THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

TP/27(MB)2015

Section 241-242 of the Companies Act, 2013

AVNINDRA KUMAR TRIPATHI

...Petitioner

V/s

CHINAR SHIPPING & INFRASTRUCTURE INDIA PVT LTD

…Respondent

TCP 40/2015

LAXYO ENERGY LIMITED

...Petitioner

V/s

CHINAR SHIPPING & INFRASTRUCTURE INDIA PVT LTD

…Respondent

Order delivered on: 30.07.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Petitioner in TP/27(MB)2015	:	Mr. Anuj Tiwari, Mr. Rohit Gupta i/b Ms Tahzeen M. Khan
For the Respondent No. 2 to 5	:	Ms. Mansi Kaku
For the Petitioner in TP/40(MB)2015	:	Ms. Mansi Kaku
For the Respondent	:	Mr. Rohit Gupta, Mr. Anuj Tiwari i/b Mr. Tahzeen M. Khan

ORDER

1. The Company Petition TCP 27 of 2015 was filed before predecessor Company Law Board ("CLB") on 7.4.2015 by Mr. Avanindra Kumar Tripathi ("AKT") and Mr. Raghvendra Dubey ("RD") (referred collectively as "AKT faction") alleging commission of acts of oppression and mismanagement in the affairs of M/s Chinar Shipping And Infrastructure (India) Pvt. Ltd. ("Respondent Company") by M/s Laxyo Energy Limited ("Laxyo"), through Mr. Maonj Kumar Kulkarni ("MKK"), Mr. Yogesh Sharma ("YS") and Mr. Jai Prakash Sharma ("JPS") to seek relief in terms of Section 402 read with Section 397-398 of the Companies Act, 1956. MKK and YS are stated to be directors of the Respondent Company at the time of filing of present petition, and JPS was ex-director; and all of them were representing Laxyo on Board of Respondent Company. Laxyo, MKK, YS and JPS are arrayed as Respondent No. 2 to 5 respectively and referred as "Laxyo Faction" collectively hereinafter.

2. Another Company Petition TCP 40 of 2015 was filed before predecessor Company Law Board ("CLB") on 28.4.2015 by Laxyo alleging commission of acts of oppression and mismanagement in the affairs of Respondent Company by AKT faction to seek relief in terms of Section 402 read with Section 397-398 of the Companies Act, 1956. AKM and RD MKK and YS are also stated to be

directors of the Respondent Company at the time of filing of present petition, and are arrayed as Respondent No. 2 & 3 respectively.

3. Both these company petitioner were transferred to this Tribunal pursuant to supersession of CLB by this Tribunal. Since AKT faction and Laxyo have alleged counter allegations in relation to mismanagement of affairs of Respondent Company, both the petitions were heard together and are being decided vide this common order.
4. AKT faction raised following issues in support of their allegations its Petition TCP 27 of 2012 in relation to mismanagement in the affairs Respondent Company caused by Laxyo faction -
   a. Net cash withdrawal of Rs. 83,75,180/- from Bank of Maharashtra and TDS deposited by Laxyo through JPS on a purported bill of INR 82,45,105/-;
   b. Failure to provide financial support as per Agreement dated 11.11.2012 read with Agreement dated 14.11.2012;
   c. Deliberate delays in issuing Bank Guarantees by YS and JPS;
   d. Siphoning of Rs. 62.99 Lakhs to sister concerns from HDFC bank;
   e. Opening of Bank Account in Ratlam only in breach of Agreement dated 11.11.2012 read with Agreement dated 14.11.2012, while the account was to be opened at both the places, namely Ratlam and Mumbai;
   f. MKK, YS and JPS, nominee(s) of Laxyo were in de-facto control of Respondent Company's affairs;
   g. Denial of Laxyo in relation to Board Meeting held on 23.02.2015 whereat the nominee(s) of Laxyo had manhandled and abused AKT, even though it had argued on basis of 16 board meeting, and had denied only meeting dated 23.02.2015;
   h. Post filing acts of Laxyo, namely, Harassment of Independent Chairman, forgery to defame AKT, circular transactions with Yolax Infraenergy Pvt. Ltd. ("Yolax") & RG Infrastructure related to Laxyo, misuse of company's funds for hundi transactions and obtaining of signature of AKT on blank cheques/company letter heads.

5. Laxyo raised following issues in support of its allegations its Petition TCP 40 of 2012 in relation to mismanagement in the affairs Respondent Company caused by AKT faction:

   a. The board meeting does not exist in AKT's own Government filing - Form MGT-7, filed and digitally signed by AKT himself with the Registrar of Companies, records the complete official list of all sixteen Board Meetings held in FY 2014-15. No meeting on 23.02.2015 the date on which Laxyo's entire 45% shareholding was purportedly extinguished for NIL consideration appears anywhere in that list.

   b. Forgery proved by an independent Government expert SEOQD Report - Cx-322/18 conclusively proves that the Board Resolutions used to open UBI illegal accounts bear forged signatures.

   c. The Statutory Auditor on whose accounts AKT relies has himself been found guilty by his own Regulator, and was never validly appointed - ICAI Preliminary Opinion dated 12.10.2022 (File No. PR-53/2019) finds CA Rajesh Kumar M. Shukla prima facie guilty of professional misconduct; his purported reappointment dated 30.09.2014 finds no place anywhere in the Company's own sixteen-meeting record filed with the Registrar of Companies.

   d. HDFC Certificate arithmetic, not argument - Laxyo is a net creditor of INR 38,08,635/- in the very account from which siphoning is alleged, a Creditor position independently confirmed by Chinar's own Balance Sheet also.

   e. Ten years' contempt of this Tribunal's own Order CLB Order dated 13.04.2015 - Para 10, declares non-compliance to be misconduct; not one direction has been honoured.

   f. AKT's own settlement offer is a binding admission of liability -Tribunal's Orders dated 06.10.2016 and 24.01.2017 record an offer of INR 2,40,00,000/-, later enhanced to INR 3,00,00,000/-, against an alleged siphoning of only INR 1,38,41,206/- no innocent party offers more than double the alleged theft to the party accused of stealing it.

g. Three irreconcilable figures, one suppressed transaction - Balance Sheet loss vs. ITR profit vs. higher IT Assessment for the same year; the suppressed INR 82,45,015/- now corroborated by Form 26AS, the Company's own invoice, and Laxyo's own bank statement.

h. 97.5% revenue collapse - From INR 35.31 Crores to INR 89.29 Lakhs under Respondent No.2's exclusive management mathematical proof of causation.

i. Unauthorised self-enrichment and asymmetric criminal exposure - Self-remuneration of INR 60,00,000/- with no Board Resolution in a declared loss year, an undisclosed diversion of INR 1,86,69,354/- to the Managing Director's own family concern, and four pending criminal proceedings against AKT with none against any Nominee Director.

j. AKT's own contemporaneous record, months before any dispute arose, confirms the very mismanagement now in issue - the Nominee Director's letter dated 11.02.2015, copied to the Registrar of Companies, records AKT's own admission that statutory dues had "touched almost Five Crores," that the agreed increase of Laxyo's shareholding from 45% to 49% was never honoured, and that Delhi Jal Board receipts represented to Laxyo as routed through a disclosed Joint Venture account were in fact diverted through other accounts altogether twelve days before that same 45% shareholding was purportedly reduced to zero. Diversion of INR 1,86,69,354/- to the Managing Director's own family concern.

