IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH–I, CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **04.08.2026** THROUGH VIDEO CONFERENCING

CORAM: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER	**:**
PETITION NUMBER	**:** CP/366/2019
NAME OF THE PETITIONER(S)	**:** A. Arumugam
NAME OF THE RESPONDENT(S)	**:** New Hope Food Industries Pvt. Ltd.
UNDER SECTION	**:** Sec 241-242 of CA 2013

ORDER

Present: Shri. Rajmakesh, Ld. Counsel for the Petitioner.
None for the Respondents.

Vide separate order pronounced in the Open Court, petition is dismissed.

File be consigned to records.

Sd/-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

Sd/-
[SANJIV JAIN]
MEMBER (JUDICIAL)

VS

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH - I, CHENNAI

CP(CA)/366(CHE)/2019

(Filed under Section 241, 242, 244, 246 and 447 and other applicable provisions of the Companies Act, 2013 read with Rules 81 and 84 of the National Company Law Tribunal Rules, 2016)

In the matter of ***New Hope Food Industries Private Limited***

A. ARUMUGAM,
S/o. Late Angappa Chettiar,
No. 178, Swathi Illam, Vinayagar Koil Veethy 7,
Moolappalayam, Kasi Palayam, Erode – 638 002.

… Petitioner

– Versus –

1. **NEW HOPE FOOD INDUSTRIES PRIVATE LIMITED**
[CIN: U01549TZ1996PTC007334],
Chinnasadayambalayam Road,
Moolapalayam Post, Erode – 638 002.

2. **A. RAJA,**
S/o. Mr. Ayyasamy,
No. 294, Vinayagar Koil Veethi 2,
Moolapalayam, Erode Railway Colony,
Erode – 638 002.

3. **R. RAMPRAKASH,**
S/o. Mr. A. Raja,
No. 294, Vinayagar Koil Veethi 2,
Moolapalayam, Erode Railway Colony,
Erode – 638 002.

4. **RAJA NIRMALADEVI,**
W/o. Mr. A. Raja,
No. 294, Vinayagar Koil Veethi 2,
Moolapalayam, Erode Railway Colony,
Erode – 638 002.

5. **M/S. ALEXANDER & ASSOCIATES,**
Chartered Accountants [FRN 0000775],
"K.G. Square", Flat No. 3-B,
3rd Floor, V.K. Iyer Road,
Mandavelli, Chennai – 600 028.

6. **V. CHANDRASEKARAN,**
Chartered Accountant [M. No. 021132],
"K.G. Square", Flat No. 3-B,
3rd Floor, V.K. Iyer Road,
Mandavelli, Chennai – 600 028.

… Respondents

For Petitioner : R.Shankarnarayanan, Senior Advocate
S.Rajmakesh, Advocate,
Gourav Chatterjee, Advocate

For Respondent : R.Vidhyashankar, Advocate,
Adithya Reddy, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

*Order Pronounced on **4th August, 2026***

O R D E R

(Heard through Hybrid mode)

The present Company Petition has been filed by A. Arumugam ("the Petitioner") under Sections 241, 242, 243, 244, 246 and 447 of the Companies Act, 2013 ("the Act") read with Rules 81 and 84 of the NCLT Rules, 2016, alleging acts of oppression and mismanagement in the affairs of the 1st Respondent, New Hope Food Industries Private Limited ("the Company"), at the hands of Respondents 2 to 4, in alleged collusion with Respondents 5 and 6, the Statutory Auditors of the Company.

2. The 1st Respondent Company, New Hope Food Industries Private Limited ("the Company"), was incorporated on 11.07.1996 under the provisions of the Companies Act, 1956 before the Registrar of Companies, Coimbatore. At the time of incorporation, the authorized share capital of the Company was ₹12,00,000/- divided into equity shares of ₹100/- each, which was subsequently enhanced to ₹30,00,000/- divided into 30,000 equity shares of ₹100/- each. The issued, subscribed and paid-up share capital of the Company presently stands at ₹27,00,000/- divided into 27,000 equity shares of ₹100/- each. The Company is engaged in the business of manufacturing and marketing cakes, confectionery and bakery products and has, over the years, established its presence in the market under the trade marks "WONDER" and "MILKA", which are stated to be the registered trademarks of the Company in various classes under the Trade Marks Act, 1999. These facts are not in dispute.

