# THE NATIONAL COMPANY LAW TRIBUNAL
# MUMBAI BENCH-I

**TP/11(MB)2012**

Section 241-242 of the Companies Act, 2013

KUNIKA MALHOTRA AND ANOTHER

...**Applicant**

V/s

TRANSAUTO AND MECHAIDS PVT. LTD. & ORS

…**Respondent**

**TP/12(MB)2012**

KUNIKA MALHOTRA

...**Applicant**

V/s

UNIQUE PROPERTIES PVT. LTD. & ORS.

…**Respondent**

**TP/13(MB)2012**

KUNIKA MALHOTRA

...**Applicant**

V/s

VIDYUT METALLICS PVT LTD & ORS

…**Respondent**

**TP/14(MB)2012**

KUNIKA MALHOTRA

...**Applicant**

V/s

SUPERMAX INTERNATIONAL PVT. LTD. & ORS.

…**Respondent**

***Order delivered on: 29.07.2026***

***Coram:***

**Shri Prabhat Kumar**
Hon'ble Member (Technical)

**Shri Sushil Mahadeorao Kochey**
Hon'ble Member (Judicial)

*Appearances:*

| | | |
|---|---|---|
| For the Petitioners | : | Mr. Shyam Kapadia |
| For the Respondent No.9 | : | Mr. Raymond Gadkar and Mr. Venkatesh Bhandari, Mr. Karan Bhide |

## ORDER

**TCP 11 to 14 of 2012**

1. The Transfer Company Petition i.e. TCP 12 of 2012, since amended, was filed by M/s Sapphire Properties Pvt. Ltd. ("Sapphire"), in the affairs of M/s Unique Properties Pvt. Ltd. ("Unique/UMPL") u/s 397-398 of the Companies Act, 1956 (section 241-242 of Companies Act, 2013) against the commission of alleged acts of oppression and mismanagement by Mr. Rakesh Malhotra ("Respondent No. 6 in the present company petition/RM") and other directors. Later on, Kunika Malhotra ("KM") was substituted as Petitioner consequent to transfer of shares of Unique by Sapphire on 30.08.2021.

2. Three other Company Petitions, namely TCP 11 of 2012, TCP 13 of 2012 and TCP 2014, all since amended, were filed Mr. Rajinder Kumar Malhotra ("RKM"), in the affairs of M/s Transauto Mechaids Pvt. Ltd ("Transauto/TMPL"), M/s Vidyut Metallics Pvt. Ltd. ("VMPL"), and M/s Supermax International Pvt. Ltd. ("SIPL") u/s 397-398 of the Companies Act, 1956 (section 241-242 of Companies Act, 2013) against the commission of alleged acts of oppression and mismanagement by Mr. Rakesh Malhotra and other directors in these company petitions.

3. On demise of RKM on 4th July 2021, the amendment applications were filed in these Company Petitions to bring on record RKM's legal representative (Kunika Malhotra in her individual capacity/ in her capacity of the Trustee of RoRag Trust) in 2024. Accordingly, Kunika Malhotra ("KM") was substituted as Petitioner in TCP 11 and TCP 14. In TCP 13, she was substituted as Petitioner on settlement of shares held by RKM in trust, namely RORag Trust. Mrs. Veena Rajinder Malhotra and KM were also substituted as Petitioner no. 2 in TCP 11 of 2012.

4. All these companies, namely Transauto, Unique, VMPL, SIPL and RCC (Sales) Pvt. Ltd. were part of Super Max Group, owned and controlled by RKM. These Indian companies owned land / plant, or intellectual property rights which was used by the Supermax Group for its business of manufacturing and selling razor blades and related products internationally. Transauto was holding substantially all the shares of other 4 RKM Indian Companies, and was holding Company thereof. At all times the directors of the RKM Indian Companies were employees of one or more of the Companies. RKM and his sons were not directors. RKM had two sons, namely Rajiv Malhotra ("Rajiv") and Rakesh.

5. RKM and Rajiv Malhotra ("Rajiv") decided to restructure and exit from the affairs of the Supermax Group and Rakesh Malhotra ("Rakesh") was to assume control of the Supermax Group. The Group was restructured with private equity funding from Actis Consumer Grooming Pvt Ltd ("ACGPL/Actis"). Pursuant to

the restructuring, a new company, Supermax Personal Care Pvt. Ltd. was formed ("SPCPL") and Rakesh was in complete control thereof.

6. It is further stated by the Petitioner(s) that, in 2008, RKM and Rajiv decided to restructure and exit from the affairs of the Supermax Group and Rakesh was to assume control of the Supermax Group. Accordingly, for the said purpose, one M/s. Allegro Corporate Finance Advisors Pvt. Ltd., ("Allegro") was appointed on 4.11.2010 on behalf of the Supermax Group to identify a private equity investor/s to invest in the Supermax Group, against payment of a success fee Allegro successfully identified Actis Consumer Grooming Limited ("ACGPL/ Actis") which invested a total of US $ 225 million in the Supermax Group against acquisition of a minority shareholding.

7. Subscription and Shareholders' Deed dated 4th November 2010 ("SSD") and Supplemental Deed dated 4th March 2011 ("SD") were executed with the private equity fund, Actis, along with RKM, Rajiv and Rakesh, amongst others, for a consideration of $ USD 225 Million for which the RKM Indian Companies were to enter into an agreement for transfer of certain business assets and liabilities etc. to SPCPL.

8. In view of the restructuring, a Business Transfer Agreement ("BTA") was entered on 30.12.2010 into between VMPL (executed through Mr. Abhishek Kumar) and SPCPL for slump sale of the business assets and liabilities of VMPL to SPCPL whereby VMPL was to receive USD 24.58 million (equivalent to Rs. 110.50 crores at that time) as consideration. Additional documents such as Employee Secondment Agreement and Equipment Lease Agreement were entered into between VMPL and SPCPL The BTA also provided for -

    (i) the Rupee Equivalent of USD 4.15 million (Rs 67.50 crores at that time) to be kept in a separate designated bank for a period of two years to meet any claims that may be raised by the transferee/SPCPL;

    (ii) execution of a job work agreement where VMPL would carry out manufacturing at its VMPL Plant 2;

(iii) lease of only VMPL Plant 1 and Transauto Plant 1 to SPCPL;

(iv) transfer of no other assets of other RKM Indian Companies; and

(v) Transfer of the working capital facility provided to viz. VMPL and RCC by the concerned banks (viz. PNB and OBC for VMPL and Andhra Bank for RCC Sales Pvt Ltd) to Rakesh's company viz. SPCPL.

9. The Article 5.1.2(a) of BTA dated 30.12.2010 entered between VMPL and SPCL expressly contemplates "*the written approval from the following lenders; (i) Punjab National Bank (ii) Oriental Bank of Commerce and (iii) Bank of Rajasthan /ICICI for transfer of the business to the transferee, provided that the transferee shall be subject to such terms and conditions which shall not be less favourable than those currently applicable to the transferor under the relevant loan facilities*". Further, Article 1.1.3 defines the business, Article 1.1.4 defines the Business Assets and Article 1.1.8 defines the Business Liabilities; and the details of business assets and business liabilities are set out in Annexure 1, Annexure 2 and Annexure 3 forming part of said BTA. Further, clause Article 6.1 states that "*The closing shall take place on the Transfer Date at the office of the Transferor or tat any other place mutually agreed in writing by the Parties hereto ("Closing Venue"), upon notice being issued by the Transferee, within 2 (two) Business Days from receipt of certificate mentioned in Article 5.3, stating the satisfaction of all of the conditions precedent stated in Article 5 (or such other period as may be agree between the Parties). Such notice shall be accompanied with certified true copies of all contents obtained by the Transferee as required under Article 5.1.*" Article 5.3. states that "*It is clarified that the obligations of the Transferee with respect of fulfilment of the Conditions Precedent will be fulfilled upon the production of a certificate to such effect addressed to the Transferee along with certified copies of such documents, which are reasonably required to allow the Transferee to assets the fulfilment of the relevant conditions Precedent.*"

10. The directors of Respondent Companies at the time of BTA were the following individuals :

a) Transauto – Mr. Shaik Hanif Mohammad, Mr. Subhash Dutta Chaudhari and Mr. Dhruv Vallavdas Thakkar appointed from 08.05.2007, 08.04.2011 and 08.04.2011, and were allowed to be continued as directors though they had joined as employee/consultants with SPCPL. Mr. P.B. Vyas and Mr. Amit Bhansali with Rakesh are stated to be signatory in the bank accounts and securities accounts maintained by the Company. Mr. P.B. Vyas and Mr. Amit Bhansali are alleged to have acted under the direct influence and instructions of Rakesh;

b) Unique – Mr. Talla Nageshwar Rao and Mr. Jasraj Bhagwandas Goel appointed from 08.05.2007 and 01.09.2011. Subhash Chaudhary was allegedly appointed unilaterally in June 2012 by Mr. Talla Nageshwar Rao, and Mr. Amit Bhansali and Rakesh are stated to be signatory in the bank accounts and securities accounts maintained with City Bank. Mr. Mr. Talla Nageshwar Rao and Subhash Chaudhary alleged to have kept Mr. Jasraj Bhagwandas Goel in dark, and Mr. Amit Bhansali are alleged to have acted under the direct influence and instructions of Rakesh;

c) VMPL — Mr. P.B. Vyas and Mr. Subhash Dutta Chaudhari appointed from 22.09.1993 and 30.04.2001, Mr. Amit Bhansali, Mr. Rakesh Malhotra, Mr. Abhishek Kumar and Ms. Jaanvi Tekchandani are stated to be signatory in the bank accounts and securities accounts maintained by the Company. Mr. Amit Bhansali, Mr. Abhishek Kumar and Ms. Jaanvi Tekchandani are alleged to have acted under the direct influence and instructions of Rakesh; and

d) SPIL — Mr. Gopalkrishna V. Nayak and Mr. Alexandar G. Tone appointed from 13.08.1990 and 25.07.2008. Mr. Amit Bhansali, Mr. Rakesh Malhotra, Mr. P.B. Vyas, Mr. Shaik Hanif Mohammad and

Mr. Sunil Raj are stated to be signatory in the bank accounts and securities accounts maintained by the Company. Mr. Amit Bhansali, Mr. Shaik Hanif Mohammad, Mr. P.B. Vyas and Mr. Sunil Raj are stated to have acted under direct influence and instructions of Rakesh Further, it is stated that no relief is claimed against Transauto and Rakesh in this Petition as they are only proforma party.