6. The Learned Counsel appearing for both the parties were heard and we have perused the material placed before us.

7. Both the factions have contended that the Petition filed by other faction is liable to be dismissed for various reasons levelling counter allegations, which have been clarified by other faction before us by adducing evidence(s) and

explanations. Laxyo has also alleged that AKT faction has approached this Tribunal with unclean hands having suppressed material facts, relied upon forged documents and certificate(s) from statutory auditor in their petition.

8. The Respondent Company was originally incorporated by AKT, who held together with RD whole of its subscribed and paid up capital amounting to Rs. 1,21,00,000/- divided into 12,10,000 equity shares of Rs. 10/-. RD held 60,500 shares only and the remaining were held by AKT. Pursuant to an agreement dated 11.11.2011 entered between AKT faction and Laxyo (referred as "Fourth parth" therein), AKT transferred 5,44,500 shares out of his holding to Laxyo for a consideration of Rs. 87,12,000/- constituting 45% in the share capital of the Respondent Company. The recital of the said agreement reads as below

> "*The Company, has bagged contract of Manning, Operation & Maintenance of Dredging units each comprising of one Cutter Suction Dredger, one Workboat/Tug and one accommodation boat in various stretches of River Ganga (National Waterways no. 1) and River Brahmaputra (National Waterway no. 2) and is likely to be awarded more similar jobs in near future and to manage the above Contract's and future similar contracts effectively, the Company seeks participation from the Fourth Party as defined below for financing, managing pool of skilled manpower, expertise on management providing resources for expansion of business other than the subject contract.*"

9. Thereafter, an agreement dated 14.11.2011 was also entered into between the parties which is stated to be in continuation of Agreement dated 11.11.2011 and forming part thereof. Since the aforesaid agreement(s) provide for understanding in relation to operational aspects as well, it is relevant to refer to the relevant clause(s) of said agreement(s) to decide the issue(s) raised in the present petition(s).

Agreement dated 11.11.2011

5. The sale of equity is to assist the Company to successfully manage the contracts so awarded and obligations effectively and to undertake the job of O&M of the subject jobs of IWAI, Dhamra Port contract and other new jobs as approved by Board or consented in writing for pursuing together for business expansion, promotion and undertaking any new liability. The existing liability with the company is no way transferred to new entrants,
6. To have clarity all sundry debtors and current liabilities as on the date of signing of this agreement for prior work due to Chinar, the existing Directors i.e. Mr. A.K. Tripathi & Mr. R. S. Dubey have agreed to indemnify the Purchaser, i.e. M/s Laxyo Energy Private Limited who do not in any case come into the picture of prior commitments or liabilities. In case any liabilities related to the period prior to signing of this agreement come to notice, the same shall be discharged by Mr. A. K. Tripathi and Mr. R. S. Dubey from their own/individual resources/share capital.

9. (A)On execution hereof:-

i. The Vendor shall deliver to the Purchaser all the relevant Share Certificates in respect of 5,44,500 equity shares together with Share transfer forms duly filled in, executed and attested,

ii. The Company shall take immediate steps for increasing the Authorized Capital of the Company to Rs 5,00,00,000.00 (Rupees Five Crores) only divided in 50,00,000 equity shares of Rs 10.00 (Rupees Ten) Each *iii. The Company shall hold a Board meeting of the company at which it shall be Resolved that:-*

a) the transfer of the equity shares in respect of 5,44,500 shares sold under this agreement is approved for transfer and registration in favour of M/s Laxyo Energy Private Limited, the Purchaser,

b) "that the representatives of the Purchaser Mr. Yogesh Sharma, Age 31 years, son of Mr. Pati Ram Sharma, DIN No 01305085 and PAN No AVDTS9618Q, residing at 1, Mitra Niwas Colony, Ratlam, MP 457001 and Mr. Jay Prakash Sharma, Age 37 years, son of Mr. Pati Ram Sharma, DIN No 01300939 and PAN no ALTPS8755J, residing at 1, Mitra Niwas Colony, Ratlam, MP 457001 herein be appointed as Directors of the company.

c) "that Bank account to be opened with HDFC Bank, Ratlam and Mumbai, to be operated by any one of four signatories, two from Vendors side and two from the Purchaser side" for all transaction. related to contract for IWAI and Dhamra port works and any job that may be awarded in future and for carrying company job on day to day basis and if required jointly by two authorized signatories at work site each nominated by Vendor/Shareholder and Purchaser."

d) "that opening of new bank account with HDFC Bank to be intimated to IWAI, Dhamra port Authority and client from whom fresh works are awarded for execution so that remittances from the client/clients are directly deposited in these new opened accounts. The funds realized from the Client as well as from the financial institutions shall be utilized solely for the purpose for which the funds have been obtained/released/arranged."

(iv) shall forthwith do all acts and things to completely and properly effect the transfer of said 5,44,500 equity shares in the name of the Purchasers, M/s Laxyo Energy Private Limited, and also to put the Purchaser in control and management of the company in all respects along with the Vendor and the Shareholders.

(B) The Vendor, the Shareholders and the Company shall also inter alia carry out the necessary acts, things and the procedure for the. following:-

i. ………………….,
ii………………….,

iii. To open a new Bank account for easy accounting purpose of newly awarded contracts by IWAI, Dhamra Port Authority, Shipping Corporation of India and any new work to be awarded by any client from now onwards, along with operation instructions as stated herein above at places wherever required for convenience of execution of work. The present bank accounts of the company with Federal Bank, Dena Bank, ICICI BANK LTD., Union Bank and /or any other bank will be closed forthwith. Till such time joint operation account authorization will be given to keep each one under picture. The subject operation with old a/c is for transparency till same is closed and new a/c is started,
LIST OF BANK ACCOUNTS IN NAME OF CHINAR SHIPPING & TRADUING CO.PVT.LTD.
DENA-BANK, A/C.NO: 002311021069, SHARE BAZAR BRANCH, MUMBAI-400023,
DENA BANK, A/C NO.:000111023786., MUMBAI MAIN BRANCH, MUMBAI-400001,
15380200001161. ONYX THE FEDERAL BANK LTD.A/C.NO.:

WEST BRANCH, MUMBAI BUILDING, S.V. RD. GOREGAON 400062.

