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

ITEM No.302
TP 82 of 2016 (CP 71 of 2014)
with
TP 82-A/ 2016 (MA 136 of 2015)
And
TP 82-B of 2016 (CA 111 of 2015)

Under Section 397-398 of Co. Act, 1956

IN THE MATTER OF:

Mr Kamal R Sharma & Ors ....**Applicant**
V/s
Gujarat Liqui Pharmacaps Pvt Ltd & Ors ....**Respondent**

Order delivered on: 20/07/2026

C O R A M:

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

O R D E R
(Hybrid Mode)

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

Sd/-
SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-
SHAMMI KHAN
MEMBER (JUDICIAL)

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

TP 82 of 2016 (CP No. 71 of 2014)

with

TP No. 82-A/2016 (MA 136 of 2015)

And

TP 82-B/2016 (CA 111 of 2015)

[A Company Petition filed under Section 111, 237 and 397, 398 and 402 of the Companies Act, 1956 as well as Section 58,59,210,213 of the Companies Act, 2013.]

In the matter of:

1. **Mr. Kamal R. Sharma**
Son of Mr. Radheshyam F. Sharma
Residing at: 48/304, MN Parijat C.H.S. Ltd.
Manisha Nagar, Mumbai-Pune Road,
Kalwa (West), Dist. Thane – 400605

2. **Kamal R. Sharma, HUF**
At: 48/304, MN Parijat C.H.S. Ltd.
Manisha Nagar, Mumbai-Pune Road,
Kalwa (West), Dist. Thane – 400605

3. **Mrs. Seema K. Sharma**
Wife of Mr. Kamal R. Sharma
Residing at: 48/304 MN Parijat C.H.S. Ltd.
Manisha Nagar, Mumbai-Pune Road,
Kalwa (West), Dist. Thane – 400605

4. **Mr. R. F. Sharma**
Son of Mr. Fatehlal Sharma
Residing at: 48/304, MN Parijat C.H.S. Ltd.
Manisha Nagar, Mumbai-Pune Road,
Kalwa (West), Dist. Thane – 400605

5. **R. F. Sharma, HUF**
At: 48/304, MN Parijat C.H.S. Ltd.
Manisha Nagar, Mumbai-Pune Road,
Kalwa (West), Dist. Thane – 400605

6. **Mr. R. S. Sharma**
Son of Mr. Mohanlal Sharma
Residing at: Flat No. 14, 3rd Floor,
Sharda Apartment No. II, Ulhas Nagar,
Dist. Thane – 421001

9. **Mr. Vijay Kumar Sharma**
Son of Mr. Dwarka Prasad Sharma
Residing at: Flat No.14, 3rd Floor,
Sharda Apartment No. II, Ulhas Nagar,
Dist. Thane – 421001

10. **Mr. Rajeev Kumar Sharma**
Son of Mr. Omprakash Sharma
Residing at: Flat No. 14, 3rd Floor,
Sharda Apartment No. II, Ulhas Nagar,
Dist. Thane – 421001

11. **Mr. M. R. Vinodanan**
Son of Mr. M. R. Raghavan
Residing at: A-4/606, Vihang Valley Phase-1,
Kasarvadavli, Ghodbunder Road, Thane(west) – 400061

12. **Seema K Sharma**
As a Legal Representative of
Omprakash R Sharma **(deceased Respondent No.8)**
Residing at 48/304, Parijat C.H.S. Ltd.
Manisha Nagar, Mumbai- Pine Rd, Kalwa (West)
Thane – 400605

13. **Parmeshawari Devi Sharma**
As a Legal Representative Wife
of Dwarka Prasad Sharma **(deceased Respondent No.12)**
22, Pareeko ka Mohlla
Village Danta Ramgadh,
Sikar, Rajasthan – 332702.

.... Petitioners

V E R S U S

1. **Gujarat Liqui Pharmacaps Pvt. Ltd.**
Having its Registered Office at: -
Plot No.662-666, G.I.D.C;
Waghodia, Vadodara, Gujarat – 391760

2. **Mr. S.K. Chattopadhyay**
   Son of Mr. Shantiranjan Chattopadhyay
   Residing at: 301/2, Arpan Tower, Ashka Complex,
   Opp.Sama Talav, Sama-Savli Road,
   Baroda, Gujarat – 390024

3. **Mrs. Rajal S. Chattopadhyay**
   Wife of Mr. S. K. Chattopadhyay
   Residing at: 301/2, Arpan Tower, Ashka Complex,
   Opp.Sama Talav, Sama-Savli Road,
   Baroda, Gujarat – 390024

4. **Ms. Shibani S. Chattopadhyay**
   Daughter of Mr. S. K. Chattopadhyay
   Residing at: 301/2 Arpan Tower, Ashka Complex,
   Opp.Sama Talav, Sama-Savli Road,
   Baroda, Gujarat – 390024

5. **Mr. S. Roy Choudhury (**deceased deleted vide order dated 07.11.2024**)**

6. **Lalitkunj Metals Private Limited**
   Having its Registered Office at: B/4,
   Bhomiya Bhavan, Anand Nagar, 2nd Floor,
   Vasai Road, Mumbai – 421202

7. **Mrs. Bhavanaben R. Shah**
   Wife of Mr. Rakesh G. Shah
   Residing at: 102, Girikandara Apartinent,
   Near Bapod Talav, Waghodia Road,
   Vadodara, Gujarat – 390019

8. **Mr. Karan N. Dhakan**
   Son of Mr. Nitin R. Dhakan
   Residing at: - Flat No.302, 3rd Floor, Bwing,
   Madhav Kunj C.H.S. Ltd., Boriwali (West),
   Mumbai – 400092

9. **State Bank of India,**
   Having Office at: Plot No. 403, G.I.D.C., Waghodia,
   Vadodara, Gujarat – 391760

10. **Registrar of Companies, Gujarat**

ROC Bhavan, Opposite Rupal Park Society,
Behind Ankur Bus Stop, Naranpura,
Ahmedabad, Gujarat – 380013

11. **State Bank of India, Stressed Assets Management**
Branch (SAMB-II), Mumbai
Having Office at 306-307, 3rd Floor,
Varma Chambers, 11, Homji Street,
Mumbai – 400023

12. **Bank of India, Mumbai Corporate Banking Branch (MCBB)**
Having Office at, Mezzanine Floor,
70/80, M. G. Road,
Mumbai – 400023

.... Respondents

Order Pronounced on: 20.07.2026

C O R A M:

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

A P P E A R A N CE S:

For the Petitioners	: Mr. Kamal Sharma, P-1 in person & on behalf of Pet. Nos. 2 to 12
For the Respondent	: Mr. Ravi Pahwa, Adv a.w. Ms. Gunjan Aggrawal, for R -1 to 4

O R D E R
(*Per*: Bench)

1. This common order disposes of TP No.82 of 2016 (formerly CP No.71 of 2014) along with TP No.82-A/2016 and TP No.82-B/2016, all arising out of the same subject matter and involving interconnected questions of fact and law.

2. This Company Petition Bearing No. TP No. 82 of 2016, which was originally filed as Company Petition bearing no. CP No. 71 of 2014 before the erstwhile Company Law Board, Mumbai Bench under Sections 397 & 398 of the Companies Act, 1956 seeking directions to reinstate the petitioner as director of the Company, and has also sought further reliefs as are mentioned herein below: -

a. *Directing for valuation of the Business of the Company and with that valuation as base Mr. Chattopadhyay and Mr. Sharma be asked to buy out the shareholding of the opposite group with the shares going to the ultimate higher bidder to permanently end the problem of Management of the Company.*

b. *Declaring the resolution passed at the Board Meeting held on 22.06.2010 for removal of Petitioner No.1 as In-charge of International Business as null & void.*

c. *Declaring the resolution passed at the Extra Ordinary General Meeting of the Company held on 13-12-2010 for removal of Mr. Kamal Sharma from Directorship as null and void.*

d. *Declaring the appointment of Mrs. Rajal S. Chattopadhyay, the Respondent No. 3 as director w.e.f. 19.08.2009, as null & void.*

e. *Declaring the appointment of Ms. Shibani S. Chattopadhyay, the Respondent No.4 as a Director and as a Whole time Director w.e.f. 11th January 2013 as null & void.*

f. *Directing that the Respondent No. 2 shall cease to be a director of the Company, for his illegal acts.*

g. *Declaring the increase in remuneration of Respondents No. 2 w.e.f. 05.10.2010 and further increases, if any, as null & void or in the alternative directing to increase the remuneration of Petitioner No. 1 also proportionately w.e.f. 05.10.2010 onwards.*

h. *Directing to release the remuneration (i.e. salary and all other benefits and perquisites) of Petitioner No. 1, Mr. Kamal R. Sharma which has been kept on hold since October 2010 and paying him up-to-date.*

i. *Declaring the Rights issue of equity shares made by the Company in Oct/Nov. 2013 as void and illegal and cancelling the allotment made there under.*

j. *Declaring the Rights Issue of equity shares vide the Letter of offer dated 12th August 2014 as void and illegal and cancelling all actions, including allotment there under, if any, pursuant thereto.*

k. *Declaring the redemption of 15% non-cumulative preference shares done by the Company as void and illegal and directing the Respondent Directors jointly and severally to have the Preference capital brought back to the pre-redemption level, as per the original terms.*

l. *Directing the Respondent Nos.2, 3 to undertake to the Banks to be guarantors in place of the Petitioner No.1 and fully and finally release Petitioner No.1 from any liability to Banks, whatsoever and however.*

m. *Declaring the refusal to allow preference shareholders to participate and to vote in the meetings of shareholders as illegal, null & void.*

n. *Declaring the refusal of the Company to hold an Extra Ordinary General Meeting as per the requisition dated 01-11-2010 from Petitioners, as illegal and void.*

o. *Declaring the resolutions passed at the 15th, 16th, 17th, 18th and 19th Annual General Meetings of the Company and at the Extra ordinary General Meetings held on 13-12-2010 and 29-07-2011 as illegal, void and non-binding and directing Mr. S.K. Chattopadhyay, Mrs. Rajal Chattopadhyay jointly and severally to reimburse to the Company the amounts of Equity and Preference dividends got paid from the Company for the years 2010-11 and 2011-12.*

p. *Declaring the issue of duplicate Preference share certificate to Lalitkunj Metals Private Limited as illegal, null and void.*

q. *Directing Lalit Kunj Metals Pvt. Ltd. Mr. S.K. Chattopadhyay and Mrs. Bhavanaben R. Shah jointly* *and severally to pay to Mr. Kamal R. Sharma the Preference dividends for F.Y.2010-11 and 2011-12, amounting to Rs.9, 00,000/- (Rs. Nine Lacs only) with interest from the date dividends received should the Company Law Board hold declaration of dividends legal and valid.*

r. *Declaring the transfer of shares earlier held by Lalit Kunj Metals Pvt. Ltd. to Mrs. Bhavanaben R. Shah as illegal, null and void.*

s. *Declaring the issue of duplicate Preference share certificate to Mr. Karan Dhakan as illegal, null and void and declaring the transmission of the Preference shares earlier held by Mr. Nitin Dhakan to Mr. Karan Dhakan as illegal, null & void.*

t. *Directing Mr. Karan Dhakan and Mr. S.K. Chattopadhyay jointly and severally to pay to Mr. Kamal R. Sharma the Preference dividend for F.Y.2010-11 and 2011-12, amounting Rs.18, 00,000/- (Rs. Eighteen Lacs only) with interest from the date dividends received, should the Company Law Board hold declaration of dividends legal and valid.*

u. *Directing rectification of Register of Preference shareholders to depict cancelling the issue of duplicate share certificates for the shares earlier held by Lalitkunj Metals Pvt. Ltd. and late Mr. Nitin R. Dhakan.*

v. *Directing the Registrar of Companies, Gujarat, to not to take any cognizance of the terms & conditions of Preference shares claimed to have been decided as per the EOGM of the Company held on 3-12-1999 and claimed to have been filed along with form No.2 on 4-2-2000 and also directing him to take / have taken necessary actions for issuing duplicate preference share certificates illegally, and for fabrication of records against Directors of the Company.*

w. *Directing the Company and Respondent Nos.11 and 12 i.e. State Bank of India and Bank of India respectively to ensure strict compliance with terms of sanction of Loans and Advances.*

x. *Ordering Mr. S.K. Chattopadhyay, Mrs. Rajal Chattopadhyay, Ms. Shibani Chattopadhyay to jointly and severally pay and contribute to such sum or sums to the assets of the Company as and by way of* *compensation for the mis-management and malpractices committed by them including for the amounts illegally wrongly spent by way of equity and preference dividends, amount of fees / remuneration paid to Mrs. Rajal Chattopadhyay and Ms. Shibani Chattopadhyay, amount spent on convening and holding of EOGM on 30-12-2010 and EOGM on 29-07-2011, and the amount spent out for litigation before the Company Law Board and the connected litigation.*

y. *Directing the Company and the Directors for withdrawal of following cases:-*

1. *Criminal complaint No.2518 /2012 filed on 12-12-2012 filed by Company against Mr. Kamal Sharma.*

2. *Special suit No.56/2012 of CPC 1908 filed in May 2012 by the Company against Mr. Kamal R. Sharma as Managing Director of Soft Health Creations Pvt. Ltd*

z. *Declaring the non-provision of Accounts details and minutes of Board meetings to Petitioner No.1 and refusing to give him inspection of Accounts, as void and illegal. Directing the Company to provide to Mr. Kamal R. Sharma data/ statutory information sought vide his Regd. A.D. letter dated 13-08-2013.*

aa. *Directing Mr. S. K. Chattopadhyay to transfer to Mr. Kamal R. Sharma 6% equity shares of the Company at paid up capital of Rs.2,00,00,000/-against the Payment of Rs. 7,00,000/- (Rs. Seven lacs only) made by Mr. Kamal R. Sharma to Mr. S.K. Chattopadhyay.*

bb. *Directing investigation into affairs of the Company.*

cc. *Ordering for cost of litigation.*

dd. *Such other orders as the Hon'ble Board in its discretion may deem fit and necessary.*

