financially as well the mental agony due to fraud, misrepresentation, mismanagement, non-compliances in the affair of Respondent No.1. Not only this respondent No.1, Respondent No.2 & Respondent

No.3 have induced the Petitioner to offer his own property and his wife's property as collateral securities on false assurances and promises for availing the loan in Respondent No.1 but Respondent No.1 failed to repay the said loan in time due to fraud and mismanagement. DRT Ahmedabad has taken action against Respondent No.1 as well as the Petitioner for recovery of loan. The Petitioner has submitted that majority shareholders and Directors of Respondent No.1 have cheated the Petitioner by adopting fraudulent and frivolous tactics in Respondent No. 1. NCLT after considering the situation may provide relief to the Petitioner. The facts disclosed in the Petition are leading to the filing of the Petition under Sections 397 & 398 of the Companies Act, 1956.

- 4.2. The petitioner has submitted that the petitioner is having the doubt about the authority given by Respondent No.1 to Mr. Bharat Mundra, authorized representative who has filed the reply. The petitioner submits that, if any, ordinary Board Resolution passed for appointing Authorized Representative which is required proper notice, agenda, and other necessary formalities as per provisions of the law in the case nothing has taken place and recorded the same in books. If no evidence in support is produced by the authorized representative of Respondent No.1, the reply filed by the authorized representative of

Respondent No.1, the reply filed by the authorized representative for filing the reply on behalf of Respondent No.1 be rejected outright.

4.3. With reference to para no. 2.2 of the reply:

The Petitioner submits that the Petitioner holds by subscription one equity share of the Respondent No.1, which is a public limited company by shares. The petitioner was also a promoter director of Respondent No.1. The Petitioner submits & refers to the Page No.212 of the Petition referring of the ROC Search Report of M/s Kanitkar's & Associates, a Practicing Company Secretary. The Petitioner submits that the Petition should not be rejected on the ground of technical requirement of Section 399 of the Companies Act, 1956. To this statement, the Petitioner rely on the Judgment of Hon'ble Supreme Court of India wherein this has been considered in **J .P. Srivastava & Sons Pvt. Ltd. V/s. Gwalior Sugar CO. Ltd."** (2005) 1 SCC 172 on 26.10.2024.

4.4. With reference to Para No.4 of the Reply-

The Petitioner submits that the Respondent No.1 in its reply have admitted that the Respondent No.2 is a Chairman and Promoter Director of Respondent No.1, where the Petitioner was also a promoter Director. The Memorandum of Articles and Association signed by the Respondent No.2 at the time of formation of the Respondent No.1 in India bears address which is

the same as of the business address of DB Shapriya and Co. Limited, Dar Es Salaam, Tanzania. The petitioner draws attention to the Company Profile and website of Tanzania Based Company at <http://dbshapriya.com/contact.htm> for establishing the close relationship of India based Respondent No.1 with Tanzania registered company. The Respondent No.2 is also a Chairman and Managing Director of BD Shapriya and Co. Limited, Dar Es Salaam, Tanzania. The petitioner submits that the Respondent No.1 and DB Shapriya & Co. Limited, Tanzania based company is very much closely related to each other. In both the companies, the Directors viz. Mr. Kishor D. Shapriya (being Respondent No.2), Mr. Amish Kishor Shapriya (being Respondent No.3) & Mr. Dipak Kumar Kotak (being Respondent No.5) are common. Mr. Kishor D. Shapriya being Respondent No.2 and Mr. Amish Kishor Shapriya being Respondent No. 3 are the Directors and Shareholders in Respondent No. 1. The Respondent No. 2 has signed MoU dated 10.12.2011 with the Petitioner, identifying himself as Chairman & Managing Director of DB Shapriya & Co Ltd.; Dar es Salaam, Tanzania, refer Page No. 148 of the Petition. The Petitioner submits copies of the newspaper articles published in renowned daily viz. The Economic Times on 28/02/2013 & The Guardian in November 2014, as attached to the rejoinder as EXHIBIT A, wherein the statements made by

Respondent No. 2 are recorded conveys the relationship of relevance between both India as well Tanzania based Companies. The Petitioner sticks to the statement & further submits that the Respondent No. 1 should be punished for misguiding the Honorable Court in stating that there is no relevance of reference of Tanzania Based Company where Respondent No. 2 is the Chairman & Managing Director. The Petitioner further submits a copy of the 'Net Worth Certificate (attached & marked as EXHIBIT B) as made available & submitted by Respondent No. 5 for Respondent No. 2 & prepared & certified by Respondent No. 6 The Petitioner submits that all these Respondents Viz 2, 3, 5 & 6 are the residents of Tanzania and are closely related with DB Shapriya & Co. Ltd, Dar Es Salaam, Tanzania.

4.5. With reference to Para No.6 of the reply:

The Petitioner submits and very much sticks to his statement made in para 2 (d) of the Petition. The Petitioner to support his statement that Respondent No.4 was a continuing Director of Respondent No.1 till filing of the petition, copy of the ROC Search Report MCA 21: Signatory details conducted as on 22.09.2016 from MCA Portal is attached herewith and marked as Exhibit No. E. The Petitioner submits that Respondent No.4 was the Director of the Respondent No.1 that is why Form DIR-11 was filed by Respondent No 4 maliciously showing the earlier

effect as of from 30.05.2015. The Challan for filling Form DIR-11 is with Respondent No 1.

The Petitioner submits that the corresponding mandatory DIR-12 is not filed with MCA by Respondent No 1. The Petitioner submits that the Respondent No 1 is maliciously claiming on one hand that Respondent No. 4 have resigned with effect from 30/05/2015, but failed to upload DIR 12 till now on MCA Portal, which is the lawful duty of Respondent No 1. The Petitioner submits that the Respondent No 4 have dubiously & to escape the investigation authorities in the FIR registered with Nerul Police Station (CR No 323/2015 dated November 20, 2015) have uploaded the DIR 11 on MCA Portal maliciously as late as on 03/03/2016, after paying heavy penalties of late fees, to misguide & show effect of resignation from Respondent No 1 from 30/05/2015. The Petitioner submits that the act of resignation effect is a stage managed in connivance between Respondent No 1, Respondents No 2 & 4. The Petitioner further submits that the Respondent No 4 have carried out & involved in performing certain tasks of Respondent No 1 at the behest of Respondent No 2 till January 2016, such action leads to mismanagement.

The Petitioner submits & brings to the knowledge one more glaring, gross & serious non-compliances on the

part of Respondent No 1, as being the Public Limited Company, with all its present Directors as Foreigners or Non-Resident Directors on its Board. With malicious resignation of Respondent No 4 as Director, the Respondent No 1 is without Resident Indian Director to carry with the affairs of the Respondent No 1 Company. This serious violation in the affairs of the Respondent No 1 has occurred after filing of DIR 11 by Respondent No 4 on 03/03/2016, showing effective from 30/05/2015. The Petitioner further submits that Respondent No 2 from Tanzania remotely directs & controls the affairs of the Respondent No 1, with mala fide interest & ignoring the due process of law of India, & for implementing its fraudulent acts, has been indulging in using the services of Professionals/ Retainer of India by engaging them for short period of time & luring them on heavy remunerations/ fees. The Petitioner submits that the Respondent No 4 is still continued to be indulged in executing the acts as directed by Respondent No 2 in Respondent No 1.