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ICICI BANK LTD.A/C.NO.: 039305003013.CIBD MUMBAI BRANCH. CHURCHGATE - 400020.
UNION BANK OF INDIA, A/C.NO.: 318301010037349. MAZGAON, MUMBAI-400010

iv. To inform all concerned including all Clients/Customers, Suppliers, Banks, Financial Institutions, Statutory Authorities, Tax Authorities. Licensing Authorities, Registrar of Companies etc. about the change in the composition of the Shareholding as well as reconstitution of the Board of Directors,

v. To take suitable steps for amendment in the various clauses of Memorandum of Association and Articles of Association of the Company as deemed fit.

vi. The Company and the Purchaser for expediting the work and gaining adequate experience in the field may decide to identify dredging work obtained through IWAI in equal proportion for execution purpose and financing purpose. Job allocation within the Vendor, the Purchaser and the Operator has to be made with mutual discussion. All the parties shall try to obtain jobs in future and shall be executed by all concerned in the ratio decided and fixed in the manner suggested in this paragraph.

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10. The Company's new Bank Account, will be henceforth operated jointly by Mr. A. K. Tripathi and Mr. R. S. Dubey from the Vendor and Shareholder's side and Mr. Yogesh Sharma and Mr. Jay Prakash Sharma on behalf of the Purchasers from the date hereof. Transaction pertaining *to old a/c before this agreement in force is to be cleared by Mr A.K. Tripathi, The Vendor shall within 7 days hereof get the requisite resolutions passed by the Board of Directors of the company to give proper effect to the aforesaid. Any transaction for current transactions through old bank 214 accounts shall be treated as void transaction and shall not be acceptable.*

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18. It is further and expressly agreed, confirmed and recorded as under:-
(a) All the liabilities, Contingent liabilities if any and/or claims, if any. against the Company and not disclosed in the books of accounts of the company as on 31 day of March 2011 and in the written statement of Assets and Current Liabilities as on date of execution of this Agreement including the liabilities of unknown or known nature, contingent or non-contingent, ascertained or unascertained, whether contractual or of tort, pursuant to any act against environmental, accident, industrial accident, act of omission or commission, tax or revenue liabilities (including any liability under income tax, sales tax, service tax or excise or customs law) or any claim on account of sales return goods, destruction, margin differences, demands from trade, quality of products or any other act of commission or omission, prior to the date hereof, in any manner relating and/or pertaining to the Company shall remain the sole and exclusive personal liability of the Shareholders/ Vendor and the Shareholders/Vendor (Mr A. K. Tripathi & Mr R. S. Dubey) shall personally pay and discharge the same and the Shareholders and the Vendor shall indemnify and hold the Purchaser harmless (M/s Laxyo Energy Private Limited) against all such liabilities and consequential losses.

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19. Once the said shares, being the 45% of entire issued, paid up and subscribed capital of the company is transferred in favour of Purchaser and Shares transferred by the Vendors in the name of the Purchasers and the representatives of Purchasers have been co-opted as Directors and start jointly controlling the management of the company along with the Shareholders and the Vendor, the Shareholders and the Vendor shall ensure that they shall:-

(i) carry on the business of the company in the ordinary course with the mutual concurrence of the Purchaser;

(ii) not enter into any contracts, arrangements or commitments without the concurrence of the Purchaser:

(iii) not incur any liability or obligation without the concurrence of the Purchaser;

(iv) maintain all existing licenses, insurances and not do anything which will affect its validity:

(v) not issue any equity and/or preference shares without the concurrence of the Purchaser;

(vi) not change the share capital of the company i.e. authorized and paid up capital without the concurrence of the Purchaser

(vii) not, declare, make or pay any dividend or other distribution without the concurrence of the Purchaser;

(viii) not make any payment to or for the benefit (direct or indirect) of the Vendor/Shareholders without the concurrence of the Purchaser: and

(ix) not pass any resolutions of the Board or of the members of the company save and except as agreed herein without the concurrence of the Purchaser,

20. The Shareholders and the Vendor personally guarantee the performance of this agreement by the Company and of the obligations on the part of the Company and agree to keep indemnified and hereby indemnify the Purchasers against any loss arising on account of non-performance thereof.

Agreement dated 14.11.2011

1………………………….

2. The first instalment of Rs. 45,00,000.00 (Rupees Forty Five Lakhs) shall be released by the Purchaser to the Vendor in form of a cheque favouring Federal Bank, Mumbai for creation of a Fixed Deposit Receipt in the name of M/s Chinar Shipping and Trading Private Limited Company to be utilized as margin money for the purpose of issue of three Bank Guarantees, for a value not exceeding the amount for which sanction has been issued and is available with the bank, in favour of M/s Inland Waterways Authority of India, Noida

3 Subsequent to receipt of information regarding confirmation of Bank Guarantee by the bank to the recipient and on intimation of request from M/s Inland Waterways Authority of India for obtaining insurance coverage for taking over of the Dredger, cutter or accommodation boat, M/s Laxyo Energy Private Limited shall make arrangements for taking *appropriate Insurance coverage on behalf of M/s Chinar Shipping and Trading Private Limited Company for submission to M/s IWAI.*

4. M/s Inland Waterways Authority of India have issued six work orders IWAI/MD/079/2010-11 dated 26.07.2011 for Manning, Operation & Maintenance of one no Dredging Unit comprising of one Cutter Suction Dredger, one Tug and one Accommodation Boat for Schedule B- Farakka-Patna stretch of NW 1.. C- Farakka Patna stretch of NW 1, D Farakka-Patna stretch of NW 1, E Patna-Varanasi stretch of NW. 1, F- Patna-Varanasi stretch of NW 1 and G- Dhubri Sadiva stretch of NW-2. It was agreed that for carrying out the works in three stretches ie. D Farakka-Patna stretch of NW 1, E Patna-Varanasi stretch of NW 1 and F- Patna-Varanasi stretch of NW 1, M/s Chinar Shipping and Trading Private Limited shall place work orders on M/s Laxyo Energy Private Limited on back to back basis. The payments received from the client shall be deposited in the bank account operated by M/s Laxyo Energy Private Limited and after setting off all expense the residue shall be shared by the parties in ratio of capital investment. Balance three stretches i.e B-Farakka-Patna stretch of NW 1,, C- Farakka Patna stretch of NW I and G- Dhubri Sadiva stretch of NW-2 shall be executed by M/s Chinar Shipping and Trading Private Limited directly. The payments received from the client shall be deposited in the bank account operated by M/s Chinar Shipping and Trading Private Limited and after setting off all expense the residue shall be 'shared by the parties in ratio of capital investment.