INTERIM RELIEFS:

a. *Reinstating the Petitioner No. 1 Mr. Kamal R. Sharma, as a Whole Time Director of the Company as Director Finance and In-charge of International Business as in the past, with remuneration in same proportion among the three Directors i.e. Mr. S. K. Chattopadhyay, Mr. Kamal Sharma and Mr. G. Roy Choudhury as it was* *immediately, prior to the Board Meeting dated 5-10-2010 in supersession of his alleged removal vide the EOGM of 13th December 2010 and reconstituting the Board to have only three internal Directors Viz.: Mr. Kamal R. Sharma, Mr. G. Roy Choudhury and Mr. S. K. Chattopadhyay with an Independent outside Chairman/Chairperson. Alternatively, the existing Board may be superseded and one or more suitable Administrators be appointed to manage the affairs of the Company.*

b. *Directing the Company to maintain status quo as regards its equity capital in all respects, considering the position obtaining on the date of filing of the Company Petition.*

c. *Granting a temporary order and injunction restraining the Company from in any manner acting upon and or implementing any further the resolution of the Board of Directors dated 4th June 2014 for Rights Issue of Equity Shares vide the Letter of Offer dated 12th August 2014.*

d. *Directing the Company and the Respondent Nos. 2, 3 and 5 to have brought back into the Company the amount of Preference Capital redeemed before due dates and for the period for which the Preference Capital was not there though it ought to have been, the Directors be directed to bring in by way of unsecured loan without interest the amount for the period the Company was denied the Preference capital.*

e. *Releasing the salary and other benefits and perquisites of the Petitioner No. 1 from the day they have been kept in abeyance, till the date of order.*

f. *To prohibit Respondent No.1 from selling or transferring any of the Company's properties, rights and interests and or creating any third party rights in respect thereof.*

g. *Directing the Company to furnish to Petitioner No.1 certified true copies of minutes of all Board Meetings held from 25-12-2010 till the 09-01-2013 and thereafter till date,*

h. *Such other orders that may be deemed necessary and expedient in the circumstances, by the Honorable*

Board.

3. Upon constitution of this Tribunal, the Company Petition stood transferred in 2016 and was renumbered. During the proceedings, various interlocutory applications were filed. As the issues are interconnected, the Transfer Petition and the Company Petition are being disposed of by this common order.

4. Before considering the merits of the Company Petition and the connected application, it is appropriate to briefly set out the background facts giving rise to the present proceedings, which form the basis of the disputes between the parties.

5. Pursuant to the Order dated 15.01.2018 passed in TP 82 A/ 2016 (MA 136 of 2015) was not pressed by the Petitioner and TP 82 B/ 2016(C.A. No. 111 of 2015) was allowed by permitting the Applicant to come on record as Legal Representative of Petitioner No. 7.

6. Consequent upon the demise of Respondent No. 5, this Tribunal, by Order dated 07.11.2024, permitted deletion of Respondent No. 5 from the array of parties. The necessary amendment has accordingly been carried out.

7. The Petitioners have pleaded the facts through the Company Petition documents in the following manner: -

7.1. The Respondent No. 1 Company was incorporated on 30.10.1995 by Mr. S K Chattopadhyay (Respondent No. 2) and Mr. Bhikubhai D. Desai. Mr. Desai subscribed Rs.100/- towards the share capital and resigned on 28.11.1995. Mrs. Rajal S. Chattopadhyay (Respondent No.) 3 was appointed as Director on 29.11.1995.

7.2. Respondent No. 2 searched for a business partner to contribute capital and participate in the management of the Company. Accordingly, Mr. S Roy Choudhary (Respondent No. 5)was appointed as Director on 15.03.1997. Respondent No. 3 resigned with effect from 02.06.1997.

7.3. It is stated that Respondent No. 5 neither invested substantial capital nor actively participated in the affairs of the Company, but continued as Director in expectation of arranging funds.

7.4. It is stated that, although the Company was incorporated in 1995. According to the Petitioners, only limited progress had been by mid-1997. Apart from incorporation, allotment of an industrial plot by GIDC and partial construction thereon, no further development took place.

7.5. The Company had liabilities towards GIDC, contractors, advocates, suppliers and other creditors. Respondent No. 2 was unable to arrange adequate finance. A loan sanctioned by Grand Consolidated Finance Co. did not materialise, resulting in dishonoured cheques and litigation. The project remained stalled for nearly two years.

7.6. Around mid-1997, Respondent No. 2 engaged Mr. Kamal R. Sharma (Petitioner No. 1), a Tax Consultant, to handle his personal tax matters and subsequently the Company's taxation work. During this period, Respondent No. 2 recognised the professional experience and financial network of Petitioner No. 1.

7.7. It is stated that Petitioner No. 1, along with his relatives and associates, possessed investible funds and could mobilise finance. At that stage, the Company was facing financial constraints, the manufacturing plant had not been established, creditors were pursuing recovery and funds required to complete the project were unavailable.

7.8. The Petitioners allege that Respondent No.2 requested Petitioner No. 1 to join the Company as Director and equal shareholder and assured that:

i. The Company would be jointly managed by both of them;

ii. Petitioner No. 1 would supervise finance;

iii. both would enjoy equal shareholding; and

iv. A Shareholders' Agreement recording these arrangements would subsequently be executed.

v. However, no such Shareholders' Agreement was ever executed.

7.9. Relying upon the above assurances, Petitioner No. 1 discontinued his professional practice, joined the Company as Director and invested funds in the Company.

7.10. After joining the Company, Petitioner No. 1 found that:

i. The paid-up capital was below Rs.10 lakhs;

ii. The anticipated financial assistance from SIDBI had not been received;

iii. Promoter contribution required for implementation of the project remained unavailable;

iv. Dependence on private financiers was commercially unviable.

7.11. Consequently, Petitioner No. 1 and Respondent No. 2 are stated to have jointly decided to obtain project finance from financial institutions and banks.

7.12. It is alleged that the Company approached State Bank of India, Bank of India, SICOM, IDBI, ICICI, Indian Overseas Bank and other financial institutions for project finance. It is alleged that preparation of project reports, financial proposals and negotiations with the lenders were primarily handled by Petitioner No. 1

7.13. Ultimately, the Company secured:

i. Term Loan of Rs.5 Crores from State Bank of India;

ii. Further Term Loan of Rs.2.25 Crores from Bank of India,

iii. Aggregating Rs.7.25 Crores for implementation of the project.

7.14. Despite obtaining institutional finance, the Company continued to face liquidity constraints as the project was under implementation and commercial production had not commenced. Statutory liabilities also remained unpaid due to shortage of working capital.

7.15. Besides institutional finance, Petitioner No. 1 also mobilised substantial private investment through his business contacts. Among others:

i. Investment from the Dhakan Group through preference shares;

ii. Investment through Lalit Kunj Metals Pvt. Ltd.; and

iii. Investment through Key Impex Pvt. Ltd.

7.16. It is further stated that Petitioner No. 1 also invested in the preference share capital of the Company.

7.17. After joining the Company, Petitioner No. 1 and Respondent No. 2 jointly undertook procurement and installation of plant and machinery, implementation of the project and commencement of commercial production.

7.18. It is stated that Respondent No. 2 supervised manufacturing and administration, while Petitioner No. 1 managed finance and later international marketing. Petitioner No. 1 developed overseas business, secured export orders, obtained product registrations and approvals, and expanded export markets. It is further alleged that Respondent No. 2 borrowed Rs.7,00,000/- from Petitioner No. 1 with an assurance to transfer 6% equity shareholding. In December 2001, Petitioner No. 1 and Respondent No. 2 incorporated Soft Health Creations Pvt. Ltd. for marketing the products of Respondent No. 1 in India, and both were its shareholders and Directors.

7.19. It is stated that, although export sales improved, plant utilisation remained below capacity. Owing to implementation delays and shortage of funds, the Company defaulted in repayment of bank loans, resulting in classification of its loan accounts as Non-Performing Assets (NPAs). The Company incurred accumulated losses exceeding its paid-up capital and reserves and sought restructuring of its banking facilities.

7.20. During this period, Respondent No. 5 (Mr. S. Roy Choudhury) sought to exit the Company and requested refund of his investment exceeding Rs.15,00,000/-. Between 2004 and 2007, Respondent No. 5 addressed communications requesting release from the Company on the grounds that: -

i. He was not involved in management;

ii. He remained merely a nominal director; and

iii. His investment had not yielded any returns.

7.21. The Company informed Respondent No. 5 that his exit required a No Objection Certificate (NOC) from State Bank of India and Bank of India. Correspondence was exchanged with the banks and State Bank of India sought a Board Resolution. However, Respondent No. 5's request was not accepted as the promoters were unable to refund his investment.

7.22. The Company was declared a sick industrial company and was registered before the Board for Industrial and Financial Reconstruction (BIFR) on 06.09.2006.

7.23. It is stated that, as the lending banks did not extend further financial assistance, Petitioner No. 1 and Respondent No. 2 decided to revive the Company by increasing sales, exports, plant utilisation and profitability.

7.24. It is further stated that, owing to the financial condition of the Company, no remuneration was paid to any Director since incorporation.

7.25. The Petition states that, though Respondent No. 1 was incorporated as a private limited company, it was managed as a partnership between the Chattopadhyay Group represented by Respondent No. 2 and the Sharma Group represented by Petitioner No. 1.

7.26. It is stated that Petitioner No. 1 devoted his full time to the affairs of the Company and contributed through equity share capital, preference share capital and unsecured loans. The Petition also contains a comparative statement of investments made by the Sharma Group, the Chattopadhyay Group, Respondent No. 5 and Dr. K. Kasturi up to 09.01.2013.

7.27. It is stated that the investments made by the Sharma Group in the equity and preference share capital of the Company, excluding the disputed preference shares earlier held by Lalit Kunj Metals Pvt. Ltd. and Mr. Nitin R. Dhakan, are compared with the investments made by the Chattopadhyay Group as on the respective dates as on the respective dates mentioned hereinbelow, are as follows:

Sr. No.	Date	Sharma Group	% of Eq. & Pref. capital Holding	Chattopadhyay Group	% of Eq. & Pref. capital Holding	Total Capital of Company
01	03-12-2010	1,93,30,000/-	51.29	1,16,05,000	30.79	Eq. 2,00,00,000 Pref. 1,76,00,000 3,76,85,000
02	09-01-2013	1,03,30,000/-	27.48	1,16,05,000	30.88	Eq. 2,00,00,000 Pref. 1,75,00,000 3,75,85,000

7.28. It is averred that, up to November 2010, when the remuneration of Petitioner No. 1 was discontinued, the investment of the Sharma Group stood at Rs.1,93,30,000/-, or Rs.1,03,30,000/- excluding the disputed preference share investments, whereas the Chattopadhyay Group had invested Rs.1,16,05,000/-.

7.29. It is further stated that the unsecured loan advanced by Petitioner No. 1 amounting to Rs.9,60,000/- and by Respondent No. 2 amounting to Rs.3,25,000/- remained unchanged from the financial year 2004-05 till 03.12.2010.

7.30. It is averred that between April 2000 and July 2001, Petitioner No. 1 advanced Rs.7,00,000/- to Respondent No. 2 on the understanding that

Respondent No. 2 would transfer 6% equity shareholding of the Company to Petitioner No. 1

7.31. The Petition further records that:

i. Mr. Bhikubhai D. Desai, being the subscriber to the Memorandum of Association, had invested Rs.100/- towards Equity Share Capital;

ii. Dr. K. Kasturi, who served as Technical Director, had invested Rs.2,00,000/- in Equity Shares and Rs.50,000/- in Preference Shares; and

iii. Mr. S. Roy Choudhury had not advanced any loan to the Company.

7.32. It is further stated that Petitioner No. 1 and Respondent No. 2 discussed execution of the proposed Shareholders' Agreement on several occasions. However, owing to the financial and operational condition of the Company, the agreement was not finalised. It is alleged that both continued to manage the affairs of the Company as equal partners and that Petitioner No. 1 was treated as a promoter despite the absence of a written agreement.

7.33. It is averred that, around January 2008, after improvement in the financial position of the Company, Respondent No. 2 initiated preparation of the proposed Shareholders' Agreement and circulated a draft in or around March 2008 to Petitioner No. 1 and Respondent No. 5. Petitioner

No. 1 objected to the draft and suggested that it be revised by an independent professional. The proposal was not acted upon.

7.34. The Petition further states that, notwithstanding the pending Shareholders' Agreement, the Company continued restructuring its borrowings, improving operations, increasing sales and expanding exports. It is alleged that Petitioner No. 1 played a significant role in securing export business and undertaking overseas business visits.

7.35. It is further averred that, after improvement in the financial position of the Company from the financial year 2007-08, it was decided to pay remuneration to the Directors engaged in the management. Accordingly, Petitioner No. 1 and Respondent No. 2 commenced drawing remuneration from February 2008, while Respondent No. 5 commenced drawing remuneration from December 2008.