The Petitioner submits that it is the duty of the Respondent No. 1 to substantiate with proof of the documents, otherwise the allegation made by the Petitioner in the Petition are correct to the extent that at the time of filing of the Petition, the Respondent No 4 was a Director on records on Respondent No 1 & on MCA Portal Site. The EXHIBIT No. F as attached and

marked is of a screen shot of MCA Portal depicting the filing of DIR 11 as on 03/03/2016. The Petitioner humbly submits that the NCLT may take cognizance to this for the act of misguiding the Honorable Court. All such actions are leading to mismanagement.

4.6. With reference to Para No. 8 of the reply:

The Petitioner submits that the Respondent No 6 is a shareholder of Respondent No 1 and the shareholding pattern is given in the Petition which is on Page No 5 of the Petition and it is supported by the ROC Search Reporter M/s. Kanitkar's & Associates for this please refer Page No 211 of the Petition. The share holding pattern was derived at the time filing of the Petition i.e. upto 31.03.2014. If any change is there in the shareholding pattern on the Respondent No 1, then Respondent No 1 can bring correct and true shareholding pattern before the NCLT, otherwise, the submitted shareholding is correct & cannot be denied by the Respondent No 1. Any change in the shareholding pattern is available with Respondent No 1, then it is deemed that Respondent No 1 was doing unlawful changes in the books of accounts, without the knowledge of the Petitioner. And this leads to Section 397 & Section 398 of the Companies Act, 1956 are endorsed to be correct. The Petitioner submits that in the Petition, Page No. 5 in shareholding pattern Sr. No. 3 Shree Kumaran be read as Shree Bhavan Balakrishna Pillai Shree

Kumar, as this was a typography error, but Dr Shree Kumar is commonly referred as the same person. A Copy of e-form No. 2 is attached herewith and marked as EXHIBIT G, as it downloaded from the MCA Portal on 23.01.2017, listed as 'list of allottees' and filed on 28/07/2014.

4.7. With reference to Para No 11 of the reply:

The Petitioner submits that the Petitioner is holding 0.001% equity shares by subscription as Proposer Promoter Shares in the Respondent No 1 Company. The Petitioner has approached this NCLT for relief as raised by the Petitioner in the Petition. This NCLT is the only authority to decide about the Petition filed by the Petitioner on just & equitable grounds otherwise it will be a prejudicial interest of the Petitioner. This has been clearly laid down in Subsection 2 of Section 397 of the Companies Act, 1956. To get rid-off all oppressive activities alleged in the Petition, the Petitioner has come before this Honorable NCLT for obtaining justice. A minority shareholder, who was also a Promoter Director in Respondent No 1, should not be debarred on the technical ground as laid down in Section 399 of the Companies Act, 1956. If the question of justice and equity is involved, then this NCLT has jurisdiction power to provide judicial relief to the Petitioner.

4.8. With reference to Para No 12 of the reply:

The Petitioner submits that the statement made in Para No 7 of the Petition is very true. Whatever statement is given in the Petition is well within the law and nothing is beyond the law. The Petitioner submits that by sending the legal notice/ & filing a criminal complaint against the Respondent No. 1 does not bar the Petitioner from filing the Petition. The Respondents 1, thru Respondent No 6 for the common beneficiary or gainers, have carried out illegal activities which were against the interest of the Respondent No. 1. The Petitioner has already mentioned in the Petition that there is siphoning of funds of the company's bank, falsification of the books of accounts of the Respondent No. 1 and it was misappropriation of funds, malpractices, fraud, non-compliance and irregularities in allotment of shares with exorbitant premium price of a newly formed Respondent No. 1 at the instance of Respondent No. 2. The Petitioner denies that the present Petition is against the law of the country. The Petitioner submits that the Petitioner's complaint to the Police Authorities was against the appointed Staff/ Advisor/ Retainer Members of Respondent No. 2 for Siphoning of Funds, Oppression & Mismanagement in Respondent No 1 Company, but not against the Respondent. No 1 Company. The petitioner relies on this statement and refer Page No 275 of the Petition.

4.9. With reference to Para No 13.1 of the reply

The Petitioner submits that the Petitioner is holding 1 equity share of Rs. 10/- each. The Petitioner is a promoter subscriber for 1 equity share and has signed in the original Memorandum and Articles of Association of the Respondent No. 1. The initial Proposer Subscriber & Director is the Promoter of the company. The Petitioner submits that the Petitioner was appointed as CEO vide executed MoU dated 10.12.2011 and after this Petitioner was requested to become the Promoter of the Respondent No. 1. It cannot be denied by the Respondent that Petitioner was not the Promoter.

4.10. With reference to Para No 13.2 of the reply

The Petitioner submits that it is not in his knowledge that any Annual Return having the share holding pattern was filed by Respondent No 1 with MCA after the filing of Annual Returns of FY 2013-14. The Petitioner as Promoter Director was removed from the Respondent No 1 with effect from 31/03/2015. The Petitioner was not allowed to function as Promoter Director & CEO of Respondent No 1 Company. The Petitioner was removed dubiously & maliciously by filing made-out documents uploaded on MCA & this was with the malicious intention of Respondent 2 thru 6 to carry out their malpractices in Respondent No 1. The Petitioner relies on the fact of the ROC Search Report of M/s Kanitkar's & Associates on Page No 211 and 212 of the Petition. The said report is

pointing out that an amount of Rs. 1,35,02,494.00 is received by Respondent No 1 & vide e-Form No 2, and 2502 equity shares of Rs 10/- face value were allocated to Mr Shree Bhavan Balkrishna Pillal Shree Kumar were at premium of Rs. 5386.68 per share. The Petitioner further submits that the Respondent No. 1 may have indulged at the insistence of Respondent No. 2 to fabricate & change the shareholding patterns in Respondent No. 1, without following due process of law & without the knowledge of the Petitioner. The Petitioner submits that the Respondent No 1 should come out with clean hands on the shareholding pattern held by Respondent No 1, as on 31/03/2014, as on 31/03/2015 & as on 05/10/2015 and should submit to the Honorable Court otherwise vague reply will have no substance & can be termed just to misguide the Honorable Court.

4.11. With reference to Para No 13.3 of the reply:

The Petitioner is stick to his statement which is made in Para 8 (iii) of the Petition. The Petitioner submits that the MOU dated 10/12/2011 clearly specifies all details & terms of appointment of the Petitioner as CEO, and this fact cannot be denied by Respondent No 1. The Petitioner was allowed to draw Remuneration from Respondent No 1 as per MOU dated 10/12/2011 & it was never objected by the Respondent No 1 during & even after formation, incorporation, operation & currency of the

Respondent No 1 Company. The Petitioner submits that the Respondent No 1 have to refer Page No 227, 228, 231, 233, 235-237, 238, 239, 255, 256 of the Petition & each of these emails/letters were acknowledged & attended and only to be ignored by Respondent No 2. The copies of the Bank Statement of Respondent No 1 showing Remuneration paid to the Petitioner attached herewith & marked as EXIHIBIT H. The Respondent No 1 has admitted in Para No 13.3 as well in Para No 13.4 in reply that the Petitioner was working as CEO & Resident Promoter Director of Respondent No 1. The Petitioner denies that the Petitioner has carried out any activity which was against the interest of Respondent No. 1 Company. On the Contrary, the Petitioner entirely devoted with full heart & soul with the Respondent No. 1 Company. That is why Respondent No. 1's turnover was able to cross from Zero (as on date of incorporation i.e. 20/04/2012) to INR 3.76 Cr (as on 31/03/2013) and jumped to INR 32.66 Crores (as on 31/03/2014). The Respondent No 1 in Para No 13.4 has given misleading and confusing statement. Annexure E attached in the reply is not supporting the statement of Respondent No. 1. The Petitioner submits that the Respondent No. 1 is misleading & misguiding the Honorable NCLT. The Petitioner submits that this Honorable NCLT can verify from the records submitted by Respondent No. 1 in the reply &

truth will come out in favor of the Petitioner.