3. According to the Petitioner, as on 05.02.2019, the shareholding pattern of the Company comprised the Petitioner holding 11,380 equity shares, constituting 42.15% of the paid-up share capital; the 2nd Respondent, A. Raja, the Managing Director of the Company, holding 10,480 equity shares, constituting 38.81%; the 4th Respondent, Raja Nirmaladevi, wife of the 2nd Respondent, holding 2,200 equity shares, constituting 8.15%; the 3rd Respondent, R. Ramprakash, son of the 2nd Respondent, holding 1,640 equity shares, constituting 6.07%; and A.

Nageshwari, wife of the Petitioner, holding 1,300 equity shares, constituting 4.81% of the paid-up share capital. The Petitioner asserts that he is the single largest individual shareholder of the Company. It is, however, his case that Respondents 2 to 4, being members of the same family, collectively hold 14,320 equity shares, representing 53.03% of the paid-up share capital, and thereby exercise majority control over the affairs and management of the Company. According to the Petitioner, it is by virtue of this controlling shareholding that Respondents 2 to 4 have carried out the acts of oppression and mismanagement complained of in the present petition.

I. SUBMISSIONS OF THE PETITIONER

4. The Petition proceeds on the basis that the Petitioner, along with one V.M. Joseph and certain other individuals, promoted six companies engaged in the business of manufacture and sale of bread, bakery and confectionery products under the brand names "MILKA" and "WONDER", one among them being the 1st Respondent Company. It is the Petitioner's case that disputes arose amongst the promoters in or about the year 2003 in relation to the management and affairs of the other group companies. According to the Petitioner, the said disputes ultimately culminated in a comprehensive settlement arrived at between the concerned parties in or about the year 2016. The Petitioner specifically pleads that the 1st Respondent Company was not the subject matter of the said *inter se* disputes or the subsequent settlement and continued to function independently. It is further averred that, notwithstanding the disputes relating to the other group companies, the shareholding pattern in the 1st

Respondent Company remained unchanged for a considerable period and the parties continued to hold their respective shareholding without any alteration. According to the Petitioner, the acts of oppression and mismanagement complained of in the present proceedings arose only subsequently and are entirely unconnected with the earlier disputes concerning the other group companies.

5. The Petitioner further pleads that in or about December 2018, the 2nd Respondent approached the shareholders of the Company with a proposal to raise substantial financial assistance for the expansion of the Company's business. According to the Petitioner, the 2nd Respondent represented that a sum of approximately ₹30 Crores could be secured by way of a loan from a private lender at a comparatively low rate of interest. It is alleged that the proposal contemplated the creation of security by pledging the equity shares held by the shareholders of the Company in favour of the proposed lender. The Petitioner states that the proposal was actively supported and endorsed by the 6th Respondent, who was then acting as one of the Statutory Auditors of the Company and who, according to the Petitioner, had enjoyed the confidence of the management for nearly twenty-five years. It is the Petitioner's case that the 2nd and 6th Respondents represented that the proposed borrowing structure would be commercially advantageous as it would enable the Company to raise funds at a lower rate of interest, would not adversely affect the creditworthiness of the Company, and would not entail payment of stamp duty or require statutory filings before the Registrar of Companies. Proceeding on the basis of the aforesaid representations and believing the same to be genuine, the

Petitioner states that he conveyed his in-principal approval to the proposal for raising funds in the manner suggested.