7.36. It is lastly stated that the efforts of Petitioner No. 1 and Respondent No. 2 resulted in improvement in the financial performance of the Company from the financial year 2007-08 onwards. Particulars thereof are stated in the table annexed to the Petition:

Sr. No.	F. Y. April-March	Sales (Rs. Crores)	Net Profit/loss (Rs. Crores)	Cumulative Profit / Loss (Rs. Crores)
01	1995-96	Nil	00.05 Preoperative Expenses.	00.05 Preoperative Expenses.
02	1996-97	Nil	00.07 Preoperative Expenses.	00.12. Preoperative Expenses.
03	1997-98	Nil	00.02 Preoperative Expenses.	00.14 Preoperative Expenses.
04	1998-99	Nil	00.07 Preoperative Expenses.	00.21 Preoperative Expenses.
05	1999-2000	Nil	00.25 Preoperative Expenses.	00.46 Preoperative Expenses.
06	2000-01	Nil	00.99 Preoperative Expenses.	1.45 Preoperative Expenses.
07	2001-02	2.87	- 00.76	- 00.76
08	2002-03	4.12	- 02.25	- 03.01
09	2003-04	5.76	00.01	- 03.00
10	2004-05	10.44	- 00.39	- 03.39
11	2005-06	11.46	- 01.86	- 05.25
12	2006-07	18.32	- 00.06	- 05.31
13	2007-08	25.32	+ 01.11	- 04.20
14	2008-09	30.75	+ 02.50	- 01.70
15	2009-10	23.62	+ 00.31	- 01.39
16	2010-11	42.11	+ 02.52	+ 01.13

7.37. It is averred that the financial position of the Company improved, its borrowings were restructured and the Company was de-registered from the Board for Industrial and Financial Reconstruction (BIFR) pursuant to the Order dated 10.11.2010.

7.38. It is stated that, despite the revival of the Company, Petitioner No. 1 continued to request Respondent No. 2 to execute the proposed Shareholders'

Agreement. Although discussions continued regarding expansion and joint management, Respondent No. 2 did not execute the agreement. Petitioner No. 1 also sought inclusion of the issue in the Board Meeting held on 07.04.2010, but no action was taken.

7.39. It is alleged that Respondent No. 2 delayed execution of the Shareholders' Agreement and insisted upon execution of a draft favourable to himself. It is further alleged that Respondent No. 2 subsequently treated Petitioner No. 1 as a minority shareholder instead of an equal promoter.

7.40. It is further alleged that Respondent No. 2 did not fulfil his assurance to transfer 6% equity shareholding to Petitioner No. 1 against payment of Rs.7,00,000/- advanced between April 2000 and July 2001. The issue was raised by Petitioner No. 1 at the Board Meeting held on 05.10.2010, but remained unresolved.

7.41. The Petitioners allege that Respondent No. 2 projected the Sharma Group before banks and third parties as a minority shareholder, attempted to exclude Petitioner No. 1 from execution of banking documents, proposed substitution of his wife as guarantor in place of Petitioner No. 1, attributed delay in bank documentation to Petitioner No. 1 and proposed purchase of Petitioner No. 1's shareholding after valuation of the Company. The proposal was declined by Petitioner No. 1.

7.42. It is further alleged that Respondent No. 2, in his capacity as Chairman and Managing Director, initiated steps to exclude Petitioner No. 1 from the management of the Company and planned his removal despite his participation in the management since 1997.

7.43. It is specifically alleged that Respondent No. 2 secured the support of Respondent No. 5 by offering him the position of Deputy Managing Director and enhanced remuneration, although Respondent No. 5 had earlier sought to exit the Company and obtain refund of his investment.

7.44. It is further averred that Respondent No. 2 strengthened the representation of his group on the Board. Respondent No. 3, wife of Respondent No. 2, was appointed as an Additional Director at the Board Meeting held on 19.08.2009, which was opposed by Petitioner No. 1 on the grounds that:

i. The Chattopadhyay Group was already represented on the Board through Respondent No. 2; and

ii. The approval/NOC of the lending banks, allegedly required under the financing arrangements, had not been obtained.

7.45. It is alleged that the appointment of Respondent No. 3 (Mrs. Rajal S. Chattopadhyay) marked the commencement of acts of oppression and mismanagement. It is further alleged that Respondent No. 2 thereafter strengthened his voting position on the Board and excluded Petitioner No. 1 from the management of the Company.

7.46. It is specifically alleged that Respondent No. 2:

i. Removed Petitioner No. 1 from charge of International Marketing with effect from 22.06.2010 on untenable grounds;

ii. Discontinued payment of remuneration to Petitioner No. 1 from November 2010 without justification; and

iii. Ultimately caused the removal of Petitioner No. 1 from the office of Director at the Extraordinary General Meeting held on 13.12.2010, thereby reducing Petitioner No. 1 and the Sharma Group to the status of mere shareholders without any role in the management of the Company.

7.47. The Petitioners contend that the above acts constitute oppression and mismanagement by Respondent No. 2, with the support of the other Respondents, and are prejudicial to the Petitioners, the Company, its lenders and other stakeholders.

7.48. It is lastly averred that, although the alleged conduct may justify winding up of the Company on the just and equitable ground, such relief would prejudice the Petitioners. The Petitioners, therefore, seek reliefs under the provisions relating to oppression and mismanagement. The specific allegations are set out in the subsequent paragraphs of the Petition.

Denial of Voting Rights to Preference Shareholders

a. It is averred that the Petitioners hold/held 11,25,000 Non-Cumulative Redeemable Preference Shares of Rs.10/- each, constituting 63.61% of the issued preference share capital of Respondent No. 1. Excluding the disputed preference shares, the Petitioners held 2,25,000 preference shares, representing 12.73% of the issued preference share capital.

b. The Petitioners allege that Respondent Nos. 1 to 5 denied them the voting rights attached to the preference shares despite such rights having accrued due to non-payment of preference dividend.

c. It is stated that, under Section 87(2)(b) of the Companies Act, 1956, preference shareholders become entitled to vote on every resolution where the prescribed preference dividend remains unpaid. The Petitioners contend that, despite non-payment of dividend, the Respondents denied them the exercise of such voting rights.

No. of Years	Financial Year (April –March)	Dividend status
01	1999 – 2000	Not Paid
02	2000 – 2001	Not Paid
03	2001 – 2002	Not Paid
04	2002 – 2003	Not Paid
05	2003 – 2004	Not Paid
06	2004 – 2005	Not Paid
07	2005 – 2006	Not Paid
08	2006 – 2007	Not Paid
09	2007 – 2008	Not Paid
10	2008 – 2009	Not Paid
11	2009 – 2010	Not Paid
12	2010 – 2011	Paid
13	2011 – 2012	Paid
14	2012 – 2013	Not Paid
15	2013 - 2014	Not Paid

d. It is averred that Respondent No. 1 adopted Table A of the Companies Act, 1956 and that Clause 56 thereof, read with Section 87 of the Act, governs the voting rights of preference shareholders.

e. It is stated that, by letter dated 13.09.2010, Petitioner No. 1 informed the Board that he held 1,00,000 Non-Cumulative Redeemable Preference Shares of Rs.10/- each and had acquired voting rights under Section 87(2)(b)(ii) of the Companies Act, 1956 due to non-payment of preference dividend. On the same date, Mr. Nitin R. Dhakan, holder of 6,00,000 preference shares, also asserted similar voting rights.

f. It is alleged that, despite receipt of the above communications, Respondent No. 1 convened the 15th Annual General Meeting on 28.09.2010 without issuing notice to the preference shareholders. Although preference shareholders attended the venue and claimed voting rights, Respondent No. 2, acting as Chairman, denied them participation and voting.

g. It is further alleged that similar denial of voting rights continued at the Annual General Meetings held on 08.06.2011, 09.06.2012 and 20.06.2013, thereby denying the preference shareholders their statutory voting rights.

h. The Petitioners further allege that the Company subsequently filed documents before the Registrar of Companies, Ahmedabad to support its stand that preference shareholders were not entitled to vote. The particulars thereof are stated in Paragraph 6.8 of the Petition.

i. It is further averred that Petitioner No. 1, by letter dated 12.10.2010, again informed the Board that he and the members of his group had acquired voting rights in respect of their preference shares. By reply dated 21.10.2010, the Company stated that the issue would be placed before the Board.

j. It is stated that Respondent No. 1, by letter dated 23.10.2010, took the stand that preference shareholders were not entitled to voting rights under Section 90(2) of the Companies Act, 1956. The Petitioners dispute the said interpretation and contend that it is contrary to Section 87(2)(b), Section 28 of the Companies Act, 1956 and Clause 56 of Table A.

k. It is further averred that Petitioner No. 1, by letters dated 27.10.2010, 01.11.2010 and 09.06.2011, asserted that the resolutions passed at the Annual General Meetings held on 28.09.2010 and 08.06.2011 were illegal as the preference shareholders had been denied voting rights.

l. It is stated that, by letter dated 28.05.2012, Petitioner No. 1 objected to the notice convening the Annual General Meeting scheduled on 09.06.2012 on the ground that it had been issued only to equity shareholders. By reply dated 08.06.2012, the Company reiterated that preference shareholders were not entitled to participate or vote.

m. It is further averred that Petitioner No. 1, by letter dated 17.06.2013, objected to the Annual General Meeting proposed to be held on 20.06.2013, stating that any meeting conducted without permitting preference shareholders to exercise voting rights would be illegal.

n. It is stated that Respondent No. 1, by letter dated 28.08.2013, rejected the allegations of Petitioner No. 1 and denied the applicability of Section 87(2)(b) of the Companies Act, 1956.

o. The Petitioners contend that the above Annual General Meetings were conducted without issuing notice to the preference shareholders and without permitting them to exercise their statutory voting rights. It is alleged that the proceedings and resolutions passed therein are illegal and constitute acts of oppression and mismanagement.

Denial of Access to Books of Accounts and Company Records

a. The Petitioners state that Petitioner No. 1, being a Whole-Time Director and representative of a group of investors, was repeatedly denied inspection of the Books of Accounts and statutory records of Respondent No. 1 despite his entitlement under the Companies Act.

b. It is averred that Petitioner No. 1, by email dated 18.08.2010, sought details of the Company's accounts for the financial year 2009-10 from the Manager (Accounts, Finance & Corporate Compliance), with copies to Respondent Nos. 2 and 5. The Company replied that the matter would be discussed in the ensuing Board Meeting, and no information was furnished before the meeting scheduled on 25.08.2010.

c. At the Board Meeting held on 25.08.2010 at 11:00 A.M., Petitioner No. 1 received the annual accounts shortly before the meeting. He sought one week's time to examine the accounts, but Respondent Nos. 2, 3 and 5 granted time only up to 5:00 P.M. on the same day, and the meeting was adjourned accordingly.

d. During the adjournment, Petitioner No. 1 submitted an Inter-Office Memorandum dated 25.08.2010 specifying the records required for inspection. Although the Board permitted such inspection, the records were not furnished on the instructions of Respondent No. 2.

e. When the Board Meeting resumed at 5:00 P.M., Respondent No. 2 stated that the requested financial information would be furnished only after Petitioner No. 1 provided details of pending balance confirmations from overseas buyers and closure of certain customer accounts. As no information was furnished, the annual accounts were approved by majority and Petitioner No. 1 recorded his dissent.

f. The Petitioners contend that the refusal to permit inspection despite the Board's decision shows that Respondent No. 2 exercised control over the affairs of the Company. It is alleged that the denial of access prevented Petitioner No. 1 from examining the accounts and objecting to the alleged irregularities, thereby constituting oppression and mismanagement.

g. The Petitioners rely upon the emails, Board Minutes, Inter-Office Memorandum and other contemporaneous records in support of their case regarding denial of inspection of the Books of Accounts and Company records.

Refusal to Convene Extraordinary General Meeting

a. The Petitioners state that Petitioner No. 1, by requisition dated 01.11.2010, sought convening of an Extraordinary General Meeting (EOGM) to consider, inter alia, appointment of Additional Directors and declaration of the resolutions passed at the Board Meeting dated 19.08.2009 as invalid. Respondent No. 1, by reply dated 19.11.2010, rejected the requisition on the grounds that appointment of Additional Directors fell within the powers of the Board under Section 260 of the Companies Act, 1956 and revocation of a Board Resolution required a Special Notice.

b. It is stated that Respondent Nos. 2, 3 and S.K. Chattopadhyay (HUF), by notice dated 10.11.2010, requisitioned an EOGM for removal of Petitioner No. 1 as Director under Section 284 of the Companies Act, 1956. Respondent No. 1 thereafter issued notice dated 12.11.2010 convening the EOGM on 13.12.2010, while rejecting the requisition made by Petitioner No. 1.

c. The Petitioners further submit that (i) no explanatory statement accompanied the notice seeking removal of Petitioner No. 1; (ii) the notice was issued only to Equity Shareholders, excluding Preference Shareholders; and (iii) the decision to convene the EOGM was taken by a Board comprising only interested Directors, namely Mr. S.K. Chattopadhyay and Mrs. Rajal Chattopadhyay, despite the opposition of Petitioner No. 1.

d. The Petitioners contend that the above actions were arbitrary and discriminatory and constitute acts of oppression and mismanagement.