The Petitioner further submits that the Petitioner has already filed Form MBP-1 and it was given to the Respondent No 1 wherein Petitioner has disclosed the interest in other companies. It is the Respondent No 1 to see the correctness of MBP-1 of the Petitioner. Petitioner has complied the procedure prescribed under the Companies Act, 1956 for disclosing the interest in other companies. The Petitioner submits that Respondent No 1 cannot deny to this fact and cannot object on this ground. Petitioner is relying on Page No 296 of the Petition for the statement. As per DIN details of the Petitioner, the details are available on the MCA site and is known to Respondent No 1. The replies of Respondent No 1 is misleading and are frivolous efforts to divert the attention of the Honorable Court that the Petitioner has suppressed the facts before filing the Petition under Sections 397 & 398 of the Companies Act, 1956. The Petitioner submits that as a full time employee of the Respondent No 1, the Petitioner was to draw a monthly salary in equivalent Indian Rupees of USD 10,000.00 per month. The Petitioner submits that the Respondent No. 1 was paying INR 2,50,000/- per month in his personal name and INR 1,25,000.00 per month each was paid in the accounts of M/s Fabcon Consultants and Engineers Pvt. Ltd. and M/s Ladji Polycrafts Pvt. Ltd. By drawing the remuneration as

per the details above, Respondent No 1 was in full knowledge, in concurrence with the facts, as per attached & marked EXHIBIT I. The Respondent No 1's allegation under reply that the Petitioner has defrauded the Respondent No 1 is false and an attempt to misguide the Court. The Respondent No. 1 was aware & in knowledge well in advance about the Petitioner's disclosed information about the Directorship in other private limited companies. The Petitioner submits that he never suppressed the fact. Being a director in other companies, the Petitioner devoted full time in the affairs of the Respondent No 1 and because of the Petitioner's sincere efforts and full time devotion with Respondent No 1, the Respondent No 1 was able to achieve Rs. 32.66 Crore turnover in its first FULL year of operation after its incorporation. The Petitioner further submits that the Respondent No 1 were able to secure projects only to have revenue or turnover in Q4 of the FY 2012-13 and achieved a turnover of Rs 3.76 Crores in Respondent No 1. The Petitioner humbly submits that the Respondent No 1 is falsely alleging the Petitioner, on the behest of Respondent No 2, just to divert & misguide the attention of Honorable Court from the facts on records.

4.12. With reference to Para No 13.6 of the reply of Respondent No. 1-

The replies of Respondent No 1 for the paragraph 8(vi) of the Petition is not correct & are way of the mark, ignoring the facts on records. The Petitioner submits that the Indian Overseas Bank, Ahmedabad along with other banks have been approached by Mr Tejas Chokshi, CA at the behest of Respondent No 2 for arranging 'local' funds in Respondent No 1 to execute the Projects awarded to Respondent No 1 in the month of December 2012. The Petitioner submits & sticks to the statement made in Petition. The Petitioner submits that Projects awarded to Respondent No 1 were to be executed on the funds to be remitted by Respondent No 2 & 3 from Tanzania, refer Page 300, 301 of the Petition. The Petitioner submits at Page No 233 of the Petition, the highlighted portion, wherein the Petitioner has sought the action of Respondent No 2 for saving the interest of Respondent No 1. The Petitioner further states & submits herewith copies of the fore-closure Reports of Kanpur & Alwar Projects as attachment & marked as EXHIBIT L.

The Petitioner submits that Mr Tejas Chokshi, CA in connivance with Respondent No 2 have submitted Project Report and obtained Cash Credit facilities of Rs 15.00 Crores from Indian Overseas Bank, Thaltej Branch, Ahmedabad. To get this loan, Respondent No 2 & 3 was to provide required co-lateral securities. Respondent No 2, 3 & Tejas Chokshi induced the

Petitioner on false assurance & promises & made to offer Petitioner's & Petitioner's wife's personal properties as co-lateral securities to satisfy the Bank to release the loan of Rs 15.00 Crores to Respondent No 1. This fact cannot be a vague statement of the Petitioner, as alleged by Respondent No 1 in its reply. On failure to repay the loan amount, the Indian Overseas Bank, Thaltej Branch, Ahmedabad has issued the notices under the SARFAESI Act & DRT, Ahmedabad has issued Notice through The District Magistrate for attaching the properties of the Petitioner. A copy of the said Notice/s is attached herewith & marked as EXHIBIT M. The Petitioner submits that all procedure in this regards shows that Respondent No 1 wanted to corner the Petitioner, so the Petitioner cannot leave the Company even after his fraudulent removal as Promoter Director.

4.13. With reference to Para No 13.7 of the reply:

The Petitioner submits that the conspiracy to defraud the Lead Lender Bank of Respondent No 1 & the Petitioner was hatched in Tanzania. In order to execute the hatched plan, the Respondent No 2 deputed one Mr Amogh Gore- General Manager (Finance) cum CFO of DB Shapriya & Co Limited, Tanzania to India to stage act the plan, arming him with agenda points & with a Board Resolution (please refer attachment & marked EXHIBIT N) passed at Dar

Es Salaam, Tanzania ceremonising Amogh Gore as Director of the India Company Respondent No 1. Respondent No 2 also indulged in crowning Amogh Gore as Group CFO of DB Shapriya Group to India on specific mission. In this regard, the Petitioner humbly submits & draw attention to Page No 206 thru 209 of the Petition.

As per the conspiracy plan, Respondent No 2 also armed Amogh Gore- now Group CFO of DB Shapriya Group (of Tanzania/ India/Others Operations) with a Board Resolution dated 19/03/2015 passed at Dar Es Salaam, Tanzania & signed/authorized by only one Director Respondent No. 2. Vide this Board Resolution; the Respondent No 1 & 2 authorized Amogh Gore to avail one time facility to discount Letter of Credit of upto Rs 300.00 Lakhs. For this, the Petitioner humbly draws the attention of the Honorable Court to Page No 157, 158 of the Petition. The Petitioner further humbly submits & draws the attention at Page No 205 of the Petition, which is also a Board Resolution dated 31/03/2014 passed at Dar Es Salaam, Tanzania & ratified by 2 Directors, filed/uploaded in August 2014 on MCA Portal. Vide this Board Resolution, the Respondent No 1 seeks & makes mandatory to have at least 2 Director's sign/ authorization as regards to contract, obligation, expenditure or else which exceeds INR 15.00 Lakhs & goes on ratifying that "Such transactions if entered

without such authority from the Company (Respondent No 1) in the manner as stated above i.e. signing by at least two Directors will be treated as null & void. This Resolution stands effective from 01/04/2014....." The Petitioner submits & brings the alleged oppression & mismanagement in the affairs of Respondent No 1, as the Board Resolution executed on 19/03/2015 breaches the Board Resolution ratified on 31/03/2014 by Respondent No 2, 3 & thereby a conspiracy was enacted to dupe the Lead Lender Bank & the Petitioner was bought to the knowledge of this Honorable Court. The Petitioner further adds & submits to the kind attention of the Honorable Court that the Police Investigation revealed & as at Page Nos 159 thru 186 of the Petition, which are the glaring & daylight proof of Respondent No 1 getting benefitted by opening new bank accounts, authorized by Respondent No 2, executed by Amogh Gore (a non-employee of Respondent No 1) & duping the Lead Lender Bank Indian Overseas Bank, as the Terms of Sanction Advise of the Lead Lender Bank, at Page No 193 of the Petition is severely breached by Respondent No 1. The Respondent No 1 have also indulged & breached other major Terms in Sanction Advise of the Bank as mentioned at Page No 189, as Respondent No 1 failed & unilaterally indulged in changing the Registered Offices & also effecting the change in Board of Directors. The Petitioner submits

& seeks to approach the Honorable NCLT under Sections 397 & 398 of the Companies Act, 1956 as the Respondent No 1 is subjected with oppression & mismanagement in its affairs causing huge financial losses & duping of the Indian Banks, Staff & Stake Holders.