6. The Petitioner further avers that on or about 01.02.2019, the 2nd Respondent informed him that the proposed loan transaction has been finalized and requested him to come to the registered office of the Company for execution of the requisite documents, representing that the initial tranche of ₹15 Crores is ready for disbursement. According to the Petitioner, pursuant to the said request, he visited the registered office of the Company on 06.02.2019, where the 2nd Respondent and the 6th Respondent had already kept ready for execution a Pledge Agreement, certain share transfer forms in Form SH-4, and a few blank sheets of paper. It is the Petitioner's specific case that the Pledge Agreement did not disclose either the identity of the proposed lender or the amount of the loan, both particulars having been left blank. The Petitioner further alleges that the share transfer forms had been pre-filled reflecting the names of the 2nd Respondent and one Ms. Krithiga, stated to be the daughter-in-law of the 2nd Respondent, as the transferee of the shares. The Petitioner states that he expressed surprise and sought an explanation regarding the inclusion of the names of the 2nd Respondent and Ms. Krithiga as transferees, whereupon the 2nd and 6th Respondents represented that the proposed lender wishes to remain anonymous and that the names of the said persons have been inserted merely as "name lenders" for procedural convenience and that the documents would not operate as actual transfers of the shares. According to the Petitioner, acting upon the aforesaid representations and reposing complete trust in the 2nd Respondent and the

6th Respondent, he signed the Pledge Agreement, the share transfer forms in Form SH-4 and the other papers placed before him without insisting upon copies thereof. It is further pleaded that all the original documents so executed remained in the custody and control of the 6th Respondent thereafter.

7. The Petitioner further pleads that, notwithstanding the execution of the aforesaid documents, the proposed financial assistance was never disbursed and no portion of the alleged loan amount was received by the Company. According to the Petitioner, despite repeated enquiries regarding the status of the proposed borrowing, the 2nd Respondent and the 6th Respondent failed to furnish any satisfactory explanation and merely gave evasive responses. It is the Petitioner's case that, upon making further enquiries, he came to know that the equity shares standing in his name had, in the meanwhile, been transferred in favour of the 2nd Respondent and one Ms. Krithiga, the daughter-in-law of the 2nd Respondent. The Petitioner alleges that the said transfer of shares was brought about by practicing fraud and misrepresentation upon him under the guise of executing documents for a proposed pledge of shares to secure a loan. According to the Petitioner, the share transfer forms executed by him were never intended to effect an absolute transfer of ownership, but were obtained solely on the representation that they were procedural documents required for creation of security in favour of the proposed lender. It is further alleged that no consideration whatsoever was paid either to the Petitioner or to the Company for the alleged transfer of shares and that the transfer was therefore fraudulent, illegal and void. On the

aforesaid premises, the Petitioner seeks, *inter alia*, a declaration that the impugned transfer of shares is null and void and consequential directions for restoration of the shares in his name.

8. The Petitioner further alleges that, upon making enquiries into the circumstances surrounding the alleged transfer of his shareholding and examining the affairs of the Company, he unearthed several other instances of oppression, mismanagement, diversion of business and financial irregularities in the conduct of the affairs of the Company by Respondents 2 to 4, allegedly with the active assistance and connivance of Respondents 5 and 6. According to the Petitioner, the acts complained of are not isolated incidents but form part of a continuous course of conduct designed to benefit Respondents 2 to 4 and their family members at the expense of the Company and its shareholders. The allegations, as pleaded in the Petition, are summarized hereunder:

(i) **Exploitation of the Company's registered trademarks through Affiliate Entities:** The Petitioner alleges that Respondents 2 to 4 and members of their family have established and are operating several proprietary concerns and business entities, namely New Way Food Products, Grandway Foods and Allied Industries, R.K. Fruit Juice's & Beverages and R.R. Aqua Industries (collectively referred to as the "Affiliate Entities"). According to the Petitioner, these entities are engaged in the manufacture and sale of bakery products, beverages and packaged drinking water under brand names deceptively similar to or incorporating the Company's registered trademarks "**WONDER**" and "**MILKA**", including products marketed as *"New Wonder Premium Sweet 'N' Milk Loaf"*, *"New Wonder Premium Milk Rusk"*, *"New Wonder Drinks"* and

"MILKA Wonder Drops". It is alleged that the Company has neither assigned nor licensed its registered trademarks to any of the Affiliate Entities, nor has it received any royalty or other commercial consideration for such use. According to the Petitioner, Respondents 2 to 4 have unlawfully diverted the goodwill, reputation and commercial value attached to the Company's registered trademarks to their own family-controlled entities, thereby siphoning away the business opportunities and profits legitimately belonging to the Company.