11. It is stated by the Petitioner(s) that, in 2016, after enough information was gathered to challenge the specific acts that were fraudulently and illegally caused by Rakesh, Company Applications were filed for amendment in these Company Petitions seeking to challenge those specific act and documents executed pursuant to the same by the hostile directors of the Company. Accordingly, further amendments were also carried out in all these company petitions to add Respondents, namely Lenders in whose favor security interest over the properties of Respondent Company was created to secure debts owed by SPCPL after restructuring, SPCPL, ex-directors of Respondent Companies around the time of such security creation, and subsidiary of Respondent Companies who had executed corporate guarantee. No relief is claimed against such subsidiary company.

12. The allegation of the Petitioner(s) in all the four Company Petitions are arising from business restructuring of Super Max Group, whereby RKM had vested manufacturing business in favor of Rakesh, and all the four Respondent Companies remained with RKM and his other son Rajiv, however, Rakesh is alleged to have committed acts of oppression and mismanagement in the affairs of these 4 Respondent Companies after such restructuring as he continued to exercise control over affairs of these companies resulting into -

(i) creation of security interest in favor of lenders over VMPL's asset viz. S. No. 29, Hissa No 1/1,1/3(part), Navpada Village, Thane ("Panama Staff Quarters"/ "said Thane Property") and VMPL Plant 1 and Unique and Emerald Investments Pvt. Ltd. ("Emerald")'s assets viz. Laxmi Villas, H.No.6-3-1186, Begumpet Road, Hyderabad ("said Hyderabad Property") to secure debts amounting to Rs. 240 crores granted by lenders transferred to SPCPL in 2011;

(ii) execution of corporate guarantee by Emerald, subsidiary of Transauto, Unique and VMPL for such debts in March 2011;

(iii) withholding of portion of Rs. 67.50 crores receivable by VMPL by execution of supplementary BTA dated 18.3.2011 by Abhisekh Kumar (R9) on behalf of VMPL and Paresh Vyas (R5) on behalf of SPCPL;

(iv) Execution of job work agreement and secondment agreement to the detriment of interest of VMPL thus causing loss to it;

(v) making available certain properties belonging to RKM companies through short term/long term leases, without there being any such stipulation in the BTA;

(vi) fraudulent and wrongful payment of Rs 10,15,22,039.61/- from VMPL; Rs. 7,75,16,193/- from SIPL and Rs 92,47,331/- from Unique to Allegro by/ at the instance of Rakesh; and

(vii) Fraudulent hypothecation of mutual funds owned by SIPL and Unique with HDFC Banks, for an amount of Rs. Rs. 38,97,94,273.83 and Rs.71,73,602.70 respectfully at the instance of Rakesh, that was realised by HDFC bank.

13. Accordingly, all these four petitions were heard together and are being dealt in this order. The Ld. Counsel for the Petitioner(s) advanced common arguments in all these four petitions taking TCP 13 of 2012 as lead, as the foundational allegations pertained to exercise of control over Respondent Company by Rakesh despite separation of RKM & Rajiv from Rakesh in terms of BTA dated 30.12.2010, and he supplemented these arguments in relation to each Petition, if required, to deal with specific issue in each of such petition.

14. The Ld. Counsel for the Petitioner(s) advanced submissions in relation to following reliefs prayed in TCP 13 of 2012, and no other relief was pressed :-

*(a) Orders and directions be passed under sections 397, 398 and 402 of the Companies Act, 1956 to bring to an end the aforesaid acts of mismanagement perpetrated by Respondent Nos. 2 and 3, including all necessary orders and reliefs in connection therewith; (prayer clause (b))*

*(b) Respondent Nos. 2, 3 and 5 to 8 be ordered to make a true fair and complete disclosure of all payments made by the Company to third parties, encumbrances created on the assets of the Company, guarantees issued by the Company and liabilities incurred/ undertaken by the Company with effect from March 2011; (prayer clause (c))*

*(c) Respondents be directed to compensate the Company and make good all losses incurred by the Company on account of the acts of commission or omission by Respondent Nos. 2 and 3 in their capacity as directors of the Company; (prayer clause (d))*

*(d) That this Hon'ble Board be pleased to set aside, terminate or modify any agreements that may have not been executed by the Company, any payments that have been made by the Company and any transfer or other dealings with any of the Companies assets/properties as may have been effected by the Company after 18th March 2011, as may be just and equitable in the circumstances so to do: (prayer clause (e))*

*(e) That this Hon'ble Tribunal be pleased to: (prayer clause (e-1))*

*i. declare that the Clauses of the Supplemental BTA dated 18th March 2011 purporting to enable Respondent Nos 6 and 9 to retain (i) a sum of Rs 67.50 crores otherwise payable by them to the Company and (ii) withhold retain and utilise Plant No 2 belonging to Transauto are vitiated by fraud, illegal and void;*

*ii. Order and direct Respondent Nos 9 and 6 to pay the sum of Rs 67.50 crs to the Company and interest thereon at 12% per annum from 18th March 2011.*

*(f) That this Hon'ble Tribunal be pleased to Order and direct the Respondents 6 and 9 to pay/ repay to the Company the amount of Rs 10,15,22,039.61/- which Respondent No 6 had fraudulently and wrongfully arranged to pay to Allegro from the funds of the Company and interest thereon from 1st February 2012 at 18% per annum; (prayer clause (e-2))*

*(g) That this Hon'ble Tribunal be pleased to declare that the Deed of Guarantee dated 9th May 2011, the Declaration of Equitable mortgage over the Company's property (Panama Staff Quarters at Naupada Thane and the Plant No. 1) as also the Memorandum of Deposit of title deeds both dated 13th May 2011, purported to be executed by the hostile ex directors of the Company in favour of Respondents 10 - 12 banks, at the instance of Respondent No. 6, to secure advances made by the said banks to SPCPL is ultra vires, vitiated by fraud and illegal; (prayer clause (e-3))*

*(h) In the alternative to prayer (e-3) above and only in the event of this Hon'ble Tribunal not granting a declaration in terms of prayer (e-3) above, Respondent Nos. 6 and 9 be ordered and directed to make good and pay over to the Company any claims made by the Banks against the 1st Respondent Company under the said Guarantee and/ or the said Mortgage [of the Panama Staff Quarters and Plant No 1] and the Respondent Nos. 6 and 9 be ordered and directed to indemnify and make good any loss that may be caused to the Respondent No. 1 Company by virtue of the said Bank seeking to enforce the said Guarantee and the said Mortgages. (prayer clause (e-4))*

*(i) That this Hon'ble Tribunal be pleased to direct Respondent No. 9 to furnish to the Petitioner copies of all the documents/ records handed over to Respondent No. 9 under the BTA and listed in detail in Annexure 4 of the BTA. (prayer clause (e-7))*

15. It is stated by the Petitioner(s) that the restructuring as per the Supplemental Deed and Share Subscription Deed, executed between both the groups, was

substantially completed on 24.03.20211 and Rakesh was placed in control of the Supermax group & its business (in which Actis was given a 25-29.17% share). The business & assets of the said five RKM Indian Companies were transferred/ leased/ sold to the Super Max Group and the aforesaid sums aggregating to US $ 53 million (with US $15 million being kept by VMPL in the separate designated account) were believed by RKM to have been received by the said five RKM companies. RKM was content for Rakesh to receive & invest the consideration receivable by the said RKM Companies. Moreover, during the period mid-2011 to Jan 2012 RKM was substantially away from India – inter alia for medical reasons.

16. It is further stated by the Petitioner(s) that Rakesh was given sole authority to represent the Malhotra family in all these transactions. He also had sole bank account operating authority. The family had complete faith and trust in Rakesh. Rakesh betrayed this trust. Following the restructuring and transfer agreements, the directors of the RKM Indian Companies were all employees of SPCPL, that was controlled and held by Rakesh. After the transfers were effected, Rakesh, using his sole authority, deployed the funds received by RKM Indian Companies not only to grant loans, but also to guarantee bank loans and facilities to SPCPL which was under Rakesh's control.

17. It is further stated by the Petitioner(s) that RKM and Rajiv learnt on 23.1.2012 from an email addressed by one Nafisa Barodawala (employee of SPCPL) to Mr. G.D. Arora, an employee of VMPL, that Rakesh had apparently arranged for the said RKM Indian Companies to give guarantees to PNB for amounts lent to SPCPL. The directors of the said RKM Indian Companies (who were now employees / consultants engaged by Rakesh/ SPCPL) refused to give RKM (who was the effective owner of the said RKM Indian Companies) information & access to records, registers & accounts. RKM also received a copy of an email issued by Rakesh directing the said directors not to communicate with RKM or Rajiv and threatening them with disciplinary action if they did so.

18. On finding that significant liabilities had been incurred and funds deployed, RKM attempted to gain information from the directors of his own companies. They refused to divulge this information, being all beholden to Rakesh. Accordingly, apprehending that Rakesh in collusion with the directors of the RKM Indian Companies would siphon the funds of the RKM Indian Companies or encumber and/or deal with the assets of the RKM Indian Companies, RKM addressed a letter on 30.1.2012 to the then bankers of the RKM Indian Companies through his advocates informing PNB that the directors and signing authorities of VMPL were acting against the interests of VMPL and RKM who held about 47% of the shareholding in VMPL. PNB was requested to not allow any transactions in the Bank Account of VMPL which may jeopardize or diminish the assets of VMPL or be detrimental to VMPL, failing which PNB would be held accountable for the same.

19. It is stated by the Petitioner(s) that this led to the filing of the these Company Petitions ("CPs") on 2nd/ 3rd February 2012 by RKM/Companies (controlled & owned by him) on account of gross oppression and mismanagement in the RKM Indian Companies by hostile directors who were acting under the influence and instructions of Rakesh.