5.The Dhamra Port Company Limited, Bhubaneswar has placed purchase order no 7000872 on M's Chinar Shipping & Trading Company Private Limited for carrying out Dredging activities. M/s Chinar Shipping & Trading Company Private Limited, shall issue a work order for carrying out this work on back to back basis to M/s Laxyo Energy Private

Limited. The payments received from the client shall be deposited in the bank account operated by M/s Laxyo Energy Private Limited and after setting off all expense the residue shall be shared by the parties in ratio of capital investment.

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10. Indubitably, these agreements were acted upon and Laxyo was transferred shares by AKT. Further, both the factions i.e. AKT and Laxyo had two directors each on the board of the Respondent Company, namely AKT, RK, YS and JPS. Further, after resignation of JPS, MKK was inducted in the Board of Respondent Company as nominee of Laxyo.

11. The aforesaid agreement(s) indicates that Laxyo faction was inducted for financing, managing pool of skilled manpower, expertise on management providing resources for expansion of business and future projects. At the time of induction of Laxyo as shareholder, the Respondent Company had one project from IWAI, which was divided into multiple stretches, of which three stretches, namely, D Farakka-Patna stretch of NW 1, E Patna-Varanasi stretch of NW 1 and F- Patna-Varanasi stretch of NW 1 as well as *Dhamra Port* were to be executed on back to back basis by Laxyo under a work order to be issued by the Respondent Company. The remaining three stretches of that contract and future contracts were to be executed by Respondent Company. In case of receipts from work of three stretches to be executed by Laxyo under work order, the receipts were to be deposited in account to be operated by laxyo, and in other cases, the account was to be operated by any of four directors, two of whom were nominee of Laxyo and two of AKT faction. The profit accruing from execution of these projects was to be shared in ratio of capital invested after meeting all the expenses. Both the factions were to work together, and the concurrence of the Laxyo faction was stipulated for business decisions. This evidences that both the factions had agreed to carry on the business affairs of the Respondent Company

in form of partnership, accordingly, the Respondent Company is in nature of quasi-partnership firm.

12. It is further noted that the Agreement dated 11.11.2011 stipulated that, after completion of major investment in the Respondent Company, the proportion of shareholding of AKT faction and Laxyo shall be 51% and 49% respectively, however, the said agreement does not define what constitutes major investment in terms of this agreement. Laxyo has not complained that its shareholding was not raised to 51% leading to an inference that the major investment, though not defined in the agreement, were not infused in the Respondent Company entitling Laxyo to raise its shareholding to 51%.

13. It is alleged by AKT that Laxyo participated in the management of Respondent Company initially in consultation with AKT faction, however, Laxyo faction started creating hurdles in the management later on by delaying the provision of finances causing delay in the implementation of the ongoing projects and loss of new projects. It delayed arrangement of BGs for Maharashtra Maritime Board project and TATA-Aldesa (JV) project, and failed to provide BG for Delhi Jal Board project resulting into loss of project. Further, AKT faction had to mobilise BG of Rs. 55 lacs for existing IWAI project and BG of Rs.79 Lacs for Inland Waterways Authority of India (IWAl) Tender. Laxyo also failed to provide security for 7.50 crores loan sanctioned by Federal Bank to execute IWAI Ghazipur project, thus making AKT to mortgage his personal properties for the purpose. Further, Laxyo failed to provide necessary funds for working capital required for the said project. Besides this, JPS transferred funds to related parties thus resulting into gains to Laxyo faction and Yolax. Further, Laxyo faction sent various emails and made telephonic calls to business relations and banks of the Respondent No. 1 company including IWAI, TATA-Aldesa (JV) and The Federal Bank wherein they used derogatory and foul language with the intention to damage the reputation of the Petitioners and its business relations. Further, JPS

and YS withdrew an aggregate sum of Rs.83,75,160/- from Bank of Maharashtra account, out of which an aggregate sum of Rs.17,71,5001- was deposited thus leaving net unexplained withdrawal of Rs.66,03,680.00. Further, Laxyo withdrew a net sum of Rs.62,99,765/- from HDFC Bank, opened tor facilitating TATA-ALDESA (JV) Project, thus putting the completion of said project and goodwill of Respondent Company at stake. It is alleged that Laxyo and its nominee directors have given the cash loans on hundi in name of the Respondent Company thereby earning commission on such loans. Further, in a meeting dated 23.02.2015 held at Indore attended by JPS, YS, Mr. D. P. Sharma & Mr, D. N. Upadhyay from Laxyo and AKT representing RD also, JPS started abusing AKT, and instead of stopping him, JPS, Mr. D. P. Sharma & Mr, D. N. Upadhyay wrongfully confined AKT. This forced AKT to issue show cause on 26.2.2015 leading to filing of a petition by Laxyo under section 409 of the Companies Act 1956 against AKT faction, and the same was dismissed by the Hon'ble Company Law Board vide order dated 13.03.2015. Further, Laxyo sent a notice through their Advocate to IWAI on false and frivolous grounds and called upon them to make all remittances of Respondent No. 1 only in account of Bank of Maharashtra, Ratlam, where the Nominee Directors of the Respondent no. 2 are authorised signatories, however, AKT faction made active representation before the said IWAI thereby all the remittance were received from IWAI are deposited in The Federal Bank Ltd. Dadar Branch. Laxyo issued notice dated 16.03.2015 through its Advocate to The Federal Bank Ltd., Dadar Branch seeking closure of the Bank Account and stopping renewal of credit facilities, and they also issued letter dated 26.02.2015 and 01.04.2015 on the forged letter head of the Respondent No. 1 to The Federal Bank Ltd. and sought closure of Bank Account no. 15380200001161 without any permission/consent of AKT faction. Further, on 14 03.2015, MKK issued notice for meeting of Board of Directors of the Respondent Company to be held on 08.04.2015 at Indore, and thereafter, Laxyo issued notice dated 16.03.2015 through its Advocate to The Federal Bank Ltd

Dadar Branch stating that Laxyo faction have no intention to be associated with AKT.