4.14. With reference to Para No 13.9 of the reply of Respondent No. 1-

The Petitioner submits that the Respondent No 1 has taken loan from the banker- Indian Overseas Bank, Thaltej Road, Ahmedabad for Rs. 15.00 Crore. The Petitioner submits that this loan funds instead of mandatorily to be employed in the business, majorly has been diverted in procuring luxurious residential property at Ahmedabad, Gujarat for the personal uses of Respondent No 2. For this the Petitioner has objected. The Banker Indian Overseas Bank has filed the Original Application no 538/2015 with debt recovery petition at DRT Ahmedabad Bench and also making the Petitioner & Petitioner's Wife as one of the Respondents to this debt recovery petition. The Petitioner submits that this fact cannot be denied by the Respondent No 1. The photocopy of the Debt Recovery Tribunal's Order and Ahmedabad & Rajkot District Magistrate's Attachment Notice Copies are attached and marked as Exhibit M.

The Petitioner submits & draws attention to the Bank

Statement of Petitioner No 1's Bank from wherein the precious bank loan amounts were diverted to buy non-operational luxurious personal residential property for Respondent No 2, for this refer attached & marked as EXHIBIT N & EXHIBIT H/1. The Petitioner also humbly submits & relies on the Bank Statement obtained by the Police Authorities in their investigation process of another scrupulous bank account of Respondent No 1 with ICICI Bank, Ahmedabad. The Petition submits & attached herewith copy of the Bank Statement of ICICI Bank as marked EXHIBIT O; vide which the funds are diverted towards this luxurious residential property.

4.15. With reference to Para No 13.10 of the reply:

The Petitioner submits that the Board Resolutions have been filed by the Respondent No 1 with MCA, when the ROC Search Report of M/s Kanitkar's & Associates observed to be carrying forged signatures of the Petitioner. Accordingly, the Petitioner has written an email to the Respondent No 2 on January 17, 2015 requesting him for briefing him as these Board Resolutions were uploaded on MCA Portal with Respondent No. 2's digital signature & Respondent No 2 is a resident of Tanzania. Respondent No 2 have responded twice promptly only to be belied & completely ignoring to attend & rectify to make the Petitioner aware. Copies of the email dated January

17, 2015 & its two specific replies from Respondent No 2 (augmenting Page No 198 of the Petition) is attached & marked as EXHIBIT P. The Petitioner further submits that thereafter the Respondent No 2 always preferred to be illusive to the various emails/ letters of the Petitioners & hence Petitioner wrote an email dated 30/03/2015 (Page No 224 of the Petition). Instead of taking the corrective actions to resolve the various non-compliances, mal practices & frauds in the Respondent No 1, the Respondent No 2 & 3 has taken the fraudulent action against the Petitioner by removing as Promoter Director from Respondent No 1 Company & with sole intention that thereafter (after removal of the Petitioner) nobody will object for the actions with ulterior motives to gain abnormally from the banks & other ways. The luxurious non-operational residential Property acquired in the name of Respondent No 1 at Ahmedabad, Gujarat is from the funds obtained from the Bank. Honorable DRT, Ahmedabad has proceeded with the attachment of the properties. This fact cannot be denied by the Respondent No 1. The Petitioner humbly submits & reasons for these acts leading to mismanagement & oppression in the Respondent No 1 Company.

4.16. With reference to Para No 13.11 of the reply of Respondent No. 1-

The Petitioner submits that the Petitioner is holding

one proposer cum promoter share and at the same time appointed as Promoter Director of Respondent No 1. The Petitioner has objected that no Board Resolution should be passed without the proper & authenticated board meeting/s and with proper agenda, notices & quorum. The Petitioner sticks to the statement made in Para 8 (xi) of the petition. However, some Board Resolutions containing forged signature of the Petitioner have been filed without the knowledge of the Petitioner. The Petitioner submits that many such malicious acts were executed at the behest of the Respondent No 2 by the appointed staff, professionals, advisors & representatives in Respondent No 1. The Petitioner further submits that the Police Authorities are investigating such acts of malicious intention under FIR CR 323/2015 dated November 20, 2015 (copy of which is attached & marked as EXHIBIT Q) against the Respondent No. 2 & others of his representatives.

The Petitioner submits & sticks to the Statements made in the Petition at 8 (xi). The Petitioner humbly submits that the Respondent No 2's unilaterally appointed staff & representatives in Respondent No 1 were compensated heavily beyond the general practices followed & Justified in the industry. without any ratified terms of appointments. One Mr Tejas Chokshi, CA was entrusted since inception & earlier, with many 'roles & responsibilities' in Respondent No

1 & was reporting directly to Respondent No 2 only. The Petition submits that even after making various pleas with Respondent No 2, the said malicious, fraudulent activities of Mr Tejas Chokshi (thereafter of Mr Amogh Gore, Mr Tushar Shah, Mr Ashish Srivastava, Dr BS Sree Kumar, Ms Dhara Shah, Mr Chetan Bajpai, Mr Namjoshi & many more....) continued in Respondent No 1. The Petitioner then have brought to the notice of Respondent No 2 the breach of 'Ethics & Rules' of ICAI (Institute of Chartered Accountants of India- apex body of CAs in India), wherein a Chartered Accountant is a Statutory Auditor of a Public Limited Company (Respondent No 1) is also a Book Keeper, Accountant, ROC Advisor, Finance Director (self-proclaimed), Statutory Advisor, Finance Advisor, Manpower Service Provider etc The Petitioner herewith attaches a copy of the email dated 25/11/2014 & marked as EXHIBIT R addressed to Respondent No 2. Once again, instead of taking a corrective mode in Respondent No 1, the Respondent No 2 preferred & opted for the same breach & in a view to continue unaltered ulterior motives in Respondent No 1, appointed & placed same hat with same colour on the head of Mr Tushar Shah, CA. The Petition attached a copy of the email of Respondent No 2, marked as EXHIBIT S. The Petitioner has protested & opposed the unilateral action taken by Respondent No 2 in Respondent No 1 without his

consent, knowledge & ratifying the terms of appointment, a copy of the email corroborating the same is attached & marked as EXHIBIT T. The Petitioner humbly submits the various such acts of oppressions, mismanagement & malpractices undertaken in Respondent No 1 & thereby the heavy financial losses & mental agony suffered & undergone have prompted the Petitioner to approach & file the Petition with NCLT. The services & responsibilities extended/ provided by the appointees of Respondent No 2 in Respondent No 1 Viz Tejas Chokshi & then Tushar Shah were insufficient & deprived the Respondent No 1 with complying with any statutory bodies with Annual Returns or filing. The Petition submits that Mr. Tejas Chokshi's actions were not in the interest of Respondent No 1 & hence these facts were brought to the notice of Respondent No 2, time & again.