Functioning of the Board

a. The Petitioners state that the affairs of Respondent No. 1 were controlled by Respondent No. 2 and that the Board of Directors did not function collectively.

b. It is averred that, prior to the Board Meeting held on 22.06.2010, Respondent No. 2 had communicated by email the decision to remove Petitioner No. 1 from the charge of International Marketing to the Director (Operations), indicating that the decision had been taken before the meeting.

c. It is stated that the remaining Directors only approved the decisions of Respondent No. 2. Respondent No. 5 supported Respondent No. 2, while Respondent Nos. 3 and 4, being his wife and daughter, respectively, also formed part of the Board.

d. It is further averred that the Company did not circulate or supply the Minutes of previous Board Meetings to the Directors, though the subsequent

Minutes recorded that the earlier Minutes had been circulated, read and confirmed. It is also alleged that adequate notice of Board Meetings was not given. The meeting held on 12.05.2012 was convened with about four working hours' notice or, at best, twenty-one hours' notice.

e. The Petitioners contend that the Board merely approved the decisions of Respondent No. 2 and did not function as an independent decision-making body, constituting acts of oppression and mismanagement.

Sr. No.	1. Date of Notice of Board Meeting 2. Date of Ticket Booking.	Date & time of Receipt of Notice via email along with E-Ticket.	Date & Time for Catching the train for Baroda	Date & time of Receipt of Notice via Regd. AD. Post.	Date & time of Board Meeting held
01	1. 01-05-2012 2. 01-05-2012 @ 02.03.26 p.m.	# 05.59 p.m. of 10-05-2010	11-05-2010 @03.45 pm.	14-05-2012 @ 4.25 p.m.	12-05-2012 @ 10 a.m.
# This email was seen by Petitioner No.1 only on the next day morning @ 10 a.m. as he had already left office on the earlier day by 5.30 p.m. Besides since the Petitioner No.1 was staying at Thane in Mumbai he had to start by about 01.30 p.m. to reach the Bandra terminus by 03.30 p.m.					

f. It is further stated that, for the Board Meeting scheduled on 12.05.2012, Petitioner No. 1 received the notice only on 14.05.2012 at 4:25 P.M., whereas the Respondents relied upon an email dated 01.05.2012. It is alleged that the delayed notice deprived Petitioner No. 1 of the opportunity to make travel arrangements and participate in the meeting.

g. It is further averred that, although the Company had previously borne the travel expenses of all Directors attending Board Meetings, such facility was discontinued only in the case of Petitioner No. 1 from the Board Meeting held on 12.05.2012 onwards.

h. The Petitioners contend that the selective denial of travel arrangements and inadequate notice of Board Meetings were arbitrary and prejudicial to the rights of Petitioner No. 1 as Director and shareholder and constitute acts of oppression and mismanagement.

Violation of Loan Sanction Terms and Prejudicial Conduct

a. The Petitioners state that Respondent No. 1, while availing term loan and working capital facilities from State Bank of India and Bank of India, violated the conditions of sanction, thereby exposing the Company to recall of the credit facilities.

b. It is averred that one of the loan conditions prohibited declaration or payment of dividend without prior approval of the lending banks. It is alleged that, despite such condition and classification of the loan accounts as Non-Performing Assets (NPAs), the Company declared and paid dividends for the financial years 2010-11 and 2011-12 without obtaining such approval.

c. It is stated that Bank of India, by letter dated 18.06.2012, recorded that the Company had failed to service its debt, the reported net profit of Rs.4,34,00,000/- was overstated, dividends were declared during the financial year 2010-11 contrary to the Bank's directions, and the loan account continued to remain classified as an NPA.

d. It is further averred that the Company also breached the loan conditions by redeeming the preference share capital before the financial year 2016, despite having accepted the restriction.

e. The Petitioners contend that the repeated breach of the loan conditions constituted financial mismanagement and was prejudicial to the interests of the Company, its shareholders and creditors.

Sr. No.	Date of Issue	Amount Rs.	Due Date of Redemption	Redeemed on
01	31-01-2000	1,00,000	31-01-2016	31-01-2012
02	23-01-2002	1,72,85,000	23-01-2016	23-01-2014
03	30-06-2002	3,00,000	30-06-2016	30-06-2014

f. It is further stated that, despite its undertaking to State Bank of India not to redeem the preference share capital before the financial year 2016, the Company redeemed part of the preference shares during the financial year 2011-12 and the balance during the financial years 2013-14 and 2014-15. The lending banks objected to such redemption and required the Company to comply with the sanction terms. It is further alleged that the redemption was also contrary to the provisions of the Companies Act relating to reduction of share capital and variation of shareholders' rights.

g. It is further averred that the loan conditions prohibited any change in the management without prior approval of the lending banks. It is alleged that Respondent Nos. 3 and 4 were appointed as Directors without such approval and that the banks recorded their objection. Thereafter, Petitioner No. 1 was removed as Director with effect from 13.12.2010.

h. The Petitioners contend that the repeated breaches of the loan conditions exposed the Company to penal interest and recall of the banking facilities. It is further alleged that, although Petitioner No. 1 ceased to participate in the management, he continued as a personal guarantor and the banks did not release him from the guarantees.

i. It is stated that Petitioner No. 1 repeatedly brought the alleged violations to the notice of the Board and the lending banks. Instead of addressing the issues, Respondent No. 2 removed Petitioner No. 1 from the management and alleged that he had violated the undertaking given before the Company Law Board. The Petitioners rely upon the affidavits of the lending banks and the orders of the Company Law Board in support of their case.

j. It is further averred that Respondent No. 2 also initiated contempt proceedings against Petitioner No. 1 before the High Courts at Bombay and Ahmedabad, which were dismissed.

k. The Petitioners contend that the above acts demonstrate non-compliance with the loan conditions, exclusion of Petitioner No. 1 from the management and conduct constituting oppression and mismanagement.

Illegal Issue of Duplicate Preference Share Certificate and Subsequent Transfer

a. The Petitioners state that Respondent No. 6, Lalit Kunj Metals Pvt. Ltd., was allotted 3,00,000 Non-Cumulative Preference Shares of Rs.10/- each under Share Certificate No. 10. In 2010, Respondent No. 6 agreed to transfer the said shares to Petitioner No. 1 for consideration. It is stated that Respondent No. 6 delivered the original share certificate, duly executed blank share transfer form, irrevocable Power of Attorney, Board Resolution authorising the transfer and acknowledgment of receipt of the sale consideration.

b. It is averred that Petitioner No. 1 requested Respondent No. 1 to register the Power of Attorney and subsequently issued reminders. The Company neither registered the documents nor communicated any decision. Owing to the pending disputes, Petitioner No. 1 retained possession of the original share certificate, executed transfer deed and Form 7C extending the period for registration of transfer.

c. It is stated that Respondent No. 6 thereafter applied for issuance of a duplicate share certificate in respect of the same shares. At the Board Meeting held on 15.09.2012, Petitioner No. 1 informed the Board that the original share certificate remained in his possession, that the shares had already been transferred in his favour and that issuance of a duplicate certificate would be contrary to law. Petitioner No. 1 also recorded his objections in writing.

d. It is further averred that, despite knowledge of the above facts, Respondent No. 1 issued a duplicate share certificate to Respondent No. 6. Thereafter, Respondent No. 6 purported to revoke the irrevocable Power of Attorney, demanded return of the original share certificate and published public notices. Petitioner No. 1 again informed the Company that the original share certificate remained in his possession and objected to the issuance of the duplicate certificate. The Company justified its action on the basis of the alleged revocation while stating that it was not concerned with the dispute between the parties.

e. The Petitioners contend that the Company accepted the claim of Respondent No. 6 despite the dispute regarding title, possession of the original share certificate and transfer of the shares. It is alleged that the Company ought to have declined the request or required the parties to establish their rights before the competent forum instead of issuing the duplicate certificate.

f. It is further stated that the duplicate share certificate was subsequently transferred to Respondent No. 7 (Mrs. Bhavnaben R. Shah). The Petitioners allege that the issuance of the duplicate certificate and its transfer were carried out in collusion between Respondent Nos. 2, 6 and 7 to defeat the claim of Petitioner No. 1. It is further alleged that the Board agenda did not disclose the relevant facts relating to the dispute.

g. The Petitioners state that they challenged the proposed issuance of the duplicate share certificate before the Company Law Board in Company

Application No. 225 of 2012. It is contended that, as the original share certificate remained in existence and in the possession of Petitioner No. 1, the duplicate share certificate and the subsequent transfer are illegal. It is further claimed that the dividend payable on the said shares belongs to Petitioner No. 1 and that the redemption of the preference shares is also liable to be set aside.

Fabrication of Company Records

a. The Petitioners state that, during the proceedings in Company Petition No. 95 of 2010 and Company Application No. 206 of 2010 before the Company Law Board, they challenged the denial of voting rights attached to the preference shares under Section 87(2)(b) of the Companies Act, 1956 and relied upon the statutory records, including Forms 23 and 5.

b. It is averred that, after filing their reply, the Respondents, by letter dated 28.01.2011, sought to produce a certified copy of Form No. 2 along with a resolution dated 03.12.1999 containing the alleged terms and conditions of the preference shares, stating that the documents had been omitted inadvertently. The Petitioners contend that these documents were not part of the records maintained with the Registrar of Companies and were produced to oppose the Petitioners' claim regarding voting rights.

c. It is stated that the Company Application was dismissed by the Company Law Board on 05.03.2011. The Hon'ble High Court of Gujarat, by Order dated 15.04.2011, set aside the said order and remanded the matter for examination of the genuineness of the documents subsequently produced.

d. It is further averred that, during the hearing before the Company Law Board on 22.03.2012, the Company agreed to withdraw the documents produced on 28.01.2011. Accordingly, the Petitioners addressed a letter dated 02.04.2012 requesting formal withdrawal of the documents. However, at the subsequent hearing held on 12.07.2012, the Respondents denied having agreed to withdraw the said documents.

e. The Petitioners contend that the subsequent production of the resolution and the alleged terms and conditions of the preference shares was intended to create records and influence the proceedings concerning the voting rights of the preference shareholders. It is further alleged that the Memorandum and Articles of Association and the Annual Reports for the financial years 1999-

2000 and 2000-2001 do not support the said documents.

Denial of Statutory Records to Director and Shareholder

a. The Petitioners state that Petitioner No. 1, being a Director and shareholder of Respondent No. 1, repeatedly sought inspection of the Books of Accounts, statutory registers, minutes, annual returns and other Company records. It is alleged that, despite repeated requests, the Company did not permit inspection or furnish the records.

b. It is averred that the Respondents justified such refusal by alleging that the records were in the custody of Petitioner No. 1 or were unavailable due to his conduct. The Petitioners denied these allegations and contended that the refusal was intended to exclude them from the affairs of the Company.

c. It is further stated that, although the Company claimed that all statutory registers were duly maintained, it continued to deny inspection thereof. Even after legal notices were issued, inspection of the Minutes of Board Meetings was refused and access was restricted to selected records.

d. It is averred that, although the Company subsequently permitted partial inspection, it refused inspection sought by Petitioner No. 1 in his capacity as Director under Section 209 of the Companies Act, 1956 by imposing conditions not contemplated under law.

e. It is stated that, by letter dated 13.08.2013, Petitioner No. 1 sought inspection and certified copies of the index of members, annual returns and other statutory records, enclosing a demand draft of Rs.1,000/-. Respondent No. 1 rejected the request, neither supplied the records nor returned the demand draft.

f. The Petitioners contend that the continued refusal to permit inspection of statutory records and furnish information to Petitioner No. 1, in his capacity as Director and shareholder, violated his statutory rights and constituted acts of oppression and mismanagement.

Refusal to Furnish Board Minutes and Incorrect Recording of Minutes

a. The Petitioners state that the Company regularly circulated draft Minutes of the previous Board Meeting from September 2007 to November 2010. Thereafter, despite repeated requests, the Company discontinued furnishing the Board Minutes to Petitioner No. 1.

b. It is averred that, in the absence of the circulated Minutes, Petitioner No. 1 communicated his understanding of the proceedings to Respondent Nos. 2 and 5. However, the Minutes continued to record that the previous Minutes had been circulated, read and confirmed.

c. It is further stated that, whenever copies of the Minutes were furnished, Petitioner No. 1 found material inaccuracies and recorded his objections. The Company neither corrected the Minutes nor incorporated his objections and continued to treat them as duly confirmed.

d. The Petitioners contend that the continued refusal to furnish the Board Minutes and the recording of inaccurate Minutes deprived Petitioner No. 1 of his rights as a director, enabled alteration of the Company's records and constituted acts of oppression and mismanagement.

Recovery of Dues from Soft Health Creations Pvt. Ltd.

a. The Petitioners state that Soft Health Creations Pvt. Ltd. was incorporated on 12.12.2001 for marketing the products of Respondent No. 1 in India. Petitioner No. 1 and Respondent No. 2 were its only shareholders and Directors.

b. It is averred that Soft Health purchased products from Respondent No. 1 on credit, resulting in outstanding dues payable to Respondent No. 1.

Particulars of the outstanding amount are stated in the annexed statement.

c. The Petitioners rely upon the outstanding dues to demonstrate the financial transactions between Respondent No. 1 and Soft Health and the manner in which the affairs of the Company were conducted.

Statement of Amounts due to Gujarat Liqui Pharmacaps Pvt. Ltd. from Soft Health Creations Pvt. Ltd.

Sr. No.	Outstanding as on	Amount in Rs.
01	31-03-2006	14,72,408
02	31-03-2007	47,82,872
03	31-03-2008	58,24,894
04	31-03-2009	62,33,393
05	31-03-2010	68,95,488
06	31-03-2011	56,06,076
07	31-03-2012	58,65,856
08	31-03-2013	58,65,856
09	31-03-2014	58,65,856

d. The It is further stated that, since 2006, the lending banks repeatedly directed Respondent No. 1 to recover the outstanding dues from Soft Health. Despite such directions, Respondent No. 1 continued to supply goods on credit, resulting in further increase in the outstanding dues.

e. It is averred that, after disputes arose between Petitioner No. 1 and Respondent No. 2, Respondent No. 2 resigned from the Board of Soft Health with effect from 10.02.2012 and caused Respondent No.