20. Rakesh has contested these petitions stating that –

    a) SSD and SD contain a valid, all-encompassing arbitration clause providing for LCIA Arbitration in Geneva and these petitions are dressed up involving purely a contractual and family dispute to color the alleged acts as act of oppression and mismanagement to evade the agreed upon arbitral forum;

    b) this Tribunal lacks the jurisdiction to adjudicate complex and disputed questions of title and fraud in summary proceedings;

    c) the relief in the present petition in relation to handover the Empire Estate Flats its beyond prayer;

d) in terms of 2010 understanding embodied in SSD, he was appointed as the "MP Representative" with "Sole and absolute control" over the voting rights and management of the Malhotra family entities in terms of Clause 41.1 of SSD;

e) the present petition is barred by Doctrine of Laches and Acquiescence in view of silence of the Petitioner(s) for 15 Months since the Bank Guarantees were executed in March 2012;

f) the securities created in favour of PNB, acting in good faith on valid board resolutions passed on 30.01.2012, are binding on Respondent Companies regardless of internal family disputes; and,

g) the petitioners having accepted the benefit of restructuring, specifically the receipt of approximately Rs. 238 crores into their Indian Companies cannot now seek to invalidate the very authority that secure those funds.

21. The PNB, consortium lender's lead, has contested the relief sought by the petitioner in relation to creation of security interest over the properties of Unique, VMPL and Emerald as well as execution of corporate guarantee in the favour of lenders stating that –

a) Mortgage of 2011 is only a continuation of the prior mortgage post slump sale; Section 402(f) empowers the Tribunal to set aside transactions only where they amount to a "fraudulent preference" entered into within three months preceding the petition;

b) Section 402(e) contemplates the termination, modification, or setting aside of *agreements* to prevent continuing acts of oppression; it does not authorise the Tribunal to annul completed transfers of proprietary interests; the Bank has, by virtue of its NOCs, clearly stipulated a condition to the proposed transfer of liabilities and assets, wherein the Bank has clearly recorded that the existing security shall continue and that there shall be no dilution of the security, which has clearly been overlooked by the Petitioner(s);

c) Respondent Companies had mortgaged its immovable property to secure the limits of VMPL and RCC much before the BTA in 2010 and a further mortgage was created in favour of SPCPL after the Slump Sale shows that it is a normal banking process and there is no element of fraud involved;

d) Petitioner(s) have wrongly assumed that post slump sale, mortgage is extinguished and bank is expected to continue the limits without mortgage security;

e) the Petitioner(s) have not alleged that: *(i)* the mortgage or guarantee was unauthorised, *(ii)* the Board Resolution was invalid, *(iii)* the authorised signatories lacked authority, *(iv)* the transaction was beyond the objects of Respondent No. 1, or *(v)* the mortgage documents were forged or fabricated; there is no dispute that the procedure as per Companies Act has not been complied with, notwithstanding even if any non-compliance, the doctrine of indoor management applies and company is bound by the mortgage and guarantee;

f) the prayer for declaration without consequential reliefs not maintainable Under Section 34 of the Specific Relief Act;

g) no Motive alleged against the bank, and, in order to make a case of fraud against the banks, there should be some illegal purpose/motive attributed upon the banks/its officials for being a party to such a ‘fraud’;

h) the Petitioner admitted knowledge of guarantees from the email dated 23.01.2012 referred at para 19 of the Company Petition and para 29(R)(iv) of the amended Company Petition, having learnt during UK court proceedings in 2012, and the Company Petition filed on 03.02.2012 did not challenge guarantee or mortgage, which was challenged only by way of an amendment in 2016, accordingly, these petitions qua-lenders are barred by limitation, as the period of limitation commences from the date of registration of charge with ROC;

i) the waiver of some guarantees pursuant to the NOC for the Business Transfer Agreement dated 31.12.2010 does not establish collusion on part of lenders;

j) The present dispute substantially concerns the validity of mortgage and guarantee documents executed in favour of a third-party secured creditor, and, at the relevant time, the Companies Act, 1956 did not contain any provision analogous to Section 430 of the Companies Act, 2013 excluding the jurisdiction of civil courts, hence, this issue lies before Civil Courts which is evident from institution of Civil Suit No. 659 of 2015 before the competent Civil Court by the Petitioner(s);

k) Sarfaesi Action having being initiated by taking symbolic possession, bar u/s 34 Sarfaesi Act applies and challenge ought to be as per the Sarfaesi Act;

l) Reliance on Minutes of Meeting Dated 5th May 2011 and Financial Statements is Misplaced, wherein it was recorded that SPCPL is a group company of R1, which is contrary to the disclosure of related parties in financial statements of SPCPL for the relevant period;

m) The Petitioner (RKM) himself was not aware at the contemporaneous time as to the commission of any alleged/purported fraud upon him;

n) The Petitioner's reliance on their advocate's letter dated 30th January 2012 is fundamentally flawed, as the execution of the impugned equitable mortgage and guarantee documents occurred in March 2011;

o) The Petitioner's reliance on a Bombay High Court order dated 12th August 2014 and subsequent RTI correspondence (September 2014–October 2015) to allege "suspicious circumstances" is misplaced, as these documents were generated years after the transaction and the Petitioner has failed to produce a shred of contemporaneous evidence to establish any anomaly that would have mandated an enquiry by the Bank at the time of execution;

p) Prior Inter-Se Court Orders are Not Binding on the Respondent Bank; and

q) the Petitioner(s)'s similar proceedings against HDFC Bank, seeking identical injunctive reliefs to restrain the bank from recovering its loan and from enforcing the underlying guarantees and pledges was dismissed by an order dated 15th July 2013—by the Hon'ble High Court, which conclusively demonstrates that such challenges mounted by the Petitioner are fundamentally devoid of merit.

22. We heard the Learned Counsel for the Petitioner(s), Ld. Counsel for PNB, representing the consortium lenders, and Ld. Counsel for Rakesh as well as other Respondents represented before us.

23. The foundation of alleged acts of oppression and mismanagement committed in the present petitions is the exercise of control by Rakesh over the then directors of the Respondent Companies as those directors allegedly remained in control of Rakesh even subsequent to restructuring whereby the control and ownership of all Respondent Companies vested in RKM and Rajiv, and the control over the Respondent Companies came to be ceded to RKM only after intervention of the Hon'ble Bombay High Court. Ld. Counsel for the Petitioner drew our attention to the observation of Hon'ble Court to canvass that the hijack of management and control of Respondent Companies by Rakesh through the then directors of Respondent companies and causing prejudice to interest of these Companies and its shareholders (the petitioner(s) herein) is conclusively evidenced from these observations in order dated 12/20.8.2014 dismissing Rakesh's Company Appeal against order dated 31.01.2013, passed by predecessor Company Law Board (CLB) rejecting Rakesh's applications (Company Application Nos. 266, 267, 268 and 269 of 2012) for reference to arbitration under Section 45, while adjudicating these petitions prior to transfer before this Tribunal. Vide said order, the CLB permitted RKM to reconstitute the Board of Directors of the remaining three companies but directed the appointment of an independent Observer-cum-Facilitator on the Board of Directors of the Companies.

24. It is submitted by Ld. Counsel for the Petitioner that the Hon'ble High Court, in Paras 107, 134 to 138 of said order (the said decision is not stayed yet by Hon'ble Supreme Court in an appeal pending thereat) recorded as follows :

i. Rakesh had betrayed the confidence deposed in by RKM;
ii. Although RKM controlled 99.9% of the said companies' shares, the Directors were acting under the control of Rakesh and continued to be obdurate and obfuscatory.

25. It is relevant to refer to said paras, which read as follows :

*"**"107….** The directors, and very possibly the authorised signatories too, were in a position where they had two masters but served well only one. They were directors of RKM'S companies, but employed, post-restructuring, by Rakesh. RKM and Mrs. Veena Malhotra wholly owned Transauto. Between them, these three along with Rajiv and Mrs. Kunika Malhotra wholly controlled every one of the other first respondent companies (with Rakesh having a negligible holding in one respondent company). Yet the directors of these companies acted in a way that was contrary to the interests of the only shareholders and owners.* ***As Mr. Justice Walker points out, most egregious of all is the refusal of these directors to disclose information and accounts to an effective owners and only shareholders of the Respondent companies****. This group of respondents does not claim "under" Rakesh though it clearly beholden to him, a very different thing. They are, therefore, not claiming under the SSD at all, and are joined as necessary parties to the CLB Proceedings. The so-called dissimilarity of parties is, thus, clearly a non-issue.*

*134. Between these rival submissions, where lies the greater equity? That, I believe, is the only question I must ask myself. Mr. Madon is not wrong in saying that a given state of affairs having continued for considerable period of time, and without objection or application for modification by the other side, a brief continuance is unexceptionable. But that argument, compelling though it is at first glance, only scratches the surface. Even given that the fabric of such separations or restructurings is seldom* *smooth and unwrinkled, there are tears and gashes in this one that are beyond the ordinary. Rakesh, then a young man his family trusted implicitly, appears prima facie to have betrayed that confidence, and to have done so in a most egregious manner. He is primarily responsible for the fractures in the family relationships and business. RKM and Rajiv acted in good faith; <u>Rakesh was, as agreed, given full control of the SuperMax companies. The funds that were, in exchange, to come to the RKM-controlled Indian companies (the Transauto companies) were wrested — perhaps hijacked might be a more apposite term — and deployed to further the interests of the entities Rakesh controls. In effect, Rakesh engineered a coup d'état and assumed control of the entire group.</u> Keeping the directors of the Transauto companies under his thumb, he not only created significant liabilities in the Indian companies but did so without notice or intimation to their owners, RKM, Transauto and the other family members. When these owners sought information, it was denied. Rakesh went so far as to threaten the directors should they make any disclosure. With orders from the CLB, these directors, all beholden to Rakesh, continued on the RKM Indian companies. This is the very "status quo" of which Mr. Madon now seeks a continuance.*

*135. There is also evidence that even after these appeals were filed, those directors continued to be obdurate and obfuscatory. By an order dated 21st October 2013, clarified on 29th October 2013, this Court appointed Mr. Justice H. Suresh, a retired Judge of this Court, as an Observer in respect of the four respondent companies, viz., Transauto & Mechaids Pvt. Ltd., Unique Properties and Securities Pvt. Ltd., Vidyut Metallics Pvt. Ltd. and Supermax International Pvt. Ltd. Mr. Justice Suresh (retd) held meetings with the parties. I have seen some of his minutes. He directed inspection and disclosure. Rakesh and the directors of the companies again played truant. On 9th December 2013, N.M. Jamdar, J. passed another order noting the lack of cooperation from the directors.*