4.17. With reference to Para No 13.12 of the reply of Respondent No. 1-

The Petitioner sticks to the statement given in the Petition. The Petitioner submits that Respondent. No 1 has not complied with laid down procedural aspects for allocating & valuing the equity shares of Respondent No 1. The Petitioner submits that for a newly incepted public limited company which had no records of any successfully completed projects in

India can ever indulge in issuing equity shares at the exorbitant premium price at the rate of around Rs 5300.00 per share of face value of just Rs 10.00 each. The allotment at premium price is nothing but money laundering through Indirect methods. The said allotment & heavy premiums were observed, and can be referred at Page No 213 thru 220 of the Petition vide the ROC Search Report of M/s Kanitkar's & Associates. When the Petitioner objected to this method of allotment & without offering the 'First Right of Refusal to the existing shareholders of the Respondent No 1 of the new offer, and not allotting any preferential shares to the Petitioner, the Respondent No 1 ignored the objections & proceeded in allotting the shares to Respondent No 2, 3 & 6. This was with the intentions to keep the Petitioner with only one equity share of face value Rs 10.00 each & not allowed to increase Petitioner's shareholding in the Respondent No 1. The Petitioner submits that the malicious actions were with ulterior motives to let remain the Petitioner with one share only so as the Petitioner will have no rights to say in the Board Meetings as well in Respondent No 1.

The Petitioner submits that Petitioner's fraudulent removal from the Promoter Directorship w.e.f. 31/03/2015, the Petitioner was subjected to receipts of calls, email, communications from various statutory bodies Viz. Income Tax, Sales Tax, ICICI

Vehicle Loan, RBI etc... The Petitioner submits herewith copies of the emails as received from RBI pertaining to the non-compliances in filing mandatory Returns, as Annexure and marked as EXHIBIT U. The Petitioner humbly submits & bring once again on record the fraudulent practices carried out in Respondent No 1 at the behest of Respondent No 2 & enacted thru his appointed professions have filed reply with RBI with apparently fraudulent (rubber stamp) signature of Respondent No 2. The Petitioner attached herewith EXHIBIT V, as copies of the said letters. The Petitioner submits that remittances so received & recorded for allotment of shares are noticed in the ROC Search Report of M/s Kanitkar's & Associates, placed at Page No 210 thru 223, of the Petition. The Respondent No 1 in its reply states at Sr No 13.2, Page No 9 that Respondent No 6 shareholding is incorrect, & on the contrary in the same reply the Respondent No 1 at Sr No 13.12, Page 16, goes on admitting that the allotment of shares of premium is made after receipt of monies from Respondents & cannot be classified as unaccounted monies, in the same reply, the Respondent No 1 contradicts its own submission. The Petitioner humbly submits to the Honorable Court to instruct Respondent No 1 to produce sources & authentications of the monies so received in Respondent No 1. The Petitioner further adds &

submits that such actions & malpractices show the ulterior & malicious intentions of Respondents in managing the affairs of the Company.

4.18. With reference to Para No 13.16 of the reply of Respondent No. 1-

The Petitioner sticks to the statement of the Petition. The Petition is filed only after coming to know from the MCA Portal on 14/05/2015 that the Petitioner has been removed as Promoter Director from Respondent No 1 under misrepresentation of Petitioner's letter dated 30/03/2015 and an email communication received by the Petitioner on 13/05/2015 at 11.52 PM (midnight), attached and marked as EXHIBIT X. The Petitioner refers various correspondence between 30/03/2015 till 11.52PM of 13/05/2015, wherein no indication of removal of Petitioner as Director of Respondent No. 1 was flashed, leave alone the correspondence of Respondent No. 2 on 13/05/2015 at 11.46AM (EXHIBIT Y). The Petitioner protested to the removal by email on 14/05/2015, on 16/05/2015/ on 28/05/2015 & so on, but the pleas were unheeded & no rectification was carried out & the Petitioner was left with only option to secure the justice and to file the present Petition & seek the justice from the NCLT.

4.19. With reference to Para No 13.20 of the reply of Respondent No. 1-

The Petitioner submits that the Respondent No 1 has admitted in its reply that the Petitioner is removed from the directorship of the Respondent No 1 Company & at the same time other directors of Respondent No. 1 are expecting to take all liabilities after removing Petitioner from directorship. The Petitioner submits that the Petitioner was stopped to function as Promoter Director & CEO with effect from 31/03/2015 & at the same time Respondent No 1 was expecting that the removed Petitioner should continue to carry with functions & responsibilities. The Whistle Blower letter email dated 30/03/2015 has not been taken in good spirits & in its written sense; the problems in the Respondent No 1 would have been averted but because of no action. The Petitioner submits that to run the affairs of the company, all Board of Directors have to take joint responsibilities & it should not be casted on single or one director. To have the mismanagement in Respondent No 1 other directors allowed Indian appointed Representatives to function freely without any control. The very reason as why Bank's action under SARFAESI Act has taken place, is summed because of the indifferent attitude & failure to attend to the health & affairs of the Respondent No 1 by Respondent No 2 thru 6.

4.20. With reference to Para No 13.25 of the reply of Respondent No. 1 company,

The Petitioner submits that the Board Resolution dated 24/01/2013 was for borrowing the loan in the company. This Board Resolution does not authorize the Respondent No. 1 Company to create co-lateral security of the Petitioner's property for borrowing the loan in the company. The Petitioner submits that nowhere in the world such type of situation have arisen where third party property is used for borrowing the bank loan. The situation in Respondent No.1 Company has taken place and the Respondent. No. 1 company has failed to repay the loan and the bank is after the guarantor-Petitioner. The reply of Respondent No.1 is not correct and has no relevance. That is why Petitioner has filed the present petition before NCLT for providing the justice to the Petitioner that Respondent No. 1 company has indulged all sort of malpractices leading to mismanagement.

4.21. With reference to Para No 14.3 of the reply of Respondent No.1-company.

The Petitioner relies on Police investigations in the matter where fraudulent transactions showing that Respondent No. 1's bank account were established without the permission & knowledge of the Lead Lender Bank (IOB) viz with Union Bank of India, New Delhi, State Bank of Travancore, Gurgaon, ICICI Bank, Ahmedabad etc. These Banks have been used by the Respondent 2 & 3 for carrying out dubious

transactions & siphoning of funds to the tune of Rs. 3.2 Crores. These fraudulent bank accounts were operated & utilized for siphoning of funds by the appointed representatives/ staff of the Respondent No 1. The representative Mr. Tejas Chokshi, CA; Mr. Tushar Shah, CA; and Ms. Dhara Shah, PCS of the Respondent No 1 have approached the Sessions Court, Thane and High Court Bombay for getting anticipatory bail against the fear of arrest by the police investigation officer at Nerul Police Station, Navi Mumbai. The photocopy of the rejection order of bail applications at Sessions Court of the Representatives of Respondent No 1 are attached herewith and marked as EXHIBIT Z. The Petitioner submits that the Respondent No 2 thru 6 is continually indulged in oppression and mismanagement in Respondent No 1 and the Petitioner has sought the relief by filing the Petition under Sections 397 & 398 of the Companies Act, 1956.

5. **Written submissions** have been filed on behalf of the Petitioner on 11.12.2023 vide Inward Diary No. D4941 and on 02.05.2025 vide Inward Diary No. D2923. The Counsel appearing for Respondent No. 1 has filed written submissions on 18.12.2024. Respondent No. 2, who has not filed any other pleadings in the matter, has filed his written

submissions on 03.01.2022.

6. We have heard the counsel for the Petitioner as well as the counsel for the Respondents and have perused the material available on record.