1 to initiate recovery proceedings against Soft Health.

f. It is further stated that, in March 2012, Respondent No. 1 raised additional debit notes against Soft Health, including claims towards sales tax refund and interest. The Petitioners contend that the recovery proceedings were initiated after prolonged inaction.

a. The Petitioners allege that Respondent No. 2 actively participated in the management of Soft Health from its incorporation and managed its financial affairs. It is contended that Respondent No. 2 cannot subsequently disclaim responsibility for the transactions of Soft Health.

Denial of Shareholders' Participation in General Meetings and Obstruction of Petitioner No. 1 from Discharging His Duties as Director

a. The Petitioners state that Petitioner No. 1 and other preference shareholders were denied participation and voting at the General Meetings despite asserting their statutory voting rights. It is alleged that notices of such meetings were issued only to equity shareholders.

b. It is averred that Petitioner No. 1 was prevented from discharging his duties as Director by withdrawing his responsibilities, denying access to information, excluding him from management decisions and discontinuing his remuneration.

c. It is further stated that Respondent No. 2, with the support of Respondent Nos. 3 to 5, acted to remove Petitioner No. 1 from the Board and to exclude the Sharma Group from the management and control of Respondent No. 1.

d. The Petitioners contend that the denial of participation in General Meetings and obstruction in the discharge of the duties of Petitioner No. 1 formed part of a continuous course of conduct intended to prejudice the Petitioners' rights.

e. It is alleged that the above acts, when read with the denial of voting rights, refusal of inspection, exclusion from management and removal of Petitioner No. 1 as Director, constitute oppression and mismanagement under the Companies Act, 1956.

Non-Payment of Dividend on Preference Shares Despite Profits

a. The Petitioners state that, despite the Company earning profits from the financial year 2007-08 onwards and declaring dividend on equity shares, no dividend was declared or paid on the Non-Cumulative Redeemable Preference Shares held by the Petitioners.

b. It is averred that the non-payment of preference dividend resulted in accrual of voting rights under Section 87(2)(b) of the Companies Act, 1956. However, the Respondents continued to deny such voting rights at the General Meetings.

c. The Petitioners contend that the declaration of dividend only on equity shares while withholding dividend on preference shares, despite availability of profits, was contrary to the rights of the preference shareholders and constituted oppression and mismanagement.

Appointment of Respondent Nos. 3 and 4 as Directors

a. The Petitioners state that Respondent No. 3 was appointed as an Additional Director at the Board Meeting held on 19.08.2009. Petitioner No. 1 objected to the appointment on the ground that the Chattopadhyay Group was already represented on the Board.

b. It is averred that the appointment of Respondent No. 3 was made without obtaining the approval or No Objection Certificate of the lending banks, though such approval was required under the loan sanction terms.

c. The Petitioners contend that the appointment of Respondent No. 3 altered the composition of the Board in favour of Respondent No. 2 and reduced the representation of the Petitioners in the management.

d. It is further stated that Respondent No. 4, daughter of Respondent No. 2, was also appointed as Director during the subsistence of the banking restrictions, without obtaining the prior approval of the lending banks.

e. The Petitioners allege that the appointments of Respondent Nos. 3 and 4 were intended to secure majority control of the Board and to facilitate exclusion of Petitioner No. 1 from the management.

f. It is averred that the appointments resulted in Respondent No. 2, his wife and daughter constituting a majority on the Board. Respondent No. 5 also supported Respondent No. 2 in the Board Meetings.

g. The Petitioners state that, after the appointments, resolutions proposed by Petitioner No. 1 were not accepted, while decisions supported by Respondent No. 2 were approved by majority.

h. It is further averred that the appointments were contrary to the understanding of equal participation between the Sharma Group and the Chattopadhyay Group in the management of Respondent No. 1.

i. The Petitioners contend that the appointments prejudiced the balance of management and enabled

Respondent No. 2 to remove Petitioner No. 1 from his responsibilities and subsequently from the office of Director.

j. It is stated that the lending banks also objected to the change in management and required compliance with the loan sanction conditions governing appointment of Directors.

k. The Petitioners further contend that the appointments of Respondent Nos. 3 and 4 were not made in the interest of the Company but to consolidate the control of Respondent No. 2 over the affairs of Respondent No. 1.

l. The Petitioners allege that the appointments of Respondent Nos. 3 and 4, read with the subsequent removal of Petitioner No. 1 and exclusion of the Petitioners from management, constitute acts of oppression and mismanagement.

Unilateral Increase in Remuneration of Respondent Nos. 2 and 5 and Arbitrary Withholding of Petitioner No. 1's Salary

a. The Petitioners state that, after improvement in the financial position of the Company, remuneration was payable to the Directors. However, Respondent No. 2 caused the remuneration of Respondent Nos. 2 and 5 to be increased while withholding the remuneration of Petitioner No. 1.

b. It is averred that the remuneration of Petitioner No. 1 was discontinued from November 2010 without any resolution recording reasons, although he continued to hold office as Director until 13.12.2010.

c. The Petitioners contend that the remuneration of Respondent Nos. 2 and 5 was revised from time to time despite the financial position of the Company, whereas Petitioner No. 1 was denied salary after disputes arose between the parties.

d. It is further stated that the discontinuance of remuneration formed part of the steps taken to remove Petitioner No. 1 from the management and to compel him to relinquish his rights in the Company.

Year ended On	Amount of Remuneration paid to Petitioner No.1	Amount of Remuneration paid to Respondent No.2	Amount of Remuneration paid to Respondent No.5
31-03-2008	90,000	1,10,000	Nil
31-03-2009	5,13,000	6,27,000	1,19,000
31-03-2010	6,71,250	8,18,000	5,23,750
31-03-2011	4,98,250	12,37,600	7,91,200
31-03-2012	Nil	31,37,818	16,57,100
31-03-2013	Nil	27,98,604	18,24,600
31-03-2014	Nil	51,67,726	27,67,754
Total Amt.	17,72,500	1,38,96,748	76,83,404

e. The Petitioners allege that the unilateral enhancement of remuneration of Respondent Nos. 2 and 5 and arbitrary withholding of Petitioner No. 1's remuneration were prejudicial to the Petitioners and constitute acts of oppression and mismanagement.

Removal of Petitioner No. 1 as Director and Failure to Execute Shareholders' Agreement

a. The Petitioners state that Respondent No. 2 repeatedly assured execution of a Shareholders' Agreement recognising equal participation in the management. Despite repeated requests, the agreement was never executed.

b. It is averred that, instead of executing the Shareholders' Agreement, Respondent No. 2 increased his control over the Board by appointing Respondent Nos. 3 and 4 and reducing the role of Petitioner No. 1 in the affairs of the Company.

c. It is further stated that Respondent Nos. 2, 3 and 5 requisitioned an Extraordinary General Meeting and, by resolution dated 13.12.2010, removed Petitioner No. 1 from the office of Director under Section 284 of the Companies Act, 1956.

d. The Petitioners contend that the removal of Petitioner No. 1 was contrary to the understanding of joint management, denied him participation in the affairs of the Company and defeated the agreed management structure.

e. It is averred that, after the removal of Petitioner No. 1, Respondent No. 2 assumed exclusive control over the management of the Company and excluded the Petitioners from its affairs.

f. The Petitioners allege that the failure to execute the Shareholders' Agreement, coupled with the removal of Petitioner No. 1 as Director, constitutes oppression and mismanagement and forms part of the continuous conduct complained of in the Petition.

Company Refusing to Register Powers of Attorney, Harassment of Petitioner No.1, False Litigation, Transmission of Preference Shares, Rights Issue and Redemption of Preference Shares

A. Refusal to Register Powers of Attorney

a. The Petitioners state that Petitioner No. 1 was authorised under Powers of Attorney executed by 14 shareholders and lodged the same with Respondent No. 1 for registration on 28.09.2010.

b. It is averred that, despite reminders dated 12.10.2010 and Advocate's communication dated 16.08.2011, Respondent No. 1 neither registered the Powers of Attorney nor communicated any decision.

c. It is further stated that Respondent No. 1 also failed to forward shareholder communications to

Petitioner No. 1 as attorney holder, despite having acted upon such requests in certain cases earlier.

d. The Petitioners contend that the refusal to register the Powers of Attorney deprived Petitioner No. 1 and the concerned shareholders of their rights and constituted an act of oppression.

B. Non-Response to Communications and Harassment of Petitioner No.1

a. The Petitioners state that, after Petitioner No. 1 ceased to participate in the management, Respondent No. 1 did not respond to several communications seeking information regarding the affairs of the Company, statutory rights and investments.

b. It is averred that, in several instances, Respondent No. 1 merely stated that the matters would be placed before the Board but failed to furnish any further response.

c. It is further stated that the replies, wherever furnished, contained allegations against Petitioner No. 1. The Petitioners contend that such conduct was intended to compel the Sharma Group to exit the Company.

C. Filing of False Civil and Criminal Proceedings

a. The Petitioners allege that Respondent No. 2 initiated or caused to be initiated several civil and criminal proceedings against Petitioner No. 1, including contempt proceedings before the Bombay High Court and the Gujarat High Court, both of which were dismissed.

b. It is further stated that Respondent No. 1 instituted a recovery suit against Soft Health Creations Pvt. Ltd., a company promoted by Petitioner No. 1 and Respondent No. 2, and that a criminal complaint for defamation was also filed against Petitioner No. 1, which was dismissed for non-prosecution.

c. It is averred that criminal proceedings were also initiated before the JMFC, Waghodia alleging offences under Sections 408 and 420 of the IPC and Section 630 of the Companies Act, 1956.

d. The Petitioners contend that the above proceedings were instituted to harass Petitioner No. 1 and to compel the Sharma Group to withdraw from the affairs of the Company.

D. Transmission of Preference Shares Held by Late Mr. Nitin Dhakan

a. The Petitioners state that Petitioner No. 1 purchased 6,00,000 preference shares from Mr. Nitin Dhakan, who executed a Power of Attorney, delivered the original share certificate and signed transfer forms after receiving consideration.

b. It is averred that, despite repeated requests by Petitioner No. 1 and Mr. Nitin Dhakan, Respondent No. 1 did not register the Power of Attorney. Following the demise of Mr. Nitin Dhakan in April 2012, the shares were transmitted in the name of Mr. Karan N. Dhakan (Respondent No. 8).

c. The Petitioners contend that the transmission was illegal as Petitioner No. 1 remained in possession of the original share certificate and claimed beneficial interest in the shares.

d. It is further stated that Petitioner No. 1 claims entitlement to the accrued dividend of approximately Rs.18,00,000/- on the said preference shares but does not claim the redemption proceeds, which, according to the Petitioners, should revert to the Company upon restoration of the preference share capital.

E. Rights Issue and Redemption of Preference Shares

a. The Petitioners challenge the Rights Issues announced in October 2013 for Rs.1,00,00,000/- and August 2014 for Rs.1,50,00,000/-, alleging that they were structured to dilute the shareholding of the Sharma Group and strengthen the control of the Chattopadhyay Group.

b. It is averred that, by the time of the Rights Issues, Petitioner No. 1 had been removed from the management, deprived of remuneration and involved in litigation, making it impracticable for the Sharma Group to subscribe to the Rights Shares.

c. It is further stated that the Rights Issues were non-renounceable, contrary to the Articles of Association. The Petitioners also rely upon the interim order of the Hon'ble Gujarat High Court staying a similar Rights Issue proposed in 2011.

d. The Petitioners further allege that Respondent No. 1 redeemed 15% Non-Cumulative Preference Shares during 2012 and 2014, despite the lending banks requiring redemption only after 2016.

e. It is averred that the redemption was carried out without following the statutory procedure and despite objections raised by Petitioner No. 1 and the lending banks.

f. The Petitioners contend that the simultaneous Rights Issues and premature redemption of preference shares were intended to dilute the Sharma Group's voting rights under Section 87(2)(b) of the Companies Act, 1956 and consolidate the control of Respondent No. 2.

F. Reclassification of Equity Share Capital

a. The Petitioners state that the authorised share capital initially comprised Rs.2,00,00,000/- Equity Share Capital and Rs.2,00,00,000/- Preference Share Capital.

b. It is averred that, during February/March 2011, Respondent No. 1 increased the authorised Equity Share Capital to Rs.5,00,00,000/- by introducing Rs.2,00,00,000/- Non-Voting Equity Shares.

c. It is further stated that, in April 2014, the Company reclassified the entire Non-Voting Equity Share Capital into Voting Equity Shares, resulting in all Equity Shares carrying voting rights.

d. The Petitioners contend that the reclassification was undertaken after the Sharma Group had been removed from the management and was unable to participate in the Rights Issues, thereby consolidating the voting control of the Chattopadhyay Group

G. Company Claiming Property Belonging to Petitioner No.3

a. The Petitioners state that commercial premises situated at Godavari Building, Thane, belonging to (Mrs. Seema K Sharma) Petitioner No. 3, were made available to Respondent No. 1 without rent from May 2000 for its business operations.

b. It is averred that, after Petitioner No. 1 ceased to participate in the management, Petitioner No. 3 resumed possession of the premises, whereupon Respondent No. 2 claimed that the property belonged to Respondent No. 1.

c. It is further stated that, while using the premises of Petitioner No. 3 without payment, Respondent No. 1 paid rent for premises belonging to the relatives of Respondent No. 2.

d. The Petitioners contend that the claim over the Thane premises was without basis and was intended to initiate litigation and harass the Petitioners.