*Two directors named in that order were made personally responsible for ensuring compliance with the directions of the Observer. Although I am not continuing this order, it is nonetheless a telling indicator of the attitude, approach and conduct of Rakesh and the director-respondents of the four Transauto companies.*

*136. In Mr. Madon's formulation I fear there is much that is lost in translation. Mr. Madon speaks of the crippling effect a reconstitution of the four respondent companies' boards will have on Rakesh's SuperMax group companies should the contracts between the two be terminated by the former. What does this mean except that Rakesh continues to believe (presumably on the basis of his assertion of an oral agreement or common understanding) that he has unfettered control and use of, and access to, the funds of the Transauto companies. To allow them a situation where they might compromise on contracts with companies in his own group is inequitable; but it matters not a whit that those very contracts expose the four respondent companies to very considerable financial risk, and even possibly ruin. Rakesh's Supermax companies must be protected and ring-fenced, even if this comes at the cost of the RKM-controlled four Indian Transauto companies. That they might as a result be placed in severe financial distress is apparently irrelevant. In a word: Rakesh must have the SuperMax group. He must also have the safety provided by the funds of the RKM Transauto group. RKM's and Rajiv's interests are of no moment. Their 99.9% shareholding is inconsequential. That the directors of their own companies have acted as Rakesh's puppets is immaterial. This is, in substance, the effect of the stay now requested.*

*137. I believe it would be wholly inequitable to allow this state of affairs to continue. There cannot possibly be any equity in Rakesh's favour in a situation like this. The irreversible prejudice that Mr. Madon apprehends is, I think, far outweighed by the considerably more profound prejudice* *and harm likely to result to RKM, his fellow-petitioners and the Transauto companies if the status quo or interim arrangement is continued. Such orders, once passed, tend to continue and are difficult to dislodge. I believe that equity now demands that Rakesh must assume the burden of satisfying a court in appeal from this judgment why the previous status quo or interim arrangement that has worked so unfairly to RKM and the Transauto companies should be allowed to continue. For myself, I find no justification for it.*

*138. As to the question of a freeze on the shareholding and the fixed assets, I believe this to be something of a red herring and perhaps a complete misconception. There is no question of a change in shareholding at all, and therefore no question of a 'stay' continuing in that respect. There is also no warrant for any 'stay' on the fixed assets of the four respondent companies continuing."*
*(Emphasis supplied)*

26. It is noted that the Board composition of Respondent Companies underwent change pursuant to said order, however, the handing over of control over affairs of these companies, including records and assets, further required CLB to pass an order dated 02.02.2015 directing erstwhile directors to hand over the charge thereto to the newly appointed board. However, the same was again resisted by filing a Company Application 120 of 2015 against the order dated 02.02.2015 seeking vacation thereof and Appeal (L) No. 10 of 2015 against said order in relation to VMPL's properties.
27. It is relevant to refer to the order dated 30.11.2015 passed by Hon'ble Bombay High Court in Appeal (L) No. 10 of 2015 (*appeal against said order is dismissed by Supreme Court vide Order dated 03.12.2015*) as the observations made in the said order demonstrate the conduct of Rakesh and the then directors. The relevant observations read as under :

*"15. …**However, since Vyas and Chaudhari at the instance of Rakesh, who admittedly controlled SPCPL, turned hostile and chose to exclude RKM, who holds 99.99% shares in the five Indian Companies including VMPL, they did not provide RKM with copies of the three Agreements, and the same were provided to him only in the course of the Company Appeal proceedings in this Court in 2013**. This fact certainly cannot be construed to mean that the said three Agreements were not acted upon by the parties.*

*20. **I am therefore of the view that SPCPL has not even made out a prima facie case of VMPL's Plant No. 2 having been transferred to SPCPL, or SPCPL being in control and possession of Plant No.2. As submitted by RKM, upon execution of the BTA, the Staff of VMPL was transferred to SPCPL. Vyas and Chaudhari who were earlier the employees of VMPL now became employees/consultants of SPCPL**. However, since Vyas and Chaudhari as employees of VMPL were appointed as Directors of VMPL since the years 1993 and 2001 respectively, RKM reposed trust in them and allowed them to continue as Directors of VMPL. **Rakesh who admittedly controls SPCPL started prevailing upon Vyas and Chaudhari and through them was dealing with the finance and assets of VMPL as per his wishes. In fact it is for this purpose that RKM filed Company Petition No. 13 of 2012 before the CLB under Sections 397, 398 and 402 of the Companies Act, inter alia, against Vyas, Chaudhari and Rakesh, seeking removal of Vyas and Chaudhari and appointment of new Directors in their place and protection of the assets of VMPL. CLB allowed RKM to replace Vyas and Chaudhari from acting as Directors of VMPL. Rakesh impugned the orders right upto the Hon'ble Supreme Court of India but failed to prevent RKM from removing Vyas and Chaudhari as Directors of VMPL. Since Vyas and Chaudhari have during the interregnum***

***throughout denied access to RKM qua the working and affairs of VMPL and have acted as per the directions of Rakesh who admittedly controlled SPCPL and allowed Rakesh to deal with the finances and assets of VMPL as per his wishes, Rakesh or SPCPL now cannot be allowed to take advantage of the same and contend that SPCPL was in possession and control of the assets of VMPL****, since RKM is unable to show which Officer of VMPL supervised the working of Plant No. 2 or that VMPL never made a demand for conversion charges or that there were only book entries made qua the conversion charges or that some property tax bills were paid by SPCPL, etc.* ***All these happenings were only because Rakesh, who controlled SPCPL, also controlled Vyas and Chaudhari, who were employees/consultants of SPCPL and also the ex-Directors of VMPL and through them acted completely against the interest of VMPL and RKM****. If Rakesh/SPCPL is allowed to take advantage of their own wrongs, it would amount to Rakesh/SPCPL being paid a premium on their dishonesty.*

*22.1 From 2012 till 2014, Rakesh prevented/delayed the hearing of the CLB Petition/removal of the said hostile Directors by filing diverse proceedings and through the said hostile Directors continued to use and exercise control of the funds and assets of VMPL. In 2012, Rakesh filed a Suit in the UK Court and obtained a stay from proceeding with the CLB Petitions. After the UK Suit was dismissed, Rakesh filed an application in the CLB Petition for reference of the disputes to an Arbitrator under Section 45 of the Arbitration and Conciliation Act, 1995. After that application was dismissed by the CLB and orders were made by the CLB in January 2013, permitting the removal of the hostile Directors, Rakesh filed an Appeal (L) No. 10 of 2013 in this Court and secured orders of interim stay of their removal.* ***Vide its Judgment dated 12th /20th August, 2014, this Court dismissed Rakesh's Appeal, and while rejecting his application for continuation of stay of removal of the Directors, severely***

***criticized /stigmatised Rakesh's attempt to usurp and control the funds and assets of VMPL through Vyas and Chaudhari. Rakesh preferred SLP against the said Judgment and Order dated 20th August, 2014. In the SLP grounds, Rakesh categorically affirmed that he controlled SPCPL and stated that he was apprehensive that if the stay order was vacated and RKM was allowed to take control of the 5 Companies including VMPL, he would jeopardize arrangements between them and SPCPL. By its Order dated 10th September, 2014, the Hon'ble Supreme Court granted Rakesh Leave to Appeal but specifically declined stay of the order. Thereafter from August 2014 to December, 2014, the said ex-Directors despite the Judgment and Order refused to hand over charge of the funds, assets and properties to VMPL's new management on diverse and untenable grounds. This again was done obviously at the instance of Rakesh.***"

*(Emphasis supplied)*

28. It is also relevant to refer to the order dated 04.03.2016 in Company Appeal (L) No. 12 of 2016 in the case of Unique, Company Appeal (L) No. 13 of 2016 in case of Transauto, and Company Appeal (L) No. 14 of 2016 in case of SPIL passed by Hon'ble Bombay High Court, wherein the Hon'ble Court has observed the events relating to restructuring and implementation thereof as well as relationship between RKM and Rakesh. The relevant part of the said Order is reproduced here as under:

*"14. Moreover, any event Rakesh Malhotra himself has, in a list of documents – standard disclosure signed on 4th September, 2014 and filed in the High Court of Justice Queen's Bench Division Commercial Court, confirmed that the four assets (subject matter of these appeals) were not with SPCPL. If it is the case of SPCPL (Rakesh Malhotra) that these properties were in possession of SPCPL pursuant to BTA, Rakesh Malhotra on 4th September, 2014 stating that these assets were not with SPCPL does not arise. In the disclosures to the UK Court, Rakesh*

*Malhotra has admitted that the four assets which are the subject matter of these appears are with the respondents…..*

*It is also not anybody's case that post 4th September, 2014 the possession of these properties were transferred to SPCP.*

*16…………One Vyas and one Chaudhari, who were the two Directors of VMPL had now become employees/Consultants of SPCPL. However, since they had been the Directors of VMPL since 1993 and 2001 respectively, RKM believed that they would continue to protect the interest of VMPL and therefore, allowed them to continue as Directors of VMPL. Similarly, the Directors of the other RKM Indian Companies remained unchanged……………….*

*17. Order have been passed by this Court and CLB against Rakesh Malhotra to hand over properties/assets to RKM and also make payment of monies due. The entire attempt of Rakesh Malhotra is to some how or the other thwart the Orders passed by the various forums in favour of his father. In a recent matter also he has been held guilty of contempt of court. He is one of those unscrupulous litigants, who by dishonest means uses the court for his sinister motives."*

29. It is also relevant to refer to observations of Observer-cum-Facilitator, appointed in terms of order dated 31.01.2013 passed by CLB, as recorded in the minutes of meeting dated 23.02.2015. It reads as under :

"*…the Respondents had adopted an evasive attitude, with no desire to comply with the directions given in the meetings. A perusal of the minutes of the said meeting demonstrates that the Respondents despite the Order of the High Court and directions given at the meeting held on 27th November 2014 have not complied with the same.*" (sic).