14. Per contra, it is alleged by Laxyo that AKT faction remained in total and absolute control of Respondent Company and their faction was not allowed to participate in the management or affairs of the Respondent Company, all the business activities were carried from Mumbai Office only and they had no access to any record. AKT faction required them only for arranging finances. It is stated that, on 11.11.2013, it was agreed between Laxyo and AKT that copies of all in/out communications with clients shall be endorsed with a copy to Laxyo and the its nominee directors since no correspondence was sent to them from 11.11.2011 i.e. date of the said Agreement. However, the situation never improved and neither the Laxyo nor its nominee directors ever received any correspondence even after addressing emails dated 13.11.2011, 14.11.2013 & 20.11.2013. Laxyo had provided financial assistance of Rs. 15 crores approx., including share purchase consideration, and their support resulted into sea change in the performance of Respondent Company as is evident from increase of 116% in the operating revenue within a span of two & half years. Laxyo has not received any dividend or profit in Respondent Company till date due to the wrongdoings of AKT faction, despite assured monthly profit of 9% promised by AKT in meeting held on 10.12.2013. Further, AKT has siphoned and misappropriated Rs. 5,38,55,345/- by cash withdrawal at regular intervals from April 2014 to December 2014 from the illegal bank accounts, opened and operated by AKT faction in breach of the terms of the said Agreement. It is further stated that, instead of closing of the bank accounts, AKT faction continued with one old account and fraudulently and with malafide intention opened nine (9) new bank accounts without informing or without the knowledge and consent of Laxyo, where AKT faction are the only authorised signatories to the exclusion of Laxyo faction. It is further stated that AKT faction has failed to deposit service tax amounting to Rs: 1,61,93,814/- and TDS amounting to Rs. 62,45,233/- with the Government thereby exposing Respondent Company to penal provisions under

relevant statute and diverted these funds for their personal use. It is further stated that provision of BG got delayed due to poor CIBIL record of AKT faction. It is further stated that genuine payments made by Laxyo for project work in Jhajjar have been falsely alleged as misappropriation of funds by AKT faction. Similarly, repayment of loan/finance taken by Respondent Company to Laxyo has been falsely alleged as illegal withdrawals by them. AKT faction have not called any Board Meeting or Annual General Meeting since 11.11.2011 till date, and the attempt made by Laxyo to call the Board Meeting and Annual General Meeting was negatived by them.

15. The allegations made by the parties against each other demonstrate that both the parties have lost mutual trust and confidence. Though, it is case of Laxyo that it was excluded from the affairs of Respondent Company since day one i.e. 11.11.2011, however, this allegation can not be taken at face value, as there is no allegation that three stretches of IWAI contract, stipulated to be awarded to them by Respondent Company, were not awarded to them, and the remaining three stretches of IWAI contract were not completed. Further, neither of the parties have alleged that the account of these six stretches as well as Dhamra Port project were not rendered and accounted for in the books of Respondent Company. Further, provision of BGs, even if delayed, and further infusion of funds as alleged indicate concurrence of Laxyo faction to the new projects and participation therein. Had there been absolute exclusion of Laxyo, no man of ordinary prudence would have kept on investing in a venture, which was to be run on equal participation basis.

16. It is also noted that the allegations in relation of siphoning by each faction by way of withdrawal relates to the period April 2014 to December 2014, and, Laxyo has averred that, in November, 2013, they had taken up with AKT for marking of all communications to them as well, which they have not been receiving. It is also noted that Laxyo had issued a work order in favour of

Respondent Company for some work relating to Jhajjar Project in February, 2014 to increase operating revenue of Respondent Company. It is also claimed by Laxyo that their support resulted into sea change in the performance of Respondent Company as is evident from increase of 116% in the operating revenue within a span of two & half years i.e. ending on March 2014. This indicates that the parties were working in tandem till such time, and their relationship had gone sour after that period only after AKT is stated to have promised 9% of net revenue of the projects, after deducting expenses therefrom, to be paid to Laxyo, and the same was not paid. These facts also indicates that claim of Laxyo that AKT was in absolute control of affairs of Respondent Company all the time is not corroborated by the facts on record.

17. From the allegations made by the parties against each other, it follows that, while Laxyo was exercising absolute control over HDFC Bank, Ratlam Branch, AKT faction had continued with existing bank accounts and also opened nine new accounts. Both of these acts are not in consonance with the Agreement dated 11.11.2011 read with 14.11.2011, which stipulated opening of new account with HDFC bank at Ratlam as well as Mumbai Branch; closure of all existing bank accounts; and opening of any other account with mutual consent only. Nonetheless, the Bank accounts of the Respondent Company were to be operated jointly by both the factions.

18. Further, Laxyo was inducted in Respondent Company for financial requirements only, and it is not that CIBIL of AKT faction had gone down thereafter. It may be that their inability to raise sufficient financial resources would have made them to induct a partner who can fund the business. In our considered view, it was for Laxyo to exercise due diligence in respect of creditworthiness of AKT faction before committing their financial participation in Respondent Company. Having done so, they ought to have arranged BGs in time to protect the interest of the Respondent Company.

19. The facts before us also indicate that it is AKT who was procuring the projects for the Respondent Company, as the allegations in relation to illegal gratification for such procurement are made by laxyo against AKT faction confirming such inference.

20. It is also alleged by Laxyo that the receipts of INR 82,45,105/- accruing to Respondent Company for Jhajjhar Project work awarded by Laxyo to augment revenue receipts of Respondent Company was not accounted for, even though a bill no. CSIPL/LEL/02 dated 29.11.2014 (signed by Ajay Tiwari) towards the said work was issued on Respondent Company's letter head and Laxyo had deducted tax at source thereon as well as had remitted the amounts payable after such deduction to Respondent Company. For this purpose, Laxyo has placed heavy reliance on the findings of Disciplinary Committee of ICAI in disciplinary proceedings initiated against the statutory auditor on the complaint of MKK. It is noted that AKM had vide letter dated 24.08.2015 represented to the Auditor's that "*We have to state and confirm that we have not billed and/or raised invoice and have not accounted as turnover of the company against the above payment as the above payment has come on account by the Laxyo Energy Limited and TDS was deducted by Laxyo Energy Limited wrongly and without our knowledge as Chinar Shipping & Infrastructure (India) Pvt. Ltd. has not carried out any contractual work against the above payment accordingly the above payment by Laxyo Energy Limited is standing to their credit as Laxyo Energy Limited is one of the shareholders of the company.*" Indubitably, Laxyo is one of the shareholder, and the payment received from it by the Respondent Company has been credited to their account. The amount paid by it to the Respondent Company is standing to its credit in the books of Respondent Company. It is trite that the accrual of revenue occurs when the right to receive the payment is vested. TDS is deductible on payment or credit to the account of the party by the payee in its books of account, hence, mere deduction of payment can not conclusively prove

that the right to receive payment has accrued in favor of the payee, as the payment, subjected to tax at source, would be in nature of advance payment also.