H. Events Subsequent to Withdrawal of Company Petition No.95 of 2010

a. The Petitioners state that, after withdrawal of Company Petition No. 95 of 2010 on 09.01.2013, Respondent No. 1 convened a Board Meeting on 11.01.2013. Petitioner No. 1 was permitted to attend only as an "Invitee" and was informed that the resolution dated 13.12.2010 removing him as Director had been implemented.

b. It is averred that Respondent Nos. 1 and 2 thereafter continued to institute civil and criminal proceedings against Petitioner No. 1. It is further alleged that successive Rights Issues and premature redemption of preference shares were undertaken to strengthen the control of the Chattopadhyay Group.

c. The Petitioners further state that Petitioner No. 1 had advanced an unsecured loan of Rs.9,60,000/- during the financial year 1994-95. Although the Company acknowledged the liability, it made unilateral adjustments and remitted Rs.8,44,354/- towards alleged full and final settlement, which was disputed by the Petitioners.

d. The Petitioners state that the present Petition has been filed pursuant to the liberty granted on 09.01.2013 upon withdrawal of Company Petition No. 95 of 2010. They further reserve the right to rely upon subsequent developments and seek amendment of the pleadings, if required.

8. That the **Reply** on behalf of the Respondent No. 1,2 and 3 to the Company Petition was taken on record dated 09.10.2014 vide inward dairy no. S453. Wherein made following submission:-

8.1. The Respondents state that the preference share capital of Rs.1,76,00,000/- was redeemed in accordance with the terms of issue and the applicable statutory provisions. They deny the Petitioners' objections and contend that the alleged transfers of preference shares were private disputes unsupported by valid transfer documents lodged with the Company.

8.2. It is submitted that Petitioner No. 1 was lawfully removed as Director at the Extraordinary General Meeting held on 13.12.2010 and that such removal was upheld by the Company Law Board by Order dated 05.03.2011. The Respondents further contend that, after withdrawal of Company Petition No. 95 of 2010 on 09.01.2013, the removal attained finality.

8.3. The Respondents deny the existence of the alleged "Sharma Group" and "Chattopadhyay Group" and contend that Respondent No. 1 has at all times functioned as a professionally managed private limited company.

8.4. It is submitted that the disputes relating to duplicate share certificates issued in favour of Respondent Nos. 6, 7 and 8 concern private ownership disputes and do not constitute oppression or mismanagement. The Respondents further contend that the alleged transfer documents were incomplete and incapable of registration.

8.5. The Respondents raise a preliminary objection that several allegations relate to concluded transactions and are barred by limitation. It is contended that such past events cannot constitute a cause of action under Sections 397 and 398 of the Companies Act, 1956.

8.6. The Respondents deny the Petitioners' account regarding the formation and development of the Company and submit that Respondent No. 2 and Late Shri Bhikhubhai Desai were the original promoters. It is further contended that Petitioner No. 1 neither arranged finance nor contributed significantly to the establishment or development of the Company's business.

8.7. The Respondents submit that the manufacturing unit, technical know-how, project implementation and statutory approvals, including WHO approvals, were secured through the efforts of Respondent No. 2 and technical experts. They deny that Petitioner No. 1 arranged investments or that Respondent No. 2 agreed to transfer 6% equity shares against Rs.7,00,000/-.

8.8. It is submitted that Soft Health Creations Pvt. Ltd. was incorporated at the instance of Petitioner No. 1, who managed its affairs as Managing Director. The Respondents contend that his mismanagement resulted in substantial dues payable to Respondent No. 1, necessitating recovery proceedings.

8.9. The Respondents deny that Petitioner No. 1 contributed to the Company's export growth or business development. They contend that the revival and subsequent growth of the Company were solely due to the efforts of Respondent No. 2.

8.10. It is further submitted that Respondent No. 1 was never a quasi-partnership and has always functioned under the Companies Act, 1956. Reliance is placed upon the Company Law Board's Order dated 05.03.2011, holding that the removal of Petitioner No. 1 as Director was lawful.

8.11. The Respondents submit that the remuneration of Petitioner No. 1 was discontinued due to alleged misconduct and non-cooperation pursuant to a collective decision of the Board. They further allege that Petitioner No. 1 continues to retain the Company's vehicle and other movable assets.

8.12. It is averred that Petitioner No. 1 acted against the interests of the Company by writing to banks, circulating communications to stakeholders, refusing to execute bank documents, granting unauthorised rebates and siphoning Company funds. The Respondents contend that Respondent No. 2 thereafter arranged additional finance by mortgaging his personal properties.

8.13. The Respondents submit that, after removal of Petitioner No. 1 from the management, the Company achieved financial growth, improved corporate governance and regulatory compliance. They further state that statutory dues, bank liabilities and preference share redemption were duly complied with and the Company received several recognitions.

8.14. It is submitted that there was never any agreement to execute a Shareholders' Agreement. The Respondents contend that the Petitioners raised such demand only to obtain a larger equity stake and that the present Petition is an abuse of process

Sr.No.	F.Y. April – March	Revenue (Rs. Crores)	Net Profit/loss (Rs. Crores)	Cumulative Profit / Loss (Rs. Crores)
01	1995-96	Nil	00.05 Preoperative Expenses	00.05 Preoperative Expenses.
02.	1996-97	Nil	00.07 Preoperative Expenses.	00.12 Preoperative Expenses.
03.	1997-98	Nil	00.02 Preoperative Expenses.	00.14 Preoperative Expenses.
04	1998-99	Nil	00.07 Preoperative Expenses.	00.21 Preoperative Expenses.
05.	1999-2000	Nil	00.25 Preoperative Expenses.	00.46 Preoperative Expenses.
06.	2000-01	Nil	00.99 Preoperative Expenses.	1.45 Preoperative Expenses.
07.	2001-02	2.87	-0.76	-0.76
08.	2002-03	4.12	-2.25	-3.01
09.	2003-04	5.76	00.01	-3
10.	2004-05	10.44	-0.39	-3.39
11.	2005-06	11.46	-1.86	-5.25
12.	2006-07	18.32	-0.06	-5.31
13.	2007-08	25.32	1.11	-4.2
14.	2008-09	30.75	2.5	-1.7
15.	2009-10	23.62	0.31	-1.39
16.	2010-11	41.76	2.52	0.27
17.	2011-12	51.57	4.34	2.28
18.	2012-13	38.98	3.53	5.52
19.	2013-14	41.9	2.71	7.8
20.	Upto 30/09/2014 Un Audited	28.60	1.38	9.18

8.15. The Respondents further state that the Company regularly serviced its banking facilities and rely upon the loan outstanding position as on **30.09.2014**, particulars whereof are furnished in a tabular statement: -

LOAN SERVCING / REPAYMENT DETAILS			
LOAN DETAILS	OPENING BALANCE	SERVCING / REPAYMENT FROM	BALANCE AS ON
	AS ON 01/04/2010	APR'10 TO SEPT'14	30/09/2014
BANK OF INDIA FITL	5,198,159.00	5,198,159.00	-
BANK OF INDIA WCTL	19,088,000.00	13,967,548.00	5,120,452.00
BANK OF INDIA TERM LOAN	28,514,127.00	23,132,285.00	5,381,842.00
STATE BANK OF INDIA TERM LOAN	104,506,035.00	77,849,103.00	26,656,932.00
	157,306,321.00	120,147,095.00	37,159,226.00

8.16. The It is averred that the Petition is devoid of merit, barred by limitation and instituted only to harass the management. The Respondents accordingly deny all allegations of oppression and mismanagement.

8.17. The Respondents submit that, during the period from 01.04.2010 to 30.09.2014, the Company repaid approximately Rs.12.01 Crores towards consortium bank facilities from its internal accruals while regularly servicing its loan obligations. They contend that the said financial performance disproves the allegations of mismanagement.

8.18. It is further submitted that Petitioner No. 1 refused to execute Bank Offer Letters to secure a Shareholders' Agreement. The Respondents state that Respondent Nos. 2 and 3 furnished personal guarantees and mortgaged their properties, while the banks continued to support the Company.

8.19. The Respondents submit that the Rights Issues undertaken by the Company were approved in accordance with the Companies Act, 1956 and the Articles of Association. It is contended that the Rights Shares were offered uniformly to all eligible shareholders without discrimination.

8.20. It is further submitted that the Petitioners voluntarily chose not to subscribe to the Rights Issues. The Respondents deny that the Rights Issues were intended to dilute the Petitioners' shareholding or voting rights.

8.21. The Respondents state that the redemption of preference shares was carried out in accordance with the terms of issue and the applicable statutory provisions. They deny that the redemption violated any condition imposed by the lending banks or any provision of law.

8.22. It is averred that the appointment of Respondent Nos. 3 and 4 as Directors was duly approved by the Board and shareholders. The Respondents deny that such appointments were intended to alter the management or oppress the Petitioners.

8.23. The Respondents deny that the Company fabricated statutory records, manipulated Board Minutes or withheld inspection of the Company's records. It is submitted that all statutory records were maintained in accordance with law and were available for inspection as permissible.

8.24. The Respondents further submit that all allegations regarding denial of voting rights, inspection of records, removal of Petitioner No. 1 and other acts of oppression are misconceived, unsupported by evidence and liable to be rejected.

8.25. The Respondents submit that the alleged Powers of Attorney were not registered as the documents produced did not satisfy the requirements for registration under the Companies Act, 1956. They deny that any statutory or contractual right of the Petitioners was infringed.

8.26. It is averred that the Company duly maintained its statutory records and furnished information wherever required under law. The Respondents deny that inspection of records or copies of documents was unlawfully refused to the Petitioners.

8.27. The Respondents further submit that the proceedings initiated against Petitioner No. 1 arose from his own acts and omissions affecting the interests of the Company. They deny that any civil or criminal proceedings were instituted with the object of harassment.

8.28. It is stated that the transmission and transfer of preference shares, including the issue of duplicate share certificates, were carried out in accordance with law after examining the documents placed before the Company. The Respondents deny any collusion or illegality.

8.29. The Respondents contend that the Petitioners have not established any continuous acts of oppression, mismanagement or prejudice to the affairs of the Company. It is submitted that the grievances raised are individual disputes and do not warrant relief under Sections 397 and 398 of the Companies Act, 1956.

8.30. The Respondents accordingly pray that the Company Petition be dismissed with costs, as the allegations are denied and no case of oppression, mismanagement or other relief under the Companies Act, 1956 is made out.

9. That the Petitioner No. 1, 2 and 3 filed **Rejoinder** to the Reply dated 08.10.2014 to the Respondent No. 1, 2 and

3. Wherein made following submission: -

9.1. The Petitioners deny the material averments in the Reply and reiterate the pleadings in the Company Petition. It is contended that the Respondents have failed to specifically rebut the allegations of oppression and mismanagement and have raised evasive pleas.

9.2. The Petitioners contend that the redemption of the Preference Shares was not carried out in accordance with law. It is further stated that the Company neither registered the Powers of Attorney submitted by the Petitioners nor communicated any objection at the relevant time.

9.3. The Petitioners deny that the removal of Petitioner No. 1 as Director attained finality. It is asserted that the Extraordinary General Meeting dated 13.12.2010 was illegal and that the Order dated 05.03.2011 stood set aside by the Hon'ble Gujarat High Court, restoring the status quo ante.

9.4. The Petitioners contend that the issue relating to Respondent Nos. 6, 7 and 8 forms part of the acts of oppression and mismanagement. It is alleged that duplicate share certificates were issued and the Preference Shares were transferred or transmitted to deprive Petitioner No. 1 of his rights.

9.5. The Petitioners reiterate that Petitioner No. 1 played a substantial role in the revival and growth of the Company by arranging finance, mobilising investments, developing export markets and obtaining regulatory approvals. The contrary assertions of the Respondents are denied.

9.6. The Petitioners deny the allegations that Petitioner No. 1 acted against the interests of the Company, including allegations relating to banking, finances and overseas customers. It is contended that such allegations are unsupported and were raised only after objections were made to the conduct of Respondent No. 2.

9.7. The Petitioners contend that Respondent No. 2 failed to execute the proposed Shareholders' Agreement despite repeated assurances. It is further alleged that Respondent No. 2 thereafter consolidated control over the Company while denying equal participation to the Petitioners.

9.8. It is further stated that Petitioner No. 1 was denied access to the Books of Accounts, statutory records, Board Minutes and other Company documents. The Petitioners contend that such conduct prevented his participation in the management of the Company.

9.9. The Petitioners dispute the Respondents' interpretation of Sections 87 and 90 of the Companies Act, 1956. It is reiterated that, upon non-payment of preference dividend, the Preference Shareholders acquired voting rights and the meetings held without notice to them are invalid.

9.10. The Petitioners further allege that Respondent No. 2 violated the conditions of the banking facilities by declaring dividends without obtaining prior approval of the lending banks. It is contended that Petitioner No. 1 merely brought such violations to the notice of the banks.

9.11. The Petitioners deny that the discontinuance of remuneration, retention of Company assets and proceedings initiated against Petitioner No. 1 were justified. It is asserted that such actions were taken to deprive him of his rights as Director and shareholder.

9.12. The Petitioners contend that the Board of Directors did not function collectively and that Respondent No. 2 exercised complete control over the affairs of the Company. It is further alleged that the appointments of Respondent Nos. 3, 4 and 5 formed part of the plan to exclude Petitioner No. 1.

9.13. The Petitioners deny that the Petition is barred by limitation or concerns personal disputes. It is contended that the acts complained of constitute continuing oppression and mismanagement, making the Petition maintainable under Sections 397 and 398 of the Companies Act, 1956.