30. The above observations in Order dated 12/20.8.2014, Order dated 30.11.2015, and Order dated 4.3.2016 passed by Hon'ble Bombay High Court and the Report of Observer-cum-Facilitator clearly evidence that the then directors of Respondent Companies remained in control thereof, and they acted at the behest and under control of Rakesh to the exclusion of RKM and Rajiv, the legally entitled person to exercise such control over Respondent Companies pursuant to restructuring. Also, the directors appointed during the period prior to ceding of control to RKM and Rajiv also acted against the interest of its lawful shareholder(s).

31. Indubitably, the directors of a company hold office of director at the pleasure of its shareholders and carry a fiduciary duty to protect the interest of shareholders while discharging their functions as director in the management of company's affairs. In the present case, it is noted that the then directors, prior to appointment of new directors by RKM faction in 2014-15 pursuant to order dated 31.01.2013 and thereafter ceding of control of affairs of Respondent Company in 2016 pursuant to order dated 2.2.2015, had excluded RKM faction, who were legitimate owner of shares of Respondent Companies, and resisted efforts of RKM faction to appoint their nominees on the board of Respondent Companies and to take control of its affairs and such resistance came through proxy war fought by Rakesh. The then Directors, during this period being fully aware of restructuring of RKM group of Companies and execution of BTA between RKM faction and Rakesh, owed a duty to the RKM faction to protect their interest on the implementation of BTA so as to ensure that the terms of Restructuring arrangement embodied in BTA, SD and SSD are followed thereby protecting the interest of Respondent Companies, the management of which was entrusted with them.

32. It can not be said that the then directors were not aware of these agreements, as pursuant to these agreements only, transfer of business/rights in assets from Respondent Companies took place in favor of SPCPL. It follows therefrom that these directors acted contrary to their duties to benefit SPCPL at cost of these

Respondent Companies. Accordingly, the decisions taken by the then directors are not bona-fide and can be held to be fraudulent, even though such decisions may have been taken by them at the behest of Rakesh, the son of RKM, who claims an overall understanding between him and RKM to this effect, as these decisions taken by the Directors of Respondent Companies were contrary to the terms of restructuring embodied in BTA, SD and SSD. Hence, these decisions are liable to be set aside and SPCPL, being in control of Rakesh who had engineered these decisions through the then directors, can not also take shelter of "doctrine of indoor management", as it knew who is authorized to do what and in which manner. Since, the agreements pursuant to such decisions were entered into fraudulently and fraud vitiates execution of those agreements by the then directors, the same are liable to be set-aside, subject to the analysis whether the interest of third parties created lawfully in the properties of VMPL, Unique and Emerald, pursuant to these decisions can be set aside in terms of the law otherwise applicable to such interest.

33. It is noted that the following agreements/arrangements were entered into by the then directors which are assailed in the present petitions as being prejudicial to the interest of Respondent Companies :

a. Supplemental BTA dated 18.3.2011 for deferring the portion of Rs. 67.50 crores receivable by VMPL;
b. Job work agreement and secondment agreement with VMPL;
c. Agreement(s) for making available certain properties belonging to RKM companies through short term/long term leases, without there being any such stipulation in the BTA;
d. Payments of Rs 10,15,22,039.61/- from VMPL; Rs. 7,75,16,193/- from SIPL and Rs 92,47,331/- from Unique to Allegro by/ at the instance of Rakesh;
e. Hypothecation of mutual funds owned by SIPL and Unique with HDFC Banks, for an amount of Rs. Rs. 38,97,94,273.83 and Rs.71,73,602.70 respectfully at the instance of Rakesh, that was realised by HDFC bank;

f. Agreements for creation of security interest in favor of lenders over VMPL's asset viz. S. No. 29, Hissa No 1/1,1/3(part), Navpada Village, Thane ("Panama Staff Quarters"/ "said Thane Property") and VMPL Plant 1 and Unique and Emerald Investments Pvt. Ltd. ("Emerald")'s assets viz. Laxmi Villas, H.No.6-3-1186, Begumpet Road, Hyderabad ("said Hyderabad Property") to secure debts amounting to Rs. 240 crores granted by lenders transferred to SPCPL in 2011; and

g. Agreements for Corporate Guarantee binding Emerald, subsidiary of Transauto, Unique and VMPL for such debts in March 2011.

34. Rakesh has placed heavy reliance on the arbitration clause contained in SSD and SD providing for LCIA Arbitration in Geneva to contend that these petitions are dressed up involving purely a contractual and family dispute to colour the alleged acts as act of oppression and mismanagement to evade the agreed upon arbitral forum. It is noted that the contention of dressed up petition was dismissed, vide its vide Order and Judgment dated 12th / 20th August 2014, by Hon'ble Bombay High Court upholding the jurisdiction of this Tribunal to decide the issues raised in these Petitions. Hence, the objection on this ground does not survive. The relevant part of the decision in this relation is reproduced hereunder :

> *"125. The impugned order is upheld only to the extent that it holds that disputes in a properly brought petition under Sections 397 and 398 read with Section 402 of the Companies Act, 1956 are not referable to arbitration. The CLB's finding that the disputes were referable to arbitration is incorrect in law".*

35. In case of ***Shailja Krishna v. Satori Global Ltd. and Ors.***, [(2025) ibclaw.in 344 SC](), it is held that

> *"**30.** The aforesaid decisions confirm the view that the NCLT/CLB possess a wide jurisdiction to decide all such matters that are incidental and/or integral to the complaint alleging oppression and mismanagement. Such power is, however, subject to any other legislative*

*enactment specifically debarring the NCLT/CLB from exercising its powers in this respect.*

***31.*** *In the instant case, it is an admitted fact that the determination of whether the gift deed is valid or not is central to the decision herein and, therefore, the NCLT did have full jurisdiction to decide whether the gift deed is valid or not, or whether it is against the provisions of the 1956 Act and/or internal regulations of the COMPANY, including but not limited to the AoA and the Memorandum of Association.*".

*36.* It is also relevant to refer the decision in case of ***Chalasani Udaya Shankar and Ors. v. Lexus Technologies Pvt. Ltd. and Ors.,*** (2024) ibclaw.in 231 SC. Though the said decision was rendered in context of section 59 of the Companies Act, 2013, but, it explained the scope of powers of this Tribunal in the light of Section 430 of the Companies Act, 2013 excluding the jurisdiction of Civil Courts in the matter to be dealt under Companies Act, 2013. The relevant part of said decision is reproduced hereunder :

*"**33.** Significantly, the earlier decision in **Shashi Prakash Khemka** (supra) had concluded that the jurisdiction of the civil court would be barred by referring to the provisions of Section 430 of the Act of 2013. Neither this provision nor this decision was noticed by this Court in **IFB Agro Industries Limited** (supra). However, it would be wrong to hold that, for the said reason, there is a conflict between these two decisions. The jurisdiction of the civil court or for that matter, any other forum, would be barred only when the subject matter of the dispute squarely falls within the domain and jurisdiction of the court/forum constituted under the provisions of the Act of 1956/Act of 2013. When and where the Act of 1956/Act of 2013 does not confer such exclusive jurisdiction on the court/forum constituted thereunder or the dispute falls outside the realm of that particular provision of the Act of 1956/Act of 2013, the jurisdiction of the civil court would not be completely barred (See **Dhulabhai vs. State of Madhya Pradesh and another**[8]). Notably, the edict in **Ammonia Supplies Corporation (P) Ltd.** (supra) was*

*also to this effect and it was followed and affirmed in the decisions that followed thereafter. In* ***Adesh Kaur*** *(supra), this Court observed that if, on facts, an open-and-shut case of fraud is made out and the person seeking rectification was the victim, the National Company Law Tribunal would be entitled to exercise such power under Section 59 of the Act of 2013. This Court rejected the contention that, as criminal proceedings had been initiated, there was a serious dispute and it was not correct for the National Company Law Tribunal to exercise power under Section 59 of the Act of 2013. The contention that the shares had been dematted and were in the name of another person and, therefore, the power of rectification should not have been exercised, was also rejected."*

37. It follows from the above judicial pronouncements, that this Tribunal has the jurisdiction to adjudicate fraud in summary proceedings, more so when the factum of perpetration of fraud in the matter of Respondent Companies is evident from the observations in the decisions of Hon'ble Bombay High Court and UK Court in the cases pertaining to issues raised in the present petition whereby the acts of committed by the then directors of the Respondent Companies leading to commission of oppression and mismanagement in the affairs thereof are subject matter of dispute in these petitions.

38. As regards handing over of the Empire Estate Flats, it is noted that Rakesh, vide letter dated 16th October 1984 addressed to Unique, stated that the said Flat is "*being held in my name as a nominee of the Company, as the Society does not accept the membership of corporate bodies. I further confirm that all rights, title and interest in the said flat belong to the Company and I have no interest therein*"., and this letter was executed by him on the same day as the Agreement for Sale dated 16th October 1984 between the Vendors therein and Rakesh, as the Purchasers. Further, the Auditors Report along with the Account Statements for the years 2006-07 to 2010-11 of Unique show that the said Flat was treated as an asset of Unique. Also, by a letter dated 6th August 1985 addressed to Inspecting, Assistant Commissioner of Income Tax, it

was admitted by Rakesh that "*...the flat is not purchased by me in my individual capacity but as a nominee of a company namely M/s Unique Props. & Securities (P) Ltd.*". By the said Letter, Rakesh has further clarified that the consideration for the said Flat was paid by Unique and has provided the necessary details therein. In view of these facts, it can not be said that there is complex dispute of title of the property, when the contemporaneous admissions of Rakesh conclusively demonstrate that the said flats were owned by Unique and held in the name of Rakesh as the Housing Society did not allow corporate bodies to hold membership of the Society.