21. It is pertinent to note that Laxyo in his reply dated 22.4.2015 to TCP 27 of 2015 has stated at Para 17 that AKT called JPS and "*requested that it is imperative that significant turnover is reflected in the books of the Company for further tender onwards. At the request of Petitioner No. 1, the Company issued a work order dated 22.02.2014 in favor of Respondent No. 1. Since the Company had no experience in the work covered under the said work order i.e. embarkment and excavation etc., Petitioner No. 1 requested Respondent No. 2 to complete and execute the work on behalf of the Company. For such work, the Company had raised a bill of Rs. 82,45,015/- (Rupees Eighty Two Lakh Forty Five Thousand and Fifteen Only) which was duly paid by Respondent No. 2 to the Company. However, since monies were to be paid to the suppliers who supplied material to the Company to carry out the work covered in the said Work Order, it was on the insistence of the Petitioner No. 1 that payments were made directly in cash to the suppliers located at Jhajjar in the State of Haryana which is a remote site and devoid of banking facilities between the period Apri 2014 to December 2014….*"

22. The above explanation for net cash withdrawal of Rs. Rs.66,03,680.00 made by Laxyo demonstrates that Laxyo and Respondent Company had entered into an accommodation arrangement, and every activity in relation to Jhajjar project was carried out by Laxyo. From the details placed in the table before aforestated submissions in the reply, it is noted that an aggregate amount of Rs. 8,10,000/- is stated to be paid in December, 2014 & January, 2015, while the purported invoice was raised on 29.11.2014.

23. It is also noted that the Respondent Company had duly recognised revenue arising from first invoice, hence, it is incomprehensible as to why second invoice would not be accounted if the services were, in fact, rendered. Hence, the allegation of suppression of revenue is ill-founded. It appears to us that these

cash expenses claimed by incurred by Laxyo have also not been accounted for want of details thereof. It follows therefrom both the revenue as well as costs incurred have not been account for so far. Laxyo is an interested party, and its statement, which is self serving in nature, in this relation can not lead to an adverse inference when the AKT faction has categorically stated that no work was performed by them and the transaction in relation to Jhajjar project was merely an accommodation between Laxyo and Respondent Company. On the contrary, the credit of amounts paid by Laxyo purportedly against the said invoice is lying unappropriated, which places Laxyo in more advantageous position than it would have been if such payment would be appropriated against the purported invoice knocking of such advance thereby reducing the credit to the account of Laxyo.

24. It is also alleged that a sum of Rs. 5,38,55,345/- was withdrawn by AKT and kept out of books. AKM has placed on record details of expenses amounting to Rs. 5,10,88,560/- claimed to have been met from such cash withdrawals. On perusal of said details, it is noted that vouchers detail in relation thereto are stated to be available, except for a sum of Rs. 2,72,415 incurred on transportation charges, miscellaneous expenses, books periodicals, repairs & maintenance and business promotion. Indubitably, the balance amount shall be reflecting as cash in hand in the books of the Respondent Company. It is also noted that the total cash expenses incurred during the financial year 2014-15 accounts for 17.08% of total gross receipts, while such ratio in preceding two years was 19.50% and 19.39%, which are not disputed. In view of these facts, we are of considered view that allegation of siphoning of funds by way of withdrawal does not sustain. Nonetheless, it is pertinent to take note of the nature of business of the Respondent Company which involves operations at remote areas where hiring of manual and unskilled labourers was needed. It is also noteworthy that Laxyo has explained withdrawal of cash by them (alleged as siphoning and unexplained by AKT faction) for operations at Jhajjar site stating that the expenses were made

on site. Accordingly, Laxyo can not dispute the contention of AKT faction in this relation. Hence, in our considered view, the details of expenses recorded in the books of respondent company demonstrate that these cash withdrawals are duly accounted for in the books of respondent company, and the remaining amount out of total cash withdrawn is held as cash in hand by the AKT faction. Needless to say, Laxyo shall also furnish details of its site expenses alongwith relevant supporting vouchers and bills, stated to have been incurred for Jhajjar Project, which appears to have not been accounted for in the absence of those details. The explanation of Laxyo in relation to withdrawal for Jhajjar project, where the expenses are stated to be met in cash, supports the explanation of AKT as well. Hence, no adverse inference can be drawn.

25. As regards withdrawal of net sum of Rs. 62,99,765/- by Laxyo, it is noted that the withdrawals were made through banking channels, accordingly, these withdrawals would be appearing as debit to the account of Laxyo in the books of Respondent Company, and Laxyo is stated to have invested additional funds thereby reducing the amount of such loan. Since, the ledger account of Laxyo in books of Respondent Company is not record, hence, the Respondent Company shall debit such withdrawal to the account of Laxyo, if not done so far, or account for the same in accordance with the account submitted by Laxyo in this relation with relevant evidence(s).

26. It is also alleged that Laxyo siphoned of money through payments to Green Earth Power Corporation, Yolax, Dev Prakash Sharma and RG Infrastructure. It is noted from the ledger account of Yolax and Dev Prakash Sharma that the payments were made to them towards settlement of loans received from them, and there is NIL balance in both the accounts as on date. Further, the payment to Green Earth Power Corporation and RG Infra were made towards their invoice, the genuineness of which is not disputed by AKT faction. Nonetheless, these invoices are duly credited in their ledger accounts in the books of Respondent

Company in the month of July/August 2014 and September 2014 respectively, the same could not be doubted.

27. It is alleged by Laxyo that the loss reported in the financial statements for the year ended on 31.3.2015 is manipulated as the Respondent Company had reported taxable profit. This Tribunal had required the Respondent Company to place on record Tax computation statement for the relevant year filed with Income Tax Department, which reveals that the Respondent Company had to disallow certain expenses debited in profit & loss account under provisions of Income Tax Act, 1961 thereby converting the accounting loss into taxable income. Accordingly, we do not find any merit in this allegation.