(ii) **Advertisement expenditure incurred for the benefit of Affiliate Entities:** The Petitioner further alleges that during the Financial Year 2017-2018, the Company incurred an expenditure of ₹53,12,182/- under the head *"Advertisement Charges Paid"*. According to the Petitioner, several of the advertisements funded by the Company simultaneously promoted the products and business of the Affiliate Entities, while the entire cost of such advertisements was borne exclusively by the Company. It is alleged that corporate funds were utilized for promoting businesses owned and controlled by Respondents 2 to 4 and their family members without any corresponding benefit accruing to the Company;

(iii) **Suppression of related party transactions:** It is further alleged that Respondents 2 to 4 deliberately failed to disclose various transactions entered into between the Company and the Affiliate Entities, notwithstanding the fact that such transactions constituted related party transactions within the meaning of the Companies Act, 2013. According to the Petitioner, the mandatory disclosures contemplated under Sections 184 **and** 188 of the Act were not made, the interested directors failed to disclose their interest in the concerned entities, and the statutory approvals prescribed under the Act were deliberately bypassed with a view to conceal the true nature of such dealings from the shareholders.

(iv) **Cash sales and incorrect reporting under the GST laws:** The Petitioner further alleges that substantial cash sales effected by the Company have not been properly reflected in its books of account or statutory returns. It is alleged that large-scale cash transactions have been deliberately kept outside the regular books, thereby resulting in suppression of revenue, evasion of Goods and Services Tax and diversion of Company funds. According to the Petitioner, the true extent of such financial irregularities can be ascertained only through an independent forensic examination of the books and records of the Company by a competent person appointed by this Tribunal.

(v) **Inflated and fictitious trade receivables:** The Petitioner also questions the genuineness of the trade receivables reflected in the financial statements of the Company. It is pointed out that the trade receivables, which stood at ₹82,53,868.72 in the Financial Year 2015, had increased to ₹1,19,72,762.80 **as on** 31.03.2018**.** According to the Petitioner, considering that the Company is engaged in the manufacture and sale of highly perishable bakery products, such a substantial increase in outstanding receivables is commercially improbable. It is alleged that the receivables shown in the books are fictitious or inflated book entries intended to conceal diversion of funds and manipulation of the Company's financial statements.

(vi) **Diversion of Company assets and utilization of Company vehicles:** The Petitioner further alleges that several items of machinery, equipment and testing instruments belonging to the Company, including equipment used for manufacturing, quality control and testing, have been removed from the Company's factory and shifted to the manufacturing facilities of the Affiliate Entities controlled by Respondents 2 to 4. It is also alleged that vehicles belonging to the Company have been regularly utilized for transporting goods and conducting the business of the Affiliate Entities without any commercial arrangement or reimbursement to the Company, thereby causing wrongful loss to the Company and corresponding gain to the family-controlled entities.

(vii) **Collusion and misconduct on the part of the Statutory Auditors:** Lastly, the Petitioner alleges that Respondents 5 and 6, who are the Statutory Auditors of the Company, actively aided and facilitated the aforesaid acts of oppression and mismanagement. According to the Petitioner, Respondents 5 and 6 simultaneously acted as auditors, accountants and advisers not only for the Company but also for the Affiliate Entities and for the personal businesses of Respondents 2 and 4 and their family members, thereby rendering services prohibited under Section 144 of the Companies Act, 2013 and placing themselves in a position of clear conflict of interest. It is alleged that instead of discharging their statutory duties independently and objectively, Respondents 5 and 6 knowingly certified incorrect financial statements, suppressed material facts relating to related party transactions, failed to report acts of diversion of funds and misuse of corporate assets, and thereby actively abetted the fraud perpetrated by Respondents 2 to 4 upon the Company and its shareholders. According to the Petitioner, the conduct of Respondents 5 and 6 not only constitutes professional misconduct but also facilitated the acts of oppression and mismanagement complained of in the present Company Petition.