39. It is noted that Clause 41.1 of the SSD as relied upon by Rakesh provides that *inter alia* RKM and Rajiv have irrevocably appointed Rakesh "*...as their representative (the "**MP Representative**") to act for and on behalf of each of the Malhotra Parties for all purposes under the [SSD]... or to generally take any and all other actions or to do any and all other things provided in or contemplated by the [SSD] to be performed by any such Malhotra party.*" This clause only authorised Rakesh to perform such things or do such acts as are provided or contemplated by SSD to be done by family member(s). It nowhere authorises Rakesh to represent RKM group in the matters concerning BTA, whereby the RKM group business(s) were divided between Rakesh on one hand and RKM & Rajiv on other hand, and each of such group was entitled to the businesses/companies falling under their lap. In our considered view, Rakesh could not have assumed authority to represent RKM & Rajiv faction for the acts to be performed under the BTA, implying that Rakesh could not have continued to control the Respondent Companies falling under RKM faction pursuant to BTA through proxies i.e. the then directors. Nonetheless, the Respondent Companies were not parties to SSD. It is also noted that UK Court (High Court of Justice, Queens Bench Division, Commercial Court), vide its Order dated 30th October 2012, held that " 174.2……*It is a completely different thing to say that Rakesh was in effect given a power of attorney by clause 41 to dispose of Mr. Malhotra senior's assets. The grant of a wide power of that kind would*

*require something much more formal. The notion that clause 41 was intended to do this become even more outlandish when it is suggested that the power under clause 41 would carry with it an ability for Rakesh to take action without telling Mr. Malhotra senior anything about what he had done.*", and ""174.1...*clause 18.10 does not establish any agreement that funds of the relevant companies would be held available and put at the sole dispositions of Rakesh* ...". finally, the Hon'ble Court concluded that *"175…….I agree with Ms Weaver that it is impossible to construe the actions alleged in the Indian petitions in relation to the management of the relevant companies as actions "provided for in or contemplated by" the revised transaction."*

40. The conduct of Rakesh and the then directors of the Respondent Companies acting at his behest can not entitle Rakesh to oppose these petitions on ground of Laches and Acquiescence, taking advance of purported silence of the Petitioner(s) for 15 Months after execution of the Bank Guarantees were executed in March 2012.

41. Indubitably, the BTA divided the business/companies between RKM faction and Rakesh faction by metes and bound. Consequent to such division, the borrowings taken from PNB/lender consortium by VMPL against security of properties owned by Unique, VMPL and Emerald stood transferred to SPCPL and the securities offered by Respondent Companies as well as guarantee(s) of RKM and Rajiv were to be released from the lender consortium by SPCPL. RKM was to receive certain consideration pursuant to such restructuring, and received approximately Rs. 238 crores into their Indian Companies.

42. It is submitted by the Petitioner(s) that execution of: **(i)** Declaration and Confirmation of Deposit for Creation of Mortgage dated 13th May 2011 (for Panama Staff Quarters and Plant 1 of VMPL) and 9th May 2011 (for Laxmi Vilas Property of Unique) in favour of the Bank Consortium; **(ii)** Deed of Guarantee dated 9th May 2011 executed by VMPL and Unique separately through the hostile directors, in favour of the Bank Consortium for monies owed by SPCPL; **(iii)** Deed of Hypothecation of Plant & Machinery dated 9th May 2011 by

SPCPL through the hostile director (Paresh Vyas) in respect of assets of VMPL in favour of the Bank Consortium; **(iv)** Memorandum of Deposit of the Title Deeds by VMPL and Unique as security for working capacity facilities available by them dated 13th May 2011 executed through the hostile directors for equitable mortgage of Panama Staff Quarters and Plant 1 of VMPL and Laxmi Vilas Property of Unique are documents fraudulently executed for the credit facilities transferred by VMPL to SPCPL pursuant to the BTA dated 30th December 2010, and hence, these securities are not enforceable against the Respondent Companies. The Petitioner(s) have specifically pleaded for declaration in this respect. During the pendency of these petitions, this Tribunal had passed an injunction order dated 18.07.2024 restraining the lender consortium/PNB from taking any precipitative steps in relation to recovery of their outstanding against these securities.

43. There can be no quarrel that VMPL, Unique and subsidiary of Transauto i.e. Emerald which came to the RKM/Rajiv Group were not obligated to take on any obligation to secure the borrowings, which came to be transferred to SPCPL in terms of SD, SSD and BTA, and the encumbrances, if any, on the properties remained with VMPL, Unique and Emerald were to be released upon implementation of BTA. Having said so, the question arises whether the securities created in favour of PNB/lenders, acting in good faith on valid board resolutions passed on 30.01.2012, are binding on Respondent Companies regardless of internal family disputes and perpetration of fraud by Rakesh in collusion with the then directors of Respondent Companies.

44. It is noted that a letter dated 29.01.2011 was addressed by PNB to VMPL informing of the Bank's approval in issuing its NOC for the proposed restructuring/transfer of assets and liabilities of VMPL and RCC to SPCPL along with FB and NFB facilities sanctioned to the Company subject to certain conditions set out in the letter including:

*"In this regard, we have to inform you that the authorities have approved the company's proposal for issuance of NOC subject to fulfilling following conditions:*

*a) Personal Guarantees of key persons of the company having substantial stake viz. Shri R.K. Malhotra, Shri Rajeev Malhotra, Shri Rakesh Malhotra and Smt. Veena Malhotra be submitted.*

*b) Lump sale agreement/arrangement be got vetted from bank's approved counsel after drafting and execution of the same for transferring the business and transfer of existing WC facilities.*

*c) The company to adjust entire irregularities in the account i.e. Devolvement of LCs and Term Loan installments.*

*Additional Stipulations:*

*i) The company to obtain similar approval from OBC and Andhra Bank for the proposed business restructuring and transfer of WC/TL limits in the name of new company.*

*ii) The company to obtain all necessary statutory approvals for the proposed business restructuring.*

*iii) The company to ensure that existing TL of our Bank stands adjusted before implementation.*

*iv) The WC limits to be transferred in the name of proposed new company to be secured as under.*

*a) First charge by way of hypothecation of all current assets (present and future) ranking pari-passu with OBC and Andhra Bank.*

*b) WC facilities to be collaterally secured by way of EM/ Registered Mortgage of IPs/Plant & Machinery of VMPL and RCC having aggregate market value of Rs.202 crore.*

*c) Personal/ Corporate Guarantees of the owners of IPs offered as collateral.*

*d) Lease hold rights of Supermax.*

*v) Before transfer of WC limits in the name of new company, please arrange to get necessary documentation executed in consultation with Bank's approved Advocate.*

*vi) External risk rating be got done immediately and submitted to the Bank."*

45. The Oriental Bank of Commerce, vide its letter dated 21.02.2011, also issued a NOC stating, inter-alia, that *similar approval shall be obtained from Punjab National Bank & Andhra Bank for the proposed business restructuring and transfer of Working Capital/Term Loan facilities in the name of new Company (Supermax Personal Care Pvt. Ltd.). Further all stipulations made by them shall also be duly complied with*. It is further states that *Pari-passu charge to be extended to cover the amount the three Banks and there shall be no dilution in the charged securities*.

46. There is no evidence on record signifying dilution of Bank's stand in relation to continuance of the securities, which it held in relation to borrowings transferred from RKM Faction companies to SPCPL, except waiver of personal guarantee of Mr. RKM, Rajiv and Veena subject to the conditions set out in letter dated 29.02.2011, and it was clearly stated in the said letter that *Other terms and conditions of MC sanction dated 20.01.2011 as conveyed vide our letter dated 29.1.2011 shall remain unchanged*.

47. It is noted that there were outstanding credit facilities due from VMPL to consortium banks/PNB prior to restructuring, and these facilities stood transferred to SPCPL pursuant to the BTA. The conditions contained in letter dated 29.1.2011 makes it abundantly clear that no objection certificate was sought as the proposed business restructuring contemplated transfer of the assets and liability of VMPL, and RCC (Sales) Pvt. Ltd, to SPCPL along with existing Fund Based & Non Fund Based facilities sanctioned to the company, and the such transfer of credit facilities was also mandated under Article 5.1.2(a) of BTA.

48. It is argued by the Petitioner(s) that the doctrine of indoor management would not protect entities that have failed to carry out any diligence whatsoever, let alone reputed public financial institutions such as the Bank Consortium and the existence of serious and suspicious circumstances. It is case of the Petitioner(s) that the consortium lender(s)/PNB were aware of the terms of BTA and the split of the Supermax Group, as such acknowledgement is part of their own correspondence and the recitals to the security documents, and the fresh security documents were executed by the then directors acting under directions of Rakesh, which is conclusively emerging from various order(s) passed in the litigations between two factions subsequent to such split. It is also submitted by the Petitioner(s) that the waiver of Guarantee of RKM and Rajiv appear to be accorded by the Banks at the behest of SPCPL to ensure that RKM and Rajiv do not find out about the conditions of the NOC. Further, on 30th January 2012, PNB was called upon not to permit any transaction in VMPL's Bank account by the Petitioner's Advocates and was informed that VMPL's directors were acting against the interest of the Company. It is claimed that no reply was received from the Bank in this regard. However, we have found no allegation that any further transaction dealing with properties of RKM faction companies was allowed subsequent to said communication.

49. In case of ***Mahima Datla v. Dr. Renuka Datla and Ors. (2022) ibclaw.in 312 SC***, the Hon'ble Supreme Court, while dealing with doctrine of Indoor Management, stated that –

> *26. The Duomatic Principle can be briefly stated as "anything the members of a company can do by formal resolution in a general meeting, they can also do informally, if all of them assent to it." This Principle was derived from the decision In Re: Duomatic Ltd., [1969] 2 Ch. 365, wherein Buckley, J. held as under:*
>
> > *"where it can be shown that all shareholders who have a right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into*

> *effect, that assent is as binding as a resolution in general meeting would be."*

*27. The enunciation of the aforesaid principle, in the abovementioned case can be traced back to the decision of Lord Devey in Salmon v. Salmon Co. Ltd., [1897] AC 22, (hereinafter referred as "Salmon's case") wherein it was held that "a company is bound in a matter intra vires by the unanimous agreement of its members".*

*28. The aforesaid Principle emanating from Salmon' Case (supra) has found its utility across various aspects of company law such as Duomatic Principle, Doctrine of Indoor Management, etc. This Principle having its origin in common law, is applicable even in the Indian context.*

*29. It is, in this context, we must note that application of Duomatic Principle is only applicable in those cases wherein bona fide transactions are involved. Fraud is a clear exception to application of these principles, be it Duomatic Principle or Doctrine of Indoor Management. In this context, we may refer to observations in Bowthorpe Holdings Ltd. v. Hills, [2002] EWHC 2331 (Ch), wherein Sir Andrew Morritt V-C, observed as under:*