7. **Observation and Directions of this Tribunal: -**

7.1. The present matter has been pending consideration since the year 2015. The present petition has been instituted in the year 2015 under Sections 397, 398, 402, 403 and 406 of the Companies Act, 1956, corresponding to Sections 241 and 242 of the Companies Act, 2013, alleging acts of oppression and mismanagement in the affairs of Respondent No. 1, DB Shapriya Construction Limited. The primary relief sought by the Petitioner is for setting aside the alleged illegal appointment of Respondent Nos. 4 and 6 as Additional Directors of the Company and for his reinstatement as Director, along with various consequential directions relating to restoration of accounts, investigation into financial irregularities, and relief from personal guarantee obligations extended to the banker of the Respondent No. 1 Company.

7.2. This Tribunal, vide order dated 27.10.2017 passed in IA No. 32 of 2017 and Intervening Petition No. 1 of 2017, had dismissed the petition on the ground of maintainability under Section 244 of the Companies

Act, 2013. The said order was assailed by the Petitioner before the Hon'ble NCLAT. The Hon'ble NCLAT, by its order dated 28.09.2018 passed in Company Appeal (AT) No. 89 of 2018, had set aside the order dated 27.10.2017 and restore the present petition to its original position. The relevant extract of the said order is reproduced herein below: -

“7.1. The Appellant was admittedly a Director till 30th March, 2015 and the Respondents are claiming that on 30th March 2015, the Appellant had sent an e-mail, copy of which is at Page 292 where the Appellant claimed that because of the state of affairs, he was putting in his resignation from the post of Director. This e-mail is dated 30th March, 2015 and the time shown is of 19.11 hours. It is argued for Appellant that on the very next date of 31st March, 2015, Board Meeting was shown as held at Tanzania where the transfers of shares from Dr. B.S. Sreekumar were recorded in favour of 5 persons. It is argued that if till the earlier evening, the Appellant was the Director, it would be a matter to be considered at the time of deciding the Company Petition whether the necessary notice or other compliances had been done for the meeting at Tanzania on 31.03.2015. The Company Petition has pleadings of Appellant not being given opportunity before removing him from directorship and that he had no Notice of the Board Meeting dated 31.03.2015. It is argued that these factors being under dispute, the Petition could not at preliminary stage be rejected on the basis that Petitioner was less than 1/10th of the Members.

8. Going through the material available, we find that Appellant has an arguable case and the Appellant should have been given opportunity to amend the Company Petition with regard to the facts which have come on record in the Rejoinder to application filed by the Respondent Company to IA 32/2017. Even without the pleadings with regard to shares of Dr. B.S.

Sreekumar, the Petition is maintainable but in interest of both sides, Appellant may be allowed to make specific submissions.

9. Reading the Company Petition as it is, we find that the Appellant original Petitioner must be held to be entitled to maintain the Petition and the disputed facts between the parties as raised by Respondents can be decided at the time of deciding the Company Petition on merits.”

7.3. The Petitioner has alleged that the affairs of Respondent No. 1 Company have been conducted in a manner prejudicial to his interest and to the interest of the Company. It is his case that he was one of the founding directors and was also appointed as the CEO of the Company under a MoU dated 10.12.2011, executed between himself and Respondent No. 2. The Petitioner contends that due to his efforts, the Company achieved substantial business turnover and profitability in its initial years; however, subsequent to this, Respondent Nos. 2 and 3, in connivance with other officers and advisors of the Company, indulged in acts of financial irregularity, falsification of books of accounts, and diversion of funds. It is further alleged that Respondent Nos. 2 and 3 appointed Respondent Nos. 4 and 6 as Additional Directors without following the due process prescribed under the Companies Act, and that the Petitioner was thereafter illegally and unilaterally removed from the Directorship of the Company without any notice or opportunity of being heard.

7.4. It is further the case of the Petitioner that despite his continuous objections and communications highlighting irregularities in the financial affairs of the Company, the same were disregarded by Respondent Nos. 2 and 3, who were the controlling directors. The Petitioner has alleged that large sums of money were siphoned off from the Company's accounts through falsified board resolutions and unauthorized transactions carried out at the instance of Respondent No. 2, including the diversion of loan proceeds obtained from Indian Overseas Bank for personal use. It is also alleged that the statutory auditor, acting under the influence of Respondent No. 2, indulged in multiple statutory violations by simultaneously acting as accountant, bookkeeper, and advisor of the Company, thereby facilitating the said irregularities. The Petitioner contends that his personal properties, which were mortgaged as collateral for the Company's credit facilities, were wrongfully put to risk owing to the mismanagement of the Respondents, and that such actions collectively constitute oppression and mismanagement warranting intervention of this Tribunal.

7.5. The Petitioner has further averred that Respondent Nos. 2 and 3, being foreign nationals and directors residing outside India, have been conducting the affairs of the Company from abroad without compliance with the statutory requirements under the

Companies Act. It is alleged that several Board Resolutions were purportedly passed at Dar es Salaam, Tanzania, without quorum, without notice to the Petitioner, and without any record of minutes being circulated or approved. The Petitioner asserts that such resolutions were subsequently utilized to effect changes in the composition of the Board and to authorize the appointment of Additional Directors, including Respondent Nos. 4 and 6, in a wholly illegal manner. It is also his case that the financial statements for the relevant financial years were filed with the Registrar of Companies without his approval and that the filings were falsified to conceal instances of fund diversion and misappropriation. The Petitioner submits that these actions, coupled with his unlawful removal from directorship, demonstrate a continuing pattern of oppressive conduct by the majority shareholders and directors.

- 7.6. On the other hand, Respondent No. 1 Company, through its authorised representative, has filed an affidavit-in-reply denying each of the allegations made by the Petitioner. It is contended that the present petition is not maintainable under Section 244 of the Companies Act, 2013, as the Petitioner holds only one equity share, constituting a negligible 0.001% of the paid-up share capital of the Company, and hence does not fulfil the statutory eligibility requirement of holding not less than one-tenth of the issued share capital. It is

further submitted that the Petitioner has initiated multiple civil and criminal proceedings against the Respondents on identical grounds, thereby abusing the process of law. The Respondents have contended that the Petitioner was the CEO and only resident Director of the Company until his resignation on 30.03.2015, and was in complete control of its day-to-day affairs during the period when the alleged irregularities are stated to have occurred. Accordingly, he cannot now claim to be a victim of oppression or mismanagement by the same management of which he himself was an integral part.

7.7. It is the stand of the Respondents that the Petitioner's grievances essentially arise out of his cessation from the post of Director and CEO, which, even if assumed to be irregular, cannot constitute oppression within the meaning of Section 241 of the Companies Act, 2013. It is asserted that the Petitioner's removal followed his own resignation dated 30.03.2015, as reflected in Form DIR-12 filed with the RoC, and that his subsequent allegations were made only after he was no longer associated with the Company. The Respondents submit that the Petitioner's loss of office does not affect his rights as a shareholder, particularly when he holds only one share and has no material interest or control in the affairs of the Company.

7.8. The Respondents have further submitted that all

actions undertaken by the Board of the Company were carried out in accordance with law and in the ordinary course of business. It is contended that the opening of bank accounts, availing of credit facilities, and execution of Board Resolutions were all duly authorised, and that the Petitioner, being the resident Director, was fully aware of and had participated in these decisions. The Respondents deny any falsification of accounts or diversion of funds and assert that the financial statements for the relevant periods were duly approved and signed by the Petitioner himself. It is further contended that the Petitioner has made vague and unsubstantiated allegations without identifying any specific transaction amounting to misappropriation or mismanagement.