28. It is alleged by Laxyo that the receipts in the bank accounts were not accounted for in the Financial Statements, accordingly, this Tribunal had required the Respondent Company to furnish a certificate from its Statutory Auditor certifying the details of bank accounts taken in the books of accounts and the project wise receipts. The certificate dated 19.6.2026 certifies that the amounts credited in all bank accounts, which are alleged to opened and operated in defiance of agreement dated 11.11.2011, have been duly accounted for in the books of account, and also given project wise receipts which is in agreement with the audited financial statements for the year ended 31.3.2015.

29. It is also alleged by Laxyo that AKT has defaulted in Service Tax and TDS obligations of the Respondent Company, which could have been avoided had AKT not indulged into siphoning of fund into cash withdrawal from April, 2014, thereby exposing Respondent Company to the penal consequences. As we have noted in the preceding paragraph that the expenses incurred against such cash withdrawal are documented and were required for meeting site expenses. Accordingly, we are of considered view that the default in payment of Service Tax and TDS cannot be attributed into such cash withdrawal. Nonetheless, both

the parties ought to have ensured due compliance with the applicable law and had engaged themselves to arrange necessary fund for the purpose.

30. It is also stated by the Laxyo in their written submission in TCP 40 of 2015 that the Respondent Company had awarded weed removal and dredging work in October, 2013 to M/s Northernexpress Infradevelopers Pvt. Ltd. to benefit AKT. It is explained by AKT that the said work was awarded to the Respondent Company at the rates of Rs. 149 per m^3 for weed removal and Rs. 181 per m^3 for dredging, and after obtaining quotations and after discussions with concerned representatives, including JPS, the work was subcontracted to the said party at lower rates of Rs. 74.59 per m^3 for weed removal and Rs. 110 per m^3 for dredging, thus, the said subcontract was commercially beneficial to the Respondent Company. Even though there is no such pleading in the Company Petition, we do not find any merit in the allegation of Laxyo on this account as these allegations are bald and no evidence is before us to negate the explanation of AKT.

31. It is also alleged by Laxyo that AKT had diverted the business to other JV companies. It is explained by AKT that the Respondents also acted through Mr. Virendra Patidar, who, at the instance of Laxyo, filed RTI applications and proceedings concerning the Company's ongoing projects with important clients and authorities, including IWAI, Delhi Jal Board and Shipping Corporation of India. Public Interest Litigations were also filed in relation to Delhi Jal Board and IWAI Ghazipur-Varanasi Project which were dismissed Delhi Jal Board Project was ultimately terminated and the Performance Bank Guarantee furnished in relation to the said projects was invoked and encashed, thereby causing substantial financial loss to Respondent Companies. Likewise, the IWAI Ghazipur-Varanasi Project also suffered due to the continuous interference and litigations initiated through Mr. Virendra Patidar, ultimately resulting in termination of the said contract and causing significant financial loss. In our considered view, the acts committed through Mr. Virendra Patidar to damage the

reputation of Respondent Company can not entitle Laxyo to seek equitable relief from this Tribunal.

32. This Tribunal, vide order dated 13.04.2015 passed in TCP 27 of 2015 had appointed Ms. Manjari Kakkar, IRS (Retd.) to act as independent Chairperson of the Respondent Company requiring both the groups to give details of the account maintained by the Respondent Company, and ceasing power of both the groups to operate bank accounts & ordering closure of other accounts. It is recorded in the order dated 2.08.2016 that *"2. Ld. Counsel for the Petitioner has mentioned that an Independent Director had been appointed but vide letter dated 01.08.2016 the Independent Director expressed her inability to continue due to the mental agony caused by the nominee Directors of the M/s . Laxyo Energy Ltd.; She has also alleged that one Mr. J.P. Sharma, ex -nominee Director is causing mental agony by insulting communications."*, thereby causing this Tribunal to direct them to maintain dignity in respect as well as causing the said chairperson to continue. Accordingly, it seems that the financial transaction thereafter were undertaken under her supervision. Further, it is explained that the Chairperson obtained the opinion of Company Secretary whether nominee directors appointed by Laxyo are entitled to remuneration, and she was appoint that they are entitled only to the sitting fees and TA/DA for attending Board Meetings, which was actually paid to them. It is also noted that the remuneration of AKT factions for FY 2014-15, though booked in the accounts, has actually not been paid. Nonetheless, it is case of Laxyo that AKT factions had excluded them from the oppressions of Respondent Company and it was only AKT factions that was looking after the affairs thereof. Since, remuneration is payable for the services rendered by individual beyond its capacity of an non-executive directors, we are of considered view the allegation of Laxyo in relation to directors remuneration does not have any merit.

33. It is also stated that AKT factions had defied CLB Order dated 13.04.2015 by issuing cheques in favour of SM Associates and Sai Sagar Dredging. It is noted that none of these two cheques were encashed from the accounts of the Respondent Company, and it is AKT were settled payments to SM Associates from his personal account. Further, the proceedings by Sai Sagar Dredging under Section 138 of Negotiable Instrument Act, 1881 stood dismissed as the relevant cheque was security cheque only.

34. As regard contentions of Laxyo that the settlements offered by AKT faction as recorded in Orders dated 06.10.2016 and 24.01.2017 constitutes a binding admission of liability. Howevere, it is noted that the said offer was made during the course of proceedings in course of settlement discussions initiated by this Tribunal, however, it had not reached finality. A lumpsum settlement proposal cannot constitute a binding an admission of liability for the equivalent amount unless such settlement fructifies. Further, the settlement amount generally takes into consideration the price a party wish to pay for peace of mind as well.

35. It is also contended by Laxyo that AKT had agreed to pay 9% of remittance(s) received from the client to Laxyo vide "Record notes of the meeting held on 10.12.2013, whereby AKT was to lead the Company in all matters of working and Directors of Respondent Company were to meet once in two months for review of different works under execution and further work to be considered for tendering. It is contended by AKT that no such meeting was convened and no such meeting is recorded in the minutes of the Respondent Company, and the alleged resolution is contrary to agreement dated 11.11.2011. At the outset, the agreement dated 11.11.2011 had unequivocally contemplated profit sharing in the ratio of capital infused by each group and this agreement has not been modified. RD is stated to present in this meeting, while RD had also signed the agreement dated 11.11.2011 and is shareholder of the Respondent Company. Since, such arrangement, even if had taken place, can not bind the Respondent Company. Nonetheless, the said Resolution is not clear whether 9% of gross

receipts was to be paid as profit share or such remittance(s) were to the account of Laxyo, subject to settlement in terms of Agreement dated 11.11.2011. Further, Laxyo is a shareholder, and a Company can declare dividends to its shareholders only after approval of its shareholder(s) in general meeting, hence, this arrangement is not in accordance with the law as well.