> *"... the transaction must be bona fide or honest. This, in my view, is demonstrated by the qualification of Viscount Haldane in AG for Canada v Standard Trust [1911] AC 498, 505 that 'the case was not ... a cloak under which a conspiracy to defraud was concealed', by Younger LJ in In re Express Engineering Works [1920] 1 Ch 466, 471 that 'no fraud is alleged in respect of this transaction', and by Lawton LJ in Multinational Gas v Multinational Services [1983] Ch 258, 268 that the members must act in good faith. Thus, in In re Duomatic Ltd [1969] 2 Ch 365, 372 Buckley J cited with approval the view of Astbury J in Parker and Cooper Ltd v Reading [1926] Ch 975, 984 that the transaction must be both intra vires and honest."*

50. Indubitably, in the present case, the then directors acting under instructions of Rakesh had caused execution of the security documents, hence, the principle of Indoor Management may not be applicable, as the PNB/Lender consortium had the knowledge of terms of separation and the BTA. However, it is also noteworthy that PNB/Lender consortium had expressly conveyed its terms of transfer of existing borrowings due from VMPL and RCC Sales to SPCPL whereby the existing encumbrances over the properties owned by RKM faction company were to continue. It follows therefrom that BTA was acted upon by the parties subject to this condition. Consequently, the existing borrowings of VMPL and RCC Sales, which were already secured by the charge on properties owned by RKM faction companies, came to be transferred to SPCPL thereby discharging RKM faction companies from liability in this relation and consequential release the said securities in relation to loan outstanding which were earlier due from RKM faction companies. Since, the existing loans came to be transferred to VMPL and the PNB/lender consortium had contemplated execution of fresh security documents in terms of its NOC stipulating continuance of existing securities to secure the loan outstanding, which became due from SPCPL, the fresh securities documents were executed. It follows therefrom that PNB/lender consortium had transferred the loan outstandings earlier due from RKM faction companies to be payable by SPCPL and released its existing security interest on one hand, and caused execution of fresh security documents in relation to existing securities for securing the loan outstandings now owed by SPCPL in accordance with the terms of NOC granted by it for implementation of BTA, this paving the way for implementation thereof. The terms of NOC had contemplated transfer of such loan outstandings to SPCPL only on continuance of existing securities. Accordingly, it would have been known to the Petitioner(s) that had the said loan outstandings been not transferred to SPCPL, the BTA could not have been implemented and they would not have received substantial money(s) from Rakesh and his companies in course of implementation thereof.

51. It is undisputed fact that RKM faction had knowledge of borrowings being transferred from RKM faction company to SPCPL and encumbrances existing over the properties of RKM faction company to secure these facilities. RKM faction also had knowledge that NOC from the lenders/PNB consortium is sine qua non for implementation of BTA, and those credit facilities are mandatorily required to be transferred by lenders/PNB consortium to SPCPL in terms of Article5.1.2(a) of BTA. BTA nowhere obligates the lenders/PNB consortium to release the existing securities held by them to secure loan outstanding due from VMPL and RCC pursuant to transfer of such loan outstanding to SPCPL. Nonetheless, an agreement between two faction of shareholder(s) can not obligate a lender(s) to release its security interest pursuant to such agreement, even if there is any stipulation to the effect therein, unless the lender(s) agree to the same, which they didn’t. Hence, it can not be accepted that PNB/consortium lender(s) ought not to have proceeded with execution of fresh documents in relation to securities held by them after transfer of loan outstandings earlier due from RKM faction companies to SPCPL, and, in doing so, PNB/consortium lender(s) have colluded in the fraud perpetrated by Rakesh and the then directors upon the RKM faction companies.

52. In the present case, the Petitioner(s) case is based on their exclusion from the affairs of their companies by Rakesh and the then directors. The fresh security documents executed by the then directors under instruction of Rakesh were filed with MCA for registration thereby releasing VMPL of its obligations in respect of loans outstanding and payable to lenders/PNB consortium thereby obligating SPCPL to pay such outstanding loans thereafter to lender consortium/PNB. Pursuant to implementation of BTA, RKM faction received substantial money, which could have otherwise not flown to them. A man of commercial prudence, which RKM being a businessman could be assumed to be, could have made out that the release of existing securities by PNB/consortium lenders for outstanding loans shall not be automatic with transfer of such outstanding loans from RKM

faction companies to SPCPL, and shall come with the conditions in relation to availability of alternate securities.

53. It is admitted by the Petitioner(s) that RKM received a letter addressed by PNB to VMPL informing the Company of the Banks decision to allow waiver of personal guarantee of Mr. RKM, Rajiv and Veena subject to the conditions set out in the letter. on 27.03.12 as an Annexure to Rakesh's 2nd Written Statement. The said letter, as noted in the preceding paragraphs, stated in clear terms that *Other terms and conditions of MC sanction dated 20.01.2011 as conveyed vide our letter dated 29.1.2011 shall remain unchanged.*

54. It is also noteworthy that the Petitioner(s) have themselves pleaded that, after being apprehensive that Rakesh in collusion with the directors of the RKM Companies would siphon the funds of the RKM Companies or encumber and/or deal with the assets of the said companies, RKM wrote a letter dated 19.01.2012 to the Citi Bank. This evidence(s) that the hostility of the then directors of RKM faction companies became known to RKM faction at that time itself.

55. Any man of ordinary prudence would have taken steps to find from MCA portal whether the encumbrances over properties of RKM faction companies have been released or not, even if the then directors had turned hostile. In fact, the hostility of the then directors gave more reasons to do so.

56. Even if, it is accepted that RKM faction was denied information/knowledge of execution of the security documents in favour of lenders/PNB consortium, RKM faction, having received the substantial consideration pursuant to implementation of BTA around 18.03.2011, could have diligently found out from MCA inspection whether the existing encumbrances over the properties RKM group companies has been released by the security holder(s) and no fresh encumbrances over the properties RKM group companies has been created by the then directors of Respondent Company, who they knew have turned hostile and were acting under the instructions and control of Rakesh. In the present case, the Petitioner(s) have themselves admitted breach of trust on part of Rakesh and the then directors, they allowed to continue after execution of BTA. But, the

breach of trust by these persons can not vitiate the third party interest, when such third party had never agreed to release security interests held by them over the properties of RKM faction companies. In our considered view, RKM faction have failed to exercise due diligence, and they could have discovered with reasonable diligence about the status of encumbrances on RKM faction properties around January/March, 2012 itself.

57. The contention of the Petitioner(s) that the Security Documents were provided for inspection pursuant to an Order of the Bombay High Court dated 21st October 2013, unsatisfactory and incomplete inspection was provided from November 2013 onwards until January 2014, and these Security Documents were provided only after November 2013 does not hold much ground in view of their knowledge of hostility of the then directors around January 2012 itself. Therefore, the amendment to assail these documents and add the Bank Consortium filed on 2nd February 2016 is also beyond period of three years and they could not seek enlargement of limitation in terms of Section 17 of the Limitation Act as they could have reasonably discovered the fact of encumbrances by exercising diligence by inspecting MCA records. It is nobody's case that the fresh charge created over the properties of RKM faction companies was filed beyond these date(s). For this reason also, there can not be a case of concealment of security documents.

58. It is also contended that the Petitioner only discovered the existence of the impugned corporate guarantees by an email dated 23.01.2012 requiring *copies of audited annual accounts of the captioned companies (from March 2011) and copy of the latest ITR. The same is required in connection with the renewal proposal at PNB for limits of SPCPL,* and they filed the present Company Petition within 10 days thereafter. Even if the timeline under S.402(f) were to be read in S.402(e) (which it cannot be) the Petitioner has still adhered to that time frame. It is noted that earlier VMPL's properties were mortgaged for the loans obtained by it, hence, there was no question of corporate guarantee in place. However, it is normal banking practice to obtain Personal/ Corporate Guarantees

of the owners of Immoveable Properties offered as collateral and no adverse inference can be drawn if such guarantee(s) was obtained consequent to mortgage of properties by these companies. In case, the corporate guarantee(s) extended by Emerald and Unique, it is not clear whether these were fresh securities, other than the existing securities covering the transferred loan outstanding pursuant to BTA. If the Corporate Guarantee(s) given by Unique and Emerald were fresh securities, and the said Guarantee(s) were impugned in the Company Petition originally filed on 2.2.2012, the said guarantee(s) are liable to be set aside in terms of section 402(f) of the Companies Act, 1956.

***59.*** The Petitioner(s) have contended that grant of certain rights in the companies assets without authority can be interfered with under section 402 of the Companies Act, 1956, and has relied upon decision in case of ***Dharamdas Nandlal Mehta v. Meridian Construction Pvt. Ltd., 2015 SCC OnLine CLB 5.*** It is noted that the said decision was rendered in relation to concealment of documents transferring the development rights, which were otherwise not available on public domain. A document filed with MCA is available to public at large for inspection, and is a notice to the public at large.

***60.*** It is also noteworthy that the CLB held in the said case that, "***In curing this wrong, if the Tribunal noticed third parties have nexus to any fraudulent act or oppressive act committed by the persons conducting the affairs of the company, then passing orders against third parties is only incidental to the conduct of the persons dealt with the affairs of the company, the only general principle to be followed in passing orders against persons other than members is whether right of hearing is given or not. One need not go that far to say that this Tribunal has jurisdiction."*** However, it is pertinent to note here that a lender has vested right to secure its lending, and in the present case, PNB/Lender consortium had, in clear terms, made the transfer of the loan outstandings owed by RKM faction Companies to SPCPL in terms of BTA subject to creation of security interest, explicitly stated in their NOC.

***61.*** Section 402 (e) of the Companies Act 1956 requires the consent of the party concerned itself for the termination, setting aside or modification of any agreement between the company and such person, hence, no order can be passed in terms of said section except with consent of PNB/consortium lenders.

***62.*** Section 402 (f) the Companies Act 1956 deals with the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference. In the present case, such transfer has been impugned much beyond three years pursuant to the amendment to the Company Petition carried out on 2.2.2016 and these agreements were entered in the year May 2011 in favor of PNB/Consortium Lenders and in February/November 2012 in favor of HDFC Bank.