- 7.9. The Respondents have also denied the allegation of illegal appointment of Additional Directors and submitted that such appointments were necessitated by the Petitioner's resignation, in order to meet the statutory requirement of a minimum number of directors for a public limited company. It is stated that Respondent No. 4 was appointed as an Additional Director on 31.03.2015 immediately after the Petitioner's resignation, and Respondent No. 5 was appointed on 01.06.2015 upon the resignation of Respondent No. 4. The Respondents contend that these appointments were validly made, with due compliance under the Companies Act, and that the

Petitioner, having resigned from directorship, has no locus to challenge the subsequent decisions of the Board. It is their categorical stand that the Petition has been instituted with mala fide intent to settle personal and professional scores, and that the same deserves dismissal in limine.

7.10. In light of the pleadings, documents, and submissions advanced by the respective parties, the following issues arise for determination before this Tribunal:

- (i) Whether the present petition is maintainable under Section 244 of the Companies Act, 2013, in view of the admitted fact that the Petitioner holds only one equity share constituting 0.001% of the paid-up share capital of the Company?
- (ii) Whether the Petitioner, who was himself serving as the CEO and the only resident Director of Respondent No. 1 Company till 30.03.2015, can allege acts of oppression and mismanagement in the conduct of the affairs of the Company during the period when he was in control of its management?
- (iii) Whether the appointment of Respondent Nos. 4 and 6 as Additional Directors of the Company was carried out in violation of the provisions of the Companies Act, 2013, and if so, whether such acts amount to oppression or mismanagement?

- (iv) Whether the alleged financial irregularities, falsification of accounts, and diversion of funds, as claimed by the Petitioner, have been established by credible evidence and whether they constitute acts of mismanagement within the meaning of Section 241 of the Companies Act, 2013?
- (v) Whether the Petitioner's removal from directorship, and the subsequent filing of forms and resolutions before the Registrar of Companies, were in accordance with law or constitute acts of oppression against the Petitioner in his capacity as a member?

7.11. **Issue No. (i): Whether the present petition is maintainable under Section 244 of the Companies Act, 2013, in view of the admitted fact that the Petitioner holds only one equity share constituting 0.001% of the paid-up share capital of the Company?**

- A. At the outset, it is an admitted position on record that the Petitioner holds only one equity share of the face value of ₹10/- in the Respondent No. 1 Company, representing approximately 0.001% of its paid-up share capital. Section 244(1) of the Companies Act, 2013 (corresponding to Section 399(1) of the Companies Act, 1956) provides that: -

“244. Right to Apply Under section 241.

(1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.”

B. The Petitioner has attempted to justify maintainability by contending that certain subsequent changes in the shareholding pattern, particularly the alleged transfer of 50 shares by one Dr. B.S. Sreekumar, were mala fide and effected to defeat his right to maintain the petition. However, even if the said transfers are disregarded, the Petitioner's own shareholding remains a single share, and thus, his numerical eligibility continued

to fall short of the statutory threshold. The contention that the petition is maintainable on the ground of alleged manipulation in the records therefore does not merit acceptance.

- C. It is further noted that under the proviso to Section 244(1), the Tribunal may, on application, waive the requirements specified in clause (a) or clause (b) of sub-section (1) so as to enable a member or members to apply under Section 241. In the present case, no such application seeking waiver of the eligibility criteria has been filed by the Petitioner, nor has any order granting such waiver been passed by this Tribunal. Therefore, the mandatory precondition for invoking jurisdiction under Section 241 stands unfulfilled.
- D. However, since the Hon'ble Appellate Authority has already, by its order dated 28.09.2018 passed in Company Appeal (AT) No. 89 of 2018, set aside the earlier dismissal order of this Tribunal dated 27.10.2017 and restored the petition, this Tribunal considers it appropriate to deal with all the issues framed in the matter and not to summarily dispose of the case solely on the ground of non-maintainability. This Tribunal is also of the opinion that, as per its interpretation of the Hon'ble NCLAT's order, the issue of maintainability was kept open by the Hon'ble Appellate Authority,

and only liberty was granted to the Petitioner to have the matter adjudicated on merits rather than being rejected at the preliminary stage.

E. Accordingly, while this Tribunal is of the considered view that the present petition does not meet the eligibility criteria prescribed under Section 244 of the Companies Act, 2013, and is therefore not maintainable on that ground, it shall nonetheless proceed to examine the other issues on merits in view of the restoration directed by the Hon'ble NCLAT.

7.12. Issue No. (ii): Whether the Petitioner, who was himself serving as the CEO and the only resident Director of Respondent No. 1 Company till 30.03.2015, can allege acts of oppression and mismanagement in the conduct of the affairs of the Company during the period when he was in control of its management?

A. It is an undisputed fact that the Petitioner was appointed as the CEO of Respondent No. 1 Company and also served as its only resident Director in India, managing and supervising its day-to-day operations till his resignation dated 30.03.2015. During the said period, the Petitioner himself signed the balance sheets, participated in the financial and operational decisions of the Company, and represented the Company before

statutory authorities and financial institutions. The Respondents have, therefore, rightly contended that the Petitioner was an integral part of the management and was responsible for ensuring the statutory and financial compliance of the Company.

- B. In the present case, the Petitioner's allegations of mismanagement, falsification of accounts, and financial irregularities pertain largely to a period when he was himself at the helm of affairs as the CEO and was responsible for the supervision of the Company's accounts and compliance functions. Having been an active participant in the management of the Company, the Petitioner cannot now attribute the alleged irregularities and managerial lapses to oppression by others. The plea of oppression cannot be maintained against a management of which the Petitioner was himself an integral and controlling part.
- C. Even the communications placed on record by the Petitioner, purportedly exchanged between him and the Respondents, have also been perused by this Tribunal. These communications do not enclose or refer to any documentary evidence substantiating the alleged acts of siphoning or falsification of accounts. The language and tenor of these communications merely indicate differences

in approach and lack of mutual confidence between the directors rather than any deliberate or oppressive conduct against the Petitioner.

D. Hon'ble Supreme Court in the case of **Shanti Prasad Jain v. Kalinga Tubes Ltd., AIR 1965 SC 1535**, has held that: -

"19. In Harmer's case, it was held that " the word ' oppressive ' meant burdensome, harsh and wrongful". It was also held that " the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the ' just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression." It was also held that " the result of applications under Section 210 in different cases must depend on the particular facts of each case, the circumstances in which oppression may arise being so infinitely various that it is impossible to define them with precision." The circumstances must be such as to warrant the inference that " there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy". The phrase "oppressive to some part of the members" suggests that the conduct complained of " should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fairplay on which every share holder who entrusts his money to a company is entitled to rely . . . But, apart from this, the question of absence of mutual confidence per se between partners, or between two sets of shareholders, however relevant to a winding up, seems to me to have no direct relevance to the remedy granted by Section 210. It

is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not . . . come within Section 210. It is not lack of confidence between shareholders per se that brings Section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs and oppression involves ... at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholder."

(Emphasis Supplied)

- E. Hence, to this Tribunal, the correspondence reflects managerial discord and a breakdown of trust among the directors, rather than any act of oppression or mismanagement as contemplated under Section 241 of the Companies Act, 2013.
- F. Accordingly, this Tribunal is of the considered view that the Petitioner, who was himself in control of the management and conduct of the affairs of the Company till 30.03.2015, cannot now be heard to allege oppression or mismanagement for actions or decisions taken during the period of his own authority and participation. Therefore, this issue is answered in the negative.

7.13. Issue No. (iii): Whether the appointment of Respondent Nos. 4 and 6 as Additional Directors of the Company was carried out in violation of the provisions of the Companies Act, 2013, and if so,

whether such acts amount to oppression or mismanagement?