36. It is also noted that Laxyo's nominee directors had not co-operated the Chairperson appointed by this Tribunal and had also not furnished account of cash withdrawal despite specific directions issued by this Tribunal at Para 10.c of Order dated 13.04.2015 appointing Chairperson. Also the chairperson by letter dated 31.08.2017 complained of defamatory correspondence maid by Laxyo and its Director against the Company Further, this Tribunal had appointed one firms of Chartered Accountant for carrying out the audit of Respondent Company at the instance of Laxyo, however, Laxyo had later on prayed for revocation of said appointment on account of financial obligations arising in terms of fees payable to such Auditor.

37. It is also noted that AKT had acted in violation of Agreement dated 11.11.2011 by opening bank accounts and continue to operate existing accounts, though the amounts credited in such accounts have been duly accounted for in the books of Respondent Company as is evidenced from the certificate issued by Statutory Auditor pursuant to the direction of this Tribunal. It is noted that both the parties have been operating the bank accounts in their respective control.

38. In case of ***Tata Consultancy Services Limited vs Cyrus Investments Pvt Ltd. AIRONLINE 2021 SC 179,*** the Hon'ble Supreme Court held that that the first just & equitable ground is "functional dead lock" and the second is where a company is a corporate quasi partnership and an irretrievable breakdown in trust and confidence between the participating members has taken place. It further held that where there is a complete functional dead lock, winding up may be ordered regardless whether the company is a quasi partnership or not. But in the second type of cases, a breakdown of trust and confidence is enough even if there is not a complete functional dead lock.

39. It clearly follows from the above discussion that there is absolute breakdown of trust and confidence between AKT and Laxyo. Accordingly, it is just and equitable to wind up the affairs of the Respondent Company. However, it is also noted that the Respondent Company is a functional company involved in execution of public projects of importance, and it would be prejudicial to the interest of its stakeholders if a winding up order is passed.

40. It is evident from the above discussion that there has been acts of oppressions committed by both the faction against each other, and this Tribunal is required to intervene in the matter by passing an appropriate order to end the matters complained of in these petitions. It also follows that the conduct of both the parties does not deserve exercise of equitable jurisdiction vested in this Tribunal. However, it is noted that in case of ***M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja, reported in (2008) 143 com cases 97 (SC),*** it is held that –

> *"20. Sections 397 and 398 of the Act empower the Company Law Board to remove oppression and mismanagement. If the consequences of refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the company, would still the Company Law Board be powerless to pass appropriate orders is the question.*
>
> *If a literal interpretation to the provisions of Section 397 or 398 is taken recourse to, may be that would be the consequence. But jurisdiction of the Company Law Board having been couched in wide terms and as diverse reliefs can be granted by it to keep the company functioning; is it not desirable to pass an order which for all intent and purport would be beneficial to the company itself and the majority of the members? A court of law can hardly satisfy all the litigants before it. This, however, by itself would not mean that the Company Law Board would refuse to exercise its jurisdiction, although the statute confers such a power on it.*
>
> *21. It is now a well settled principle of law that the Courts should lean in favour of such construction of statute whereby its jurisdiction is retained*

enabling it to mould the relief, subject of course, to the applicability of law in the fact situation obtaining in each case.

In Pearson Education Inc. (formerly Prentice Hall Inc.) Vs. Prentice Hall India (P) Ltd. and Ors. [134 (2006) DLT 450], as regards the jurisdiction of the Company Law Board and the High Court under Sections 397/398 and 402, a learned single judge of the Delhi High Court held:

"Jurisdiction of the CLB (and ultimately of this Court in appeal) under Sections 397/398 and 402 is much wider and direction can be given even contrary to the provisions of the Articles of Association. It has even right to terminate, set aside or modify the contractual arrangement between the company and any person [see Section 402(d) and (e)]. Section 397 specifically provides that once the oppression is established, the Court may, with a view to bringing to an end the matters complained of, make an order as it thinks fit. Thus, the Court has ample power to pass such orders as it thinks fit to render justice and such an order has to be reasonable. It is also an accepted principle that "just and equitable" provision in Section 402(g) is an equitable supplement to the common law of the company to be found in its Memorandum and Articles of Association."

41. In view of the above, we consider it appropriate to require AKT to buy the shares held by Laxyo in the Respondent Company. It is noted that AKT had proposed a settlement offer before CLB for a sum of Rs. 2.40 crores for buy out of Laxyo's shareholdings and withdrawal of present proceedings.
42. For the purpose of this buy out, the value of the Respondent Company's share shall be determined by an independent valuer to be engaged by the Respondent Company within 15 days from date of this order. The valuer shall carry out valuation in accordance with the applicable Valuation Standards and report shall be submitted within 30 days from the date of engagement. The fees of the valuer shall be decided by the Respondent Company and paid by it. Further, the

adjustment in the share value shall be made for (i) any write off of receivable or write back of any payable forming part of Financial Statements for the year ended 31.03.2011 and written statement of Assets & Current Liabilities as on 11.11.2011 as referred in Clause 18(a) of Agreement dated 11.11.2011 subsequent to 11.11.2011 in the Books of Account; and (ii) any liability pertaining to period upto 11.11.2011 accounted for subsequent to 11.11.2011 in the Books of Account, (iii) Account tendered by both the Factions in relation to cash withdrawn by them and alleged to be siphoning in the company petition, to the extent it is not supported by vouchers/bills.

43. If the value of share attributable to Laxyo's shareholdings so determined is less than Rs. 2.40 crores, AKT shall pay Rs. 2.40 cores for these shares, else the value of share attributable to Laxyo's shareholdings so determined by the valuer.
44. The consideration so determined shall be paid within 30 days from the date of receipt of the Valuation Report and Laxyo shall tender share transfer deed along with share Certificate to AKT forthwith on the notification of payment being ready. In case Laxyo fails to tender share transfer deed along with share Certificate to AKT within 7 days from the date of notification, AKT shall make payment within 2 days thereafter, and shall be entitled to lodge these shares for transfer in his or his nominee names without any further act and Respondent Company shall make necessary entries in the Register of Members accordingly.
45. The parties shall be, at liberty, to file appropriate application if there is any breach of this order.
46. In terms of the above, TCP 27 of 2015 and TCP 40 of 2015 are disposed of. Any Application pending thereunder shall also disposed of. Any interim order passed by this tribunal in terms of these petitions shall stand vacated. The Chairperson appointed by this Tribunal shall demit her office if not done earlier.

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