9.14. The Petitioners reiterate that the Reply contains inconsistent and unsupported averments. They contend that a prima facie case of oppression and mismanagement is made out and seek grant of the interim and final reliefs prayed for together with costs.

10. That the **Sur – Rejoinder** has been filed by the Respondent No. 1 to 3 dated 30.01.2015 vide inward dairy no. 831. Wherein denied all have denied the allegations contained in the Petition as well as the Rejoinder filed by the Petitioners and have sought dismissal of the Company Petition on the ground that the same is misconceived, frivolous, vexatious and devoid of any cause of action. For the sake of brevity, the detailed facts and submissions have not been reproduced herein.

11. That the **Reply of the Respondent No. 7** to the company petition was received on 05.01.2014 vide inward dairy no. 6448. Wherein, made following submission: -

11.1. The Respondent No. 7 submits that she has no concern with the disputes between the Petitioners and Respondent Nos. 1 to 6 and 8 to 12. It is stated that she lawfully acquired 3,00,000 Non-Cumulative

Preference Shares from Respondent No. 6 (Lalit Kunj Metals Pvt. Ltd.) in accordance with law.

11.2. It is further submitted that the aforesaid Preference Shares have since been redeemed by Respondent No. 1. The Respondent contends that the reliefs sought against her have, therefore, become infructuous.

11.3. Respondent No. 7 denies the allegations of fraud, collusion and deprivation of the Petitioners' rights. It is further contended that the Petitioners never challenged the transfer of the Preference Shares or her title at the relevant time.

11.4. It is stated that the Petitioners had filed C.A. No. 225 of 2012 in Company Petition No. 95 of 2010, which stood withdrawn on 09.01.2013. It is further submitted that the Petitioners did not challenge the title of Respondent No. 7 in those proceedings.

11.5. Respondent No. 7 submits that she lawfully held the Preference Shares and had declined the requests of Petitioner No. 1 to transfer the shares in his favour. It is contended that the present proceedings have been initiated only on account of such refusal.

11.6. It is further submitted that the only relief sought against Respondent No. 7 relates to declaration of the transfer of the Preference Shares as illegal.

Since the shares already stand redeemed, such relief is stated to be not maintainable.

11.7. Respondent No. 7 contends that she neither participated in the management nor exercised control over the affairs of Respondent No. 1. It is further submitted that disputes relating to title or transfer of shares are outside the scope of proceedings under Sections 397 and 398 of the Companies Act, 1956.

11.8. It is accordingly contended that the Petition is not maintainable against Respondent No. 7 as she lawfully acquired the Preference Shares, her title was never challenged earlier, the allegations relate to title disputes and the shares already stand redeemed.

11.9. Respondent No. 7 submits that she has been unnecessarily impleaded despite having no role in the affairs of Respondent No. 1. She accordingly prays for dismissal of the Petition against her, exemplary costs and legal expenses of Rs.1,00,000/-.

12. That the **Reply of the Respondent No. 8** (Mr. Karan N. Dhakan) to the company petition was received on 16.04.2015 vide inward dairy no. 2855. Wherein, made following submission: -

12.1. The Respondent No. 8 submits that he has no concern with the disputes between the Petitioners and Respondent Nos. 1 to 7 and 9 to 12. It is contended that no cause of action has been disclosed against him.

12.2. It is stated that Respondent No. 8 was impleaded only as the legal heir of late Mr. Nitin Dhakan, whose 6,00,000 Preference Shares were transmitted in his favour. It is further submitted that the said shares already stand redeemed.

12.3. Respondent No. 8 contends that the Petitioners had earlier initiated proceedings during the lifetime of late Mr. Nitin Dhakan but withdrew the same. It is further submitted that the alleged Power of Attorney stood revoked upon his demise.

12.4. It is averred that Respondent No. 8 lawfully became entitled to the transmission of the Preference Shares as the legal heir of late Mr. Nitin Dhakan. The present proceedings are stated to be unnecessary and vexatious.

12.5. It is further submitted that, as the original share certificates were not traceable, duplicate share certificates were issued upon furnishing the prescribed affidavit, indemnity bond and supporting documents. The issuance thereof is stated to be lawful.

12.6. Respondent No. 8 contends that the alleged Power of Attorney relied upon by the Petitioners neither created ownership rights in favour of Petitioner No. 1 nor survived the death of late Mr. Nitin Dhakan.

12.7. Respondent No. 8 denies the allegations contained in Paragraph 6.20 of the Petition. It is further stated that, by letter dated 14.09.2012, the legal heirs of late Mr. Nitin Dhakan informed Petitioner No. 1 that they would not pursue the pending litigations.

12.8. It is further denied that the Preference Dividend was unlawfully received or that the duplicate share certificates were illegally issued. Respondent No. 8 claims lawful entitlement to the transmitted shares and the dividend thereon.

12.9. Respondent No. 8 submits that the only reliefs sought against him are payment of the Preference Dividend for the financial years 2010-11 and 2011-12 to Petitioner No. 1 and rectification of the Register by cancelling the duplicate share certificates.

12.10. It is contended that the aforesaid reliefs are beyond the jurisdiction under Sections 397 and 398 of the Companies Act, 1956. It is further submitted that the redemption of the shares and death of late Mr. Nitin Dhakan render such reliefs untenable.

12.11. Respondent No. 8 submits that he never participated in the management or affairs of Respondent No. 1. It is, therefore, contended that no allegation of oppression or mismanagement can be maintained against him.

12.12. It is further contended that disputes relating to title, transmission, ownership or alleged fraudulent transfer of shares are civil disputes and cannot be adjudicated in proceedings under Sections 397 and 398 of the Companies Act, 1956.

12.13. Respondent No. 8 submits that the Petition is not maintainable against him as the alleged Power of Attorney created no ownership rights, stood extinguished upon the death of late Mr. Nitin Dhakan, the Preference Shares already stand redeemed and no cause of action survives against him.

12.14. Respondent No. 8 submits that he has been unnecessarily impleaded despite having no role in the management of Respondent No. 1. He accordingly prays for dismissal of the Petition against him with exemplary costs.

13. That in compliance with the order dated 21.02.2024, Respondent Nos. 1 to 4 filed a pursis dated 07.03.2024 enclosing the death certificate of Respondent No. 5, which was furnished to and acknowledged by the

Applicant. It was noted that Respondent No. 5 expired on 22.10.2021. The death certificate was taken on record.

14. Pursuant to the order dated 01.08.2024, the Applicant filed an affidavit dated 16.10.2024 inward Diary No. D-7876 stating that, having regard to the nature of the reliefs sought, impleadment of the legal heirs of deceased Respondent No. 5 was not necessary. Accordingly, the name of deceased Respondent No. 5 was ordered to be deleted from the array of parties.

15. That the Application for the production of **Additional Document** was received on 12.06.2019 vide inward dairy no. 5721 on behalf of the Respondent No 1 to 5. The same was taken on record.

16. That the **Chronology of the Events** on behalf of the Petitioners in compliance of the order dated 07.11.2024 was received dated 08.01.2025 vide inward dairy no. D141.

17. That the **Written Submission** on behalf of the Petitioner was received on 24.07.2025 vide inward diary no. D4964 and the **synopsis** on behalf of the Respondent was filed on 18.04.2024 vide inward dairy no. D-3361. The same was taken record.

Observation and Findings of this Tribunal: -

18. The dispute arises from the breakdown of the relationship between Petitioner No. 1 and Respondent No. 2, who were associated with the management of Respondent No. 1 for several years. The Petitioners assert that the Company functioned as a joint venture or quasi-partnership, whereas the Respondents contend that it has always been governed as a private limited company under the Companies Act.

19. The Petition concerns disputes arising from 2010 onwards relating to the management and affairs of Respondent No. 1. The allegations include removal of Petitioner No. 1 from management and directorship on 13.12.2010, denial of participation in the affairs of the Company, irregularities in Board and General Meetings, Rights Issue, redemption of Preference Shares, denial of voting rights, appointment of Directors, refusal of inspection, issue of duplicate share certificates and other acts alleged to constitute oppression and mismanagement.

20. The Petitioners contend that Petitioner No. 1 joined the Company in 1997 on the understanding of joint management with Respondent No. 2 and a proposed Shareholders' Agreement. It is alleged that, after the Company became financially stable, Respondent No. 2 excluded Petitioner No. 1 from the management and undertook various corporate actions to dilute the Petitioners' rights.

21. The Petitioners further contend that the impugned acts constitute a continuous course of oppressive conduct. According to them, the issue of duplicate share certificates, transfer of shares, denial of inspection, restructuring of share capital, violation of banking conditions and institution of legal proceedings were intended to consolidate the control of Respondent No. 2 and his family.

22. The Respondents deny the allegations and question the maintainability of the Petition. It is contended that the

Petition seeks to reopen concluded transactions, that the removal of Petitioner No. 1 was lawful, and that disputes relating to shares, personal agreements and proprietary rights fall outside the scope of proceedings for oppression and mismanagement.

23. The Respondents further contend that Respondent No. 1 has always functioned as a professionally managed private limited company. It is submitted that all corporate decisions were taken in accordance with law and that the Company's financial performance improved after Petitioner No. 1 ceased to participate in the management

24. In light of the pleadings, rival submissions and the material available on record, the following **issues** arise for determination by this Tribunal: -

(i) **Issue No.(i):** Whether the present Petition is maintainable in law, including whether the Petition is barred by limitation?

(ii) **Issue No.(ii):** Whether the relationship between the parties and the management of Respondent No. 1 Company gave rise to any legitimate expectation or constituted a quasi-partnership, as alleged by the Petitioners?

(iii) **Issue No.(iii):** Whether the acts alleged by the Petitioners, individually or cumulatively, constitute oppression of the Petitioners and/or mismanagement of the affairs of Respondent No. 1 Company within the meaning of the Companies Act?

(iv) **Issue No.(iv):** Whether the Petitioners are entitled to the reliefs sought in the Company Petition?

(v) **Issue No.(v):** If answer to Issue No.(iv) is in affirmative, then what are appropriate reliefs?

25. Findings on Issue No.(i): Whether the present Petition is maintainable in law, including whether the Petition is barred by limitation?

25.1. The Respondents have raised a preliminary objection that the Petition is barred by limitation. It is contended that the grievances relate to corporate actions undertaken between 2009 and 2012, which attained finality and cannot be reopened in proceedings under Sections 397 and 398 of the Companies Act, 1956.

25.2. It is further submitted that Company Petition No. 95 of 2010, challenging the removal of Petitioner No. 1 as Director, was withdrawn on 09.01.2013 with liberty to institute fresh proceedings. According to the Respondents, the Petitioners cannot reopen the same issues after an unreasonable lapse of time.

25.3. The Petitioners contend that the Petition challenges a continuous course of oppressive conduct and mismanagement. According to them, the various corporate actions are interconnected and constitute a continuing cause of action.

25.4. This Tribunal notes that Sections 397 and 398 of the Companies Act, 1956 prescribe no specific period of limitation. However, while stale and concluded transactions cannot ordinarily be reopened, antecedent events forming part of a continuing course of oppression and mismanagement may be considered.

25.5. It is an admitted position that Company Petition No. 95 of 2010 was withdrawn on 09.01.2013 with liberty to institute fresh proceedings. The present Petition was filed in 2014 and also challenges several corporate actions undertaken subsequent to the withdrawal of the earlier proceedings.

25.6. The pleadings disclose that the challenge is not confined to events of 2009 and 2010, but extends to subsequent actions, including appointment of Respondent No. 4, issue of duplicate share certificates, Rights Issues during 2013 and 2014, redemption of Preference Shares and other consequential corporate actions.

25.7. Whether the impugned acts constitute oppression and mismanagement is a matter for consideration on merits. At this stage, the pleadings disclose a series of interconnected events extending over several years and cannot be treated as isolated or concluded transactions.

25.8. In the above circumstances, this Tribunal is of the view that the objection regarding limitation cannot be sustained. The Petition alleges a continuing course of conduct culminating in subsequent corporate actions during 2013 and **2014**. Accordingly, the preliminary objection is rejected and **Issue No. (i)** is answered in favour of the Petitioners.

26. Findings on Issue No.(ii): Whether the relationship between the parties and the management of Respondent No. 1 Company gave rise to any legitimate expectation or constituted a quasi-partnership, as alleged by the Petitioners?

26.1. The Petitioners contend that Respondent No. 1, though incorporated as a private limited company, functioned as a joint venture or quasi-partnership between the Sharma Group and the Chattopadhyay Group. The Respondents deny the existence of any such arrangement and contend that the Company was governed solely by the Companies Act and its Articles of Association.

26.2. The record shows that Respondent No. 1 was incorporated on 30.10.1995 by Respondent No. 2

and Mr. Bhikhubhai Desai, prior to the induction of Petitioner No. 1. ***In Ebrahimi v. Westbourne Galleries Ltd., (1973) AC 360***, it was held that a quasi-partnership arises only where equitable considerations, mutual confidence, participation in management and restrictions on transfer of shares coexist.

26.3. The Hon'ble Supreme Court in ***Hind Overseas Pvt. Ltd. v. Raghunath Prasad Jhunjhunwalla, (1976) 3 SCC 259*** held that every closely held or family company cannot be treated as a quasi-partnership and that such principles apply only in exceptional circumstances where the factual foundation justifies departure from ordinary company law principles.

26.4. It is an admitted position that no Shareholders' Agreement was executed and the Articles of Association were never amended to confer equal management or veto rights upon Petitioner No. 1. In ***Kilpest Pvt. Ltd. v. Shekhar Mehra, (1996) 10 SCC 696***, the Hon'ble Supreme Court reiterated that partnership principles cannot ordinarily be imported into company law in the absence of such foundational arrangements.