- A. The Petitioner has alleged that Respondent Nos. 2 and 3, without following due process and in violation of the statutory provisions governing appointment of directors, appointed Respondent Nos. 4 and 6 as Additional Directors of the Company by filing Form DIR-12 dated 13.05.2015 and 21.07.2015, respectively. It is contended that no notice of any Board Meeting was issued to the Petitioner, no quorum was present, and no proper minutes were recorded or circulated. The Petitioner submits that such appointments were purportedly made through Board Resolutions alleged to have been passed at Dar-es-Salaam, Tanzania, without the presence of a resident director, in violation of Sections 173, 174 and 161 of the Companies Act, 2013.
- B. On the contrary, the Respondents have asserted that the Petitioner had already resigned from the directorship of the Company vide his email dated 30.03.2015, which was duly acted upon and reflected in Form DIR-12 filed with the Registrar of Companies. It is submitted that subsequent to his cessation, the Company was statutorily required to ensure that the minimum number of directors prescribed under Section 149(1)(a) for a public

limited company was maintained. Accordingly, Respondent No. 4 was appointed as an Additional Director on 31.03.2015 to fill the vacancy arising out of the Petitioner's resignation, and thereafter, Respondent No. 6 was appointed to maintain compliance. The Respondents maintain that these appointments were made bona fide, in compliance with the statutory provisions, and that the Petitioner, having ceased to be a director, had no locus to challenge the same.

C. It is pertinent to note that the Petitioner has not produced any material evidence demonstrating that he continued to hold office as a director after 30.03.2015 or that he did not tender his resignation as claimed. The records filed with the Registrar of Companies, including Form DIR-12, reflect that the cessation of his directorship was recorded as "resignation". In the absence of any contemporaneous objection or correspondence disputing his resignation, this Tribunal finds no reason to disbelieve the documentary record. Once the Petitioner ceased to be a director, the Board was within its powers to appoint additional directors under Section 161(1) to ensure the statutory minimum number of directors was maintained.

D. Even assuming there were procedural irregularities

in the appointment of the Additional Directors, such irregularities per se would not amount to acts of oppression or mismanagement under Section 241 of the Companies Act, 2013, unless it is shown that the appointments were made with the intent to prejudice the rights of the Petitioner as a shareholder or to alter the balance of control in the Company to his detriment. In the present case, the Petitioner's shareholding being a single share, no such prejudice can be said to have been caused to his proprietary or participatory rights as a member.

E. In view of the above discussion, this Tribunal is of the considered opinion that the appointment of Respondent Nos. 4 and 6 as Additional Directors, even if procedurally irregular, does not constitute an act of oppression or mismanagement within the meaning of Section 241 of the Companies Act, 2013. This issue is, accordingly, answered in the negative.

7.14. **Issue No. (iv): Whether the alleged financial irregularities, falsification of accounts, and diversion of funds, as claimed by the Petitioner, have been established by credible evidence and whether they constitute acts of mismanagement within the meaning of Section 241 of the Companies Act, 2013?**

- A. The Petitioner has alleged that Respondent Nos. 2 and 3, in connivance with the statutory auditor and other officials, siphoned off substantial funds of the Company by falsifying books of account, manipulating financial statements, and diverting loan proceeds obtained from Indian Overseas Bank for personal use. It has been further alleged that certain Board Resolutions were fabricated and backdated, that the statutory auditor performed multiple conflicting roles, and that the Petitioner's personal properties, mortgaged as collateral for the Company's borrowings, were wrongfully exposed to enforcement actions under the SARFAESI Act. These, according to the Petitioner, collectively demonstrate gross mismanagement and abuse of fiduciary duty by those in control.
- B. The Respondents, on the other hand, have categorically denied all allegations of financial impropriety and submitted that all transactions were duly authorised and reflected in the Company's audited accounts, which were signed and approved by the Petitioner himself as a Director. It is contended that the Petitioner has not produced any specific instance or documentary proof of misappropriation or unauthorised withdrawal of funds. The Respondents further submit that the classification of the Company's account as NPA by the lending bank occurred

solely due to financial stress and non-performance of projects, for which the Petitioner, as CEO, was directly responsible.

- C. Upon perusal of the record, it is evident that while the Petitioner has made extensive allegations of financial misconduct, no independent audit report, bank communication, or contemporaneous financial statement has been produced to substantiate these claims. The allegations of falsified resolutions, misuse of loan funds, or siphoning of company money remain largely uncorroborated by verifiable evidence. The audited financial statements placed on record bear the signatures of both the Petitioner and Respondent No. 2, which indicates that the accounts were approved with the Petitioner's knowledge and consent during his tenure.

7.15. **Issue No. (v): Whether the Petitioner's removal from directorship, and the subsequent filing of forms and resolutions before the RoC, were in accordance with law or constitute acts of oppression against the Petitioner in his capacity as a member?**

- A. The Petitioner has contended that his removal from the position of Director and Chief Executive Officer of the Company was carried out in contravention of the provisions of the Companies Act, 2013, and the principles of natural justice. It is alleged that no

notice of the purported Board Meeting dated 31.03.2015, held at Dar-es-Salaam, Tanzania, was issued to him and that his cessation was subsequently regularized by uploading a false declaration and Form DIR-12, showing his resignation. The Petitioner asserts that he never resigned and that the filing of Form DIR-12 was a mala fide act engineered by Respondent Nos. 2 and 3 to remove him from management and seize control of the Company.

- B. The Respondents, however, have placed reliance upon the Petitioner's own email communication dated 30.03.2015, wherein he is stated to have tendered his resignation as Director of the Company "with immediate effect". This communication has not been denied by the Petitioner, nor has any contemporaneous correspondence been produced by him disputing the authenticity of such resignation, such email constitutes a valid notice in writing, effective from receipt. The cessation was thereafter duly reflected in Form DIR-12 filed with the Registrar of Companies, and there is nothing on record to indicate that such filing was fraudulent or unauthorized. Furthermore, the Petitioner did not raise any objection or protest regarding his alleged illegal removal until several months after his cessation, when the present petition came to be

filed.

- C. It is settled law that the mere cessation or removal of a director, even if alleged to be procedurally irregular, does not, by itself, constitute oppression within the meaning of Section 241 of the Companies Act, 2013, unless it is accompanied by conduct that is burdensome, harsh, or wrongful to the member concerned. The Hon'ble Supreme Court in ***Tata Consultancy Services Ltd v. Cyrus Investments Pvt Ltd.***, (2021) 9 SCC 449 has held that: -

“111. In fact the real reason why the complainant companies thought fit, quite tactfully, not to press for the reinstatement of CPM is that the mere termination of Directorship cannot be projected as something that would trigger the just and equitable clause for winding up or to grant relief under Sections 241 and 242.”

(Emphasis Supplied)

- D. In the present case, the Petitioner holds only one equity share in the Company and has not demonstrated that his cessation as a Director has in any way affected his rights as a shareholder. His grievance, at best, pertains to his personal and managerial position and not to any prejudice caused to him in his capacity as a member. The cessation of his directorship, being based on his own communication of resignation, cannot therefore be construed as an act of oppression.

E. In view of the above discussion and the material placed on record, this Tribunal finds that the Petitioner's cessation from directorship was effected pursuant to his own resignation and was subsequently recorded through due statutory filing. There is no material to substantiate that such cessation was illegal, fabricated, or actuated by mala fides. Consequently, the same does not constitute an act of oppression within the meaning of Section 241 of the Companies Act, 2013. This issue, therefore, stands answered in the negative.

12. Therefore, in light of the above observation, the Transfer Petition No. 119 of 2016 is ***dismissed*** being devoid of merit on all substantive issue.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

HG

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)