***63.*** It is also noted that the Ld. CLB also held in the Dharamdas Nandlal Mehta (Supra) that "***Though the petitioners are under obligation to challenge the transaction to third party within three months as stated in section 402 of the Companies Act 1956, the aggrieved party is at liberty to challenge the said alienation of rights even after lapse of three months provided it is shown as fraudulently made in favor of third party and he has assailed within reasonable time after it has come to the notice of the aggrieved."*** As noted above, PNB/Consortium Lenders had never agreed for release of their security interest in the properties of RKM faction companies consequent upon transfer of loan outstanding from RKM faction companies to SPCPL, hence, it can not be alleged that PNB/Consortium Lenders acted fraudulently. In our considered view, PNB/Consortium Lenders secured these securities for value, which, otherwise also, they were entitled to enforce to recover their outstandings prior to such transfer. Even if it is assumed that the continuation of security interest after transfer of loan outstanding from RKM faction companies to SPCPL was fraudulent, it will follow therefrom that transfer of loan outstandings from RKM faction companies to SPCPL will also fail as such transfer took place only consequent to continuance of such security interest.

***64.*** It is also noted that, in case of ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, (2005) 11 SCC 314***, it is held that "*It is also beyond any controversy that the court while exercising its discretion is not bound by the terms contained in Section 402 of the Companies Act if in a particular fact situation a further relief or reliefs, as the court may deem fit and proper, are warranted."***,*** however, it is also stated thereafter that *"But the same would not mean that Section 397 provides for a remedy for every act of omission or commission on the part of the Board of Directors. Reliefs must be granted having regard to the exigencies of the situation…."* Further, the said decision could not be read to mean that this Tribunal can go beyond the mandate of specific conditions contained in clause (e) and (f) thereof. Hence, we are of considered view that no order in terms of Section 402(f) of Companies Act, 1956 can also be passed qua PNB/Consortium lenders.

***65.*** Further, the decision in case of **Lazarus estates ltd. v. Beasley -** Court of Appeal (1956) 1 Q.B. 702 proceeds on the principle that *"No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."* It can not be said in the present case that PNB/Consortium Lender have obtained an advantage by fraud, as PNB/Consortium Lenders secured these securities for value, which, otherwise also, they were entitled to enforce to recover their outstandings prior to such transfer

***66.*** *Further, the decision in case of* ***S.P. Chengalvaraya Naidu (Dead) by LRS v. Jagannath (Dead) by LRS & Others - (1994) 1 SCC 1*** only lays down that "*a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation*", and it further states that ***"****A fraud is an act of deliberate deception with the design of securing* *something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage*"**.**

***67.*** It is also contended by the Petitioner(s) that the Articles of Association of the Company specifically restricted the borrowing powers of the Company to borrow funds only for the 'purpose of the Company', and despite the Articles specifically prohibiting the borrowing power of the Company for the benefit of another, the Bank Consortium accepted the securities provided by the Company, without verifying the Articles of the Company. Further, Minutes of meeting held on 05.05.2011 of VMPL whereby authority was given to Paresh Vyas to mortgage the assets of VMPL. In the said minutes, SPCPL is referred to as "*Group Company*" of VMPL. This is completely false and the Bank Consortium would have known this with the background of the BTA and the financial statements of SPCPL (for year ended 31.03.2011) that VMPL and SPCPL were not group companies. Accordingly, it is contended that these facts ought to have raise suspicion in the mind of PNB/Consortium lenders in relation to authority of the then directors to create fresh security interest over the properties of RKM faction companies.

***68.*** In the present case, it can not be accepted that the PNB/Lender Consortium's claim over securities is based on falsehood, as they were already entitled to it, and an agreement between both factions here could not have bound them to release the securities unless they are duly secured on transfer of loan outstanding to SPCPL. No fresh security interest has come into effect by execution of fresh security documents, which were necessitated in view of transfer of loan outstandings in terms of BTA. For the same reasons, it can also not be said that PNB/Lender consortium had taken unfair advantage of RKM faction companies, who owned the charged properties. Instead, it is Rakesh and his Companies that may be said to have taken advantage in the process.

***69.*** Indubitably, the affairs of respondent companies were mismanaged by the then directors/individuals authorised to operate bank accounts under instructions of

Rakesh for his benefit and benefit of his companies. The Respondent Companies have immoveable properties as well as obligations towards PNB/consortium lenders, hence, it would not be equitable to wind up the affairs of the Respondent Companies.

***70.*** Section 542(1) of the Companies Act, 1956 provides that "*If in the course of the winding up of a company, it appears that any business of the company has been carried on, with intent to defraud creditors of the company or any other persons, or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct.*" Section 406 of Companies Act, 1956 extends the provisions contained in sections 539 to 544 to an application u/s 397 & 398 of the Companies Act, 1956.

***71.*** Further, in relation to hypothecation of mutual fund units in favor of HDFC Bank and appropriation thereof by HDFC Bank towards its due owed by SPCPL, it is noted that no relief is claimed against HDFC Bank and it is not a party to the present petitions. <u>However, the concerned directors/individuals authorised to operate bank/securities accounts as well as Rakesh are liable to compensate the concerned Respondent Company for the loss caused to it by such fraudulent hypothecation.</u>

72. There are order(s) passed by predecessor CLB directing handing over the properties of the Respondent Companies, which must come to it. It is noted that the handing over of properties is arising from BTA, whereby the RKM Companies/Businesses were divided between two factions, and, accordingly, any claim of possession over the properties in possession of Rakesh and his companies has to be subject to the understanding embodied in such document. Any other interest created in favor of Rakesh or his companies gets overridden

by the understanding between the parties dividing the companies/business. Accordingly, Rakesh is under bounden duty to return the Empire Estate flats owned by Unique, and transfer the same in the name of Unique without any further delay in view of no dispute in relation to title thereof. Also, the possession of the properties owned by the Respondent Companies, in possession of Rakesh or his companies, is to be restored back to the Respondent Companies.

***73.*** Since, Allegro is a third party, and there is no evidence on record to demonstrate that it was also a knowing party to the payments made illegally from accounts of Respondent Companies to them, though such payments were required to be made by SPCPL, we are of considered view no order can be passed against Allegro in this relation. Further, SPCPL is admitted into Corporate Insolvency Resolution Process in terms of provisions of Insolvency & Bankruptcy Code, 2016 from 11.1.2024, no order can be passed against it in view of section 14 of Insolvency & Bankruptcy Code, 2016. However, it is clarified that the agreements with SPCPL allowing it the possession or occupation or usage of properties in terms of the decisions taken by the then directors, if in force at the time of commencement of CIRP, shall be subject to these orders, and those agreements shall be determinable on cessation of moratorium u/s 14 of IBC in terms of this order.

74. In view of aforesaid discussions, we are of considered view that the decisions at para 33.'a' to 'd', to the extent they are not in conformity with SD and BTA, are set aside, and the directors/individuals to operate bank accounts as well as Rakesh, being knowing parties to these transactions are liable to compensate the Respondent Companies. Accordingly, we hold that Rakesh and the directors/individuals to operate bank accounts are personally liable, without any limitation of liability, for the loss caused to the Respondent Companies. Hence, then Directors as well as Rakesh are jointly and severally liable to pay -

a. the balance portion of Rs. 67.50 crores receivable by VMPL, which was deferred by supplemental BTA, along with interest @ 10% p.a. from the date when it actually became due for payment;
b. the loss caused to VMPL on account of Job work agreement and secondment agreement, which were to be entered on no profit-loss basis between SPCPL and VMPL/other Respondent Companies in terms of restructuring;
c. Fair value of the rent for the usage of properties belonging to RKM companies through short term/long term leases contrary to terms of BTA;
d. Amounts paid from Unique, SIPL and VMPL to Allegro, which otherwise were obligations of SPCPL along with interest @ 10% p.a. from the date when such amounts were paid;
e. amounts appropriated by HDFC Bank from the proceeds of hypothecated mutual fund units towards its due owed by SPCPL along with interest @ 10% p.a. from the date of appropriation by HDFC bank;
f. amounts which shall be appropriated by PNB/Consortium lenders from enforcement of the security interest over RKM faction companies held by them in respect of due owed from SPCPL@ 10% p.a. from the date of appropriation by PNB/Consortium Lenders.

75. The following persons shall be liable to make contribution for such losses jointly or severally within 30 days from the receipt of the order in relation to amounts at Para 74.a, 74.d & 74.e, and within 30 days from the receipt of communication of the quantum of amounts from the Petitioners/Respondent Company in relation to amounts at Para 74.b, 74.c & 74.f. In case these amounts are not paid within the said time, the unpaid amount shall carry an interest @ 10% p.a. on the balance amount :

a) Transauto – Mr. Shaik Hanif Mohammad, Mr. Subhash Dutta Chaudhari, Mr. Dhruv Vallavdas Thakkar, Mr. P.B. Vyas, Mr. Amit Bhansali and Rakesh;
b) Unique – Mr. Talla Nageshwar Rao, Mr. Amit Bhansali and Rakesh;

c) VMPL — Mr. P.B. Vyas, Mr. Subhash Dutta Chaudhari, Mr. Amit Bhansali, Mr. Rakesh Malhotra, Mr. Abhishek Kumar and Ms. Jaanvi Tekchandani; and

d) SPIL — Mr. Gopalkrishna V. Nayak, Mr. Alexandar G. Tone, Mr. Amit Bhansali, Mr. Rakesh Malhotra, Mr. P.B. Vyas, Mr. Shaik Hanif Mohammad and Mr. Sunil Raj.

76. In case of the corporate guarantee(s) extended by Emerald and Unique, it is not clear whether these were fresh securities, other than the existing securities covering the transferred loan outstanding pursuant to BTA. If, the Corporate Guarantee(s) given by Unique and Emerald were fresh securities, the said guarantee(s) are set aside in terms of section 402(f) of the Companies Act, 1956 as these Guarantee(s) were impugned in the Company Petition originally filed on 2.2.2012. The parties shall act accordingly.

***77.*** In terms of above, TP/11(MB) of 2012, TP/12(MB) of 2012, TP/13(MB) of 2012 and TP/14(MB) of 2012 stands disposed of. All Applications pending thereunder shall also stands disposed of. All interim relief, if any in force, shall stand vacated in terms of the above orders.

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| **-Sd/-** | **-Sd/-** |
| **Prabhat Kumar** | **Sushil Mahadeorao Kochey** |
| Member (Technical) | Member (Judicial) |