26.5. The material on record, however, establishes that Petitioner No. 1 joined the Company in 1997, functioned as Director and Whole-time Director for over 12 years and actively participated in finance, project implementation, institutional funding and development of the Company's international business.

26.6. The record further indicates that Petitioner No. 1 represented the Company before financial institutions, negotiated with lenders, developed export markets and discharged executive responsibilities until disputes arose during 2010. His role was substantially different from that of an ordinary minority shareholder.

26.7. At the same time, parity in ownership and management never crystallised. The alleged Shareholders' Agreement remained unexecuted, the Articles were never amended and the Petitioners themselves rely upon an alleged proposal for transfer of an additional 6% shareholding for Rs.7,00,000/-, indicating that equal proprietary rights had not been achieved.

26.8. The Tribunal must distinguish between a quasi-partnership and a legitimate expectation of participation in management. While a quasi-partnership ordinarily gives rise to such expectation, a legitimate expectation may arise independently from the consistent conduct of the parties over a substantial period.

26.9. Applying the aforesaid principles, this Tribunal is unable to hold that Respondent No. 1 assumed the character of a quasi-partnership. The Company was independently incorporated, no binding Shareholders' Agreement came into existence and the constitutional documents did not recognise parity in management or ownership.

26.10. Nevertheless, the Petitioner No.1 and other petitioners (who are family members of Petitioner No.1) collectively held 26.93% of issued and paid up share capital of the company. The total investment by Sharma family in the company was of Rs 80,80,000. The holding of the Petitioner No. 1 was 25.45% of the issued and paid-up capital of the company.

26.11. The investment of Petitioner No.1 in the company was of Rs 76,35,000. They also held issued and paid-up preference share capital of the company. There was uninterrupted participation of Petitioner No. 1 in the management for more than a decade constitutes a relevant equitable circumstance. Such long-standing participation is required to be considered while examining whether the subsequent corporate actions unfairly defeated his legitimate expectation of continued participation in the affairs of the Company.

26.12. Accordingly, this Tribunal holds that Respondent No. 1 cannot be regarded as a quasi-partnership in the strict legal sense. However, the long-standing participation of Petitioner No. 1 and his family members in the equity of the company and his involvement in the management gave rise to a legitimate expectation which is a relevant factor while considering the subsequent allegations of oppression and mismanagement. **Issue No. (ii)** is answered accordingly.

27. Findings on Issue No.(iii): Whether the acts alleged by the Petitioners, individually or cumulatively, constitute oppression of the Petitioners and/or mismanagement of the affairs of Respondent No. 1 Company within the meaning of the Companies Act?

27.1. Having concluded that Respondent No.1 is not a quasi-partnership, the next issue is whether the acts complained of, individually or cumulatively, amount to oppression and mismanagement under Sections 397 and 398 of the Companies Act, 1956.

27.2. The jurisdiction under Sections 397 and 398 is intended to remedy oppressive conduct in the affairs of the Company and not every individual grievance or commercial decision. The Tribunal must examine whether the affairs of the Company have been conducted in a manner lacking probity, fairness and fair dealing.

27.3. In ***Shanti Prasad Jain v. Kalinga Tubes Ltd., AIR 1965 SC 1535***, the Hon'ble Supreme Court held that oppression must be burdensome, harsh and wrongful, involving lack of probity and fair dealing in the conduct of the Company's affairs. Mere loss of confidence or dissatisfaction of the minority does not constitute oppression.

27.4. In ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, AIR 2005 SC 809***, the Hon'ble Supreme Court held that an isolated act is ordinarily insufficient and that a continuous course of oppressive conduct is required to attract Section 397. The cumulative effect of the impugned acts must therefore be examined.

27.5. Applying the above principles, the Tribunal has examined the pleadings, contemporaneous correspondence and chronology of events. It is not disputed that Petitioner No. 1 remained associated with Respondent No. 1 from 1997 and actively participated in its management for nearly 12 years.

27.6. The record further shows that, from 2010 onwards, Petitioner No. 1 was successively divested of managerial responsibilities, his remuneration was discontinued, disputes arose regarding inspection of records and voting rights, Respondent No. 3 was inducted on the Board and Petitioner No. 1 was ultimately removed as Director. These events were followed by Rights Issues and redemption of Preference Shares.

27.7. The Respondents justify each corporate action as being in accordance with the Companies Act and in the interest of the Company, relying upon the subsequent financial growth and improved performance of the Company.

27.8. Financial prosperity, however, is not conclusive of the absence of oppression. A commercially successful company may nevertheless be managed in a manner oppressive to a section of its members. The enquiry under Sections 397 and 398 extends to the standards of fairness, transparency and probity adopted in the conduct of the Company's affairs.

27.9. At the same time, disputes relating to the alleged oral agreement for transfer of 6% Equity Shares, beneficial ownership of Preference Shares and the affairs of Soft Health Creations Pvt. Ltd. are essentially civil or contractual disputes. Such disputes, by themselves, do not establish oppression or mismanagement under Sections 397 and 398.

27.10. The core grievance of the Petitioners is the progressive exclusion of Petitioner No. 1 from the management of the Company. The Tribunal is therefore required to examine the cumulative effect of the impugned actions rather than each act in isolation.

27.11. Individually, appointment of Directors, removal of a Director, Rights Issues, redemption of Preference Shares and other management decisions may fall within the powers of the Company. However, where such actions collectively result in exclusion of one shareholder group from meaningful participation in the affairs of the Company, the Tribunal is required to examine whether the exercise of such powers lacked fairness and bona fides.

27.12. The explanations offered by the Respondents do not satisfactorily explain why, within a short period, every significant corporate action operated to diminish the role of Petitioner No. 1 while correspondingly strengthening the control of Respondent No. 2 and his group. The cumulative pattern of events, therefore, assumes significance.

27.13. The Tribunal also finds that repeated requests made by the Petitioners for inspection of records, participation in meetings and consideration of their objections were consistently declined. Such conduct is inconsistent with the standards of fairness expected in the management of a closely held private company.

27.14. In ***Dale and Carrington Invt. (P) Ltd. v. P.K. Prathapan, (2005) 1 SCC 212***, the Hon'ble Supreme Court held that Directors occupy a fiduciary position and must exercise their powers in good faith, for a proper purpose, with full disclosure and in the interest of the Company and its shareholders. In a closely held private company, the exercise of managerial powers is required to be scrutinised with greater care to prevent misuse of majority control.

27.15. On an overall appreciation of the evidence, this Tribunal finds that the Petitioners have established a continuing course of conduct commencing from 2010, whereby Petitioner No. 1 was progressively excluded from management and meaningful participation in the affairs of Respondent No. 1. Though some individual acts may have been within the powers of the majority, their cumulative effect demonstrates lack of fairness and probity in the conduct of the Company's affairs.

27.16. Accordingly, this Tribunal holds that the affairs of Respondent No. 1 Company were conducted in a manner oppressive to the Petitioners within the meaning of Section 397 of the Companies Act, 1956. The cumulative conduct also warrants interference under Section 398. **Issue No. (iii)** is answered in favour of the Petitioners.

28. Findings on Issue No.(iv): Whether the Petitioners are entitled to the reliefs sought in the Company Petition?

28.1. Having held that the affairs of Respondent No. 1 Company were conducted in a manner oppressive to the Petitioners, this Tribunal is required to mould an appropriate relief under Sections **397**, **398** and **402** of the Companies Act, 1956, corresponding to Section **242** of the Companies Act, 2013.

28.2. The relief to be granted must bring an end to the matters complained of while protecting the interests of the Company, its shareholders and other stakeholders. At the same time, the Tribunal is required to avoid granting reliefs which have become infructuous or relate to concluded corporate actions.

28.3. Having regard to the prolonged disputes, complete breakdown of trust between the parties and the admitted absence of any possibility of restoring a functional management, reinstatement of Petitioner No. 1 as Director or restoration of joint management would neither be practicable nor in the interest of Respondent No. 1 Company.

28.4. The reliefs relating to declaration of title over Preference Shares, duplicate share certificates, personal monetary claims, contractual disputes and other matters giving rise to independent civil remedies do not warrant adjudication in the present proceedings and are left open to be pursued before the appropriate forum, in accordance with law.

28.5. In the facts of the present case, an equitable separation of the parties would adequately protect the interests of both sides and also secure the continued functioning of Respondent No. 1 Company without further disruption.

28.6. Accordingly, this Tribunal holds that the Petitioners are entitled to relief only to the extent necessary to bring an end to the oppression established herein. The remaining reliefs, inconsistent with the aforesaid directions or relating to independent causes of action, are declined. **Issue No. (iv)** is answered accordingly.

29. Findings on Issue No.(v): If answer to Issue No.(iv) is in affirmative, then what are appropriate reliefs?

29.1. In view of the findings recorded on Issue Nos. **(i)** to **(iv)**, this Tribunal holds that the affairs of Respondent No. 1 Company were conducted in a manner oppressive to the Petitioners within the meaning of Sections **397** and **398** of the Companies Act, 1956, corresponding to Sections **241** and **242** of the Companies Act, 2013.

29.2. Both the Petitioner (Mr. Kamal Sharma) and Respondent No.2 cooperated and worked for the functioning of the Respondent No.1 from its incorporation to about 2009-2010. The Petitioner No.1 was excluded from the management of the company after his removal as a director on 13.12.2010. Payment of his remuneration was also stopped. The Petitioner was not allowed to work for the company after his removal as a director. This means effectively he did not work for the company.

29.3. But his and his family members investments in the form of equity share capital and preference share capital continued. The financial investments of the Petitioners have been used by the company in its business. There is no information whether the preference shares of the Petitioners were redeemed or not. No information on the payment of dividends on the shareholding of the Petitioners. The extent of equity shareholding of the Petitioners in the company is not known. The matter concerns of 2009-2010. The Petition is accordingly allowed to the extent indicated below.

29.4. Having regard to the complete breakdown of trust between the parties since 2010, the prolonged litigation and the impracticability of restoring joint management, this Tribunal is of the view that an equitable separation of the parties by way of purchase of the Petitioners' shareholding would meet the ends of justice.

29.5. Hence, the Company Petition is liable to be partly allowed. Appropriate consequential directions are issued in the operative portion of this Order.

30. Accordingly, in exercise of powers under Section **402** of the Companies Act, 1956 read with Section **242(2)** of the Companies Act, 2013, it is ordered as follows: -

30.1. An Independent Registered Valuer from the IBBI panel **Mr. Bihari Lal Chakravarti** (IBBI Registration No. IBBI/IBBI/IPA-002/IP-N00863/2019 2020/12776, E-mail ID; blchakravarti25@gmail.com), is appointed to determine the fair value of the equity shareholding held by the Petitioners in Respondent No. 1 Company as on 31.03.2026.

30.2. The Respondent Nos. **2** to **4** are directed to provide the relevant information and access to the record of the Respondent No. 1 Company as desired by the said valuer within a period of 7 days from the date of this order.

30.3. The Registered Valuer shall determine the fair value as on 31.03.2026 in accordance with recognised valuation principles after considering the financial statements, books of account, assets, liabilities, business prospects and other relevant records of Respondent No. 1 Company. The valuation report shall be submitted within **60** days from the date of receipt of this Order.

30.4. The valuation shall be conducted as per the applicable Valuation Standards issued by ICAI/IBBI, considering discounted cash flow, net asset value, and market approach, as may be appropriate, after affording opportunity of hearing to both sides and inspection of records.

30.5. Upon submission of the valuation report, Respondent Nos. **2** to **4**, jointly or severally, shall purchase the entire equity shareholding of the Petitioners at the value determined by the Registered Valuer within **90** days thereafter.

30.6. Upon receipt of the sale consideration, the Petitioners shall execute all necessary transfer documents and Respondent No. 1 Company shall register the transfer in accordance with law.

30.7. In the event Respondent Nos. **2** to **4** fail to complete the purchase within the stipulated period, the Petitioners shall be entitled to purchase the shareholding of Respondent Nos. **2** to **4** at the same valuation by communicating their willingness within **30** days thereafter.

30.8. Therefore, either of the parties may purchase the shareholding of the other party at a price determined as on 31.03.2026 or at a mutually agreed price of shares. They may also use and agree on any other methodology to pay the consideration for exit of either of the group from the company. The concerned Respondents shall execute all documents necessary for such transfer.

30.9. The fee of valuer is fixed to Rs.3.0 Lakhs + GST+ Out of pocket expenses, travel etc. The fees and expenses of the Registered Valuer shall be borne by the Respondent No.1.

30.10. In view of the above directions, the reliefs relating to reinstatement of Petitioner No. 1 as Director, declaration of Board and General Meeting resolutions as void, remuneration, rectification of the Register of Members, restoration of Preference Share Capital, cancellation of Rights Issues and other consequential reliefs do not survive for separate adjudication.

30.11. The disputes relating to ownership, transfer or transmission of Preference Shares, duplicate share certificates, dividend claims, unsecured loans, salary claims and other personal or civil disputes are left open to be pursued before the competent forum, in accordance with law.

30.12. In case the exit of either party from the company is not settled within 180 days of this order, either party can file petition under section 439 of the Companies Act, 1956 (Section 272 of the Companies

Act, 2013) seeking winding up of the Respondent No.1 Company.

31. Subject to the aforesaid directions, **Transfer Petition No. 82 of 2016** (formerly Company Petition No. 71 of 2014), along with all connected applications, stands **partly allowed** and **disposed of.**

32. All pending Interlocutory Applications, if any, stand disposed of accordingly. Parties to bear their own costs.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)
SS

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)