9. On the basis of the aforesaid allegations, the Petitioner contends that the affairs of the Company are being conducted in a manner oppressive to him as a shareholder and prejudicial to the interests of the Company within the meaning of Sections 241 and 242 of the Companies Act, 2013. According to the Petitioner, Respondents 2 to 4, acting in concert and with the active assistance of Respondents 5 and 6, have fraudulently divested him of his shareholding, diverted the business and goodwill of the Company to their family-controlled entities, misappropriated the Company's assets and funds, concealed related party transactions, manipulated the financial statements of the Company and committed various acts of fraud and mismanagement, thereby rendering it impossible for the affairs of the Company to be carried on in accordance with law and the principles of fair corporate governance. The Petitioner further asserts that the cumulative effect of the aforesaid acts is such that the facts would otherwise justify an order for winding up of the Company on the just and equitable ground. However, it is his case that an order of winding up would unfairly prejudice him and other stakeholders, particularly in view of the valuable business, assets, goodwill and intellectual property of the Company, and that the circumstances therefore warrant the exercise of the equitable jurisdiction of this Tribunal under Section 242 of the Act to grant appropriate reliefs in substitution of an order of winding up.

10. In the aforesaid circumstances, the Petitioner has sought, inter alia, the following substantive reliefs: (i) a direction restraining Respondents 2 to 4 from continuing the alleged acts of oppression and mismanagement in the affairs of the Company; (ii) a declaration that the alleged transfer of the

Petitioner's shares in favour of the 2nd Respondent and Ms. Krithiga is null and void and consequential restoration of the Petitioner's shareholding under Section 242(2)(d) read with Section 243 of the Act, together with a declaration that the Petitioner continues to hold 11,380 equity shares constituting 42.15% of the paid-up share capital of the Company; (iii) annulment of the Pledge Agreement, the share transfer forms in Form SH-4, the board resolutions and all connected documents on the ground that the same were obtained by practising fraud and misrepresentation upon the Petitioner; (iv) appropriate directions for recovery from Respondents 2 to 4 of the alleged undue gains and profits derived by them through the Affiliate Entities by exploiting the assets, goodwill and business opportunities of the Company; (v) directions for protection and preservation of the Company's intellectual property rights, including its registered trademarks; (vi) a declaration that the Petitioner shall continue to hold office as a Director of the Company; (vii) formulation of an appropriate scheme for the future management and administration of the affairs of the Company by superseding the existing Board of Directors; and (viii) an award of costs of the present proceedings.

11. Pending disposal of the Company Petition, the Petitioner has also sought various interim reliefs, including a direction for investigation into the affairs of the Company by the **Serious Fraud Investigation Office (SFIO)**, an order restraining the Respondents from altering the shareholding pattern or creating third-party rights in respect of the shares of the Company, removal of Respondents 2 to 4 from the office of Directors, appointment of an independent Administrator to manage the

affairs of the Company during the pendency of the proceedings, and a direction for conducting a forensic audit into the financial affairs and accounts of the Company.

12. The records disclose that the Company Petition came up for admission before this Tribunal on 20.03.2019, when, upon considering the nature of the allegations and the submissions advanced on behalf of the Petitioner, this Tribunal granted an ad-interim order protecting the existing shareholding structure of the Company. By the said order, this Tribunal, *inter alia*, directed that the original shareholding pattern of the Company as it existed prior to the impugned transfer of shares shall be maintained pending disposal of the Company Petition. The interim protection was evidently granted with a view to preserve the subject matter of the dispute and to ensure that no further alteration is made to the shareholding structure during the pendency of the proceedings. It is not in dispute that the said interim order remained in force throughout the pendency of the present proceedings and continued to govern the *inter se* rights of the parties in relation to the shareholding of the Company.

13. During the course of final hearing, the learned Counsel appearing for the Petitioner also filed detailed written submissions dated 20.02.2024, reiterating and elaborating upon the pleadings contained in the Company Petition. The written submissions broadly classify the disputes between the parties under three principal heads, namely: (i) the alleged fraudulent transfer of the Petitioner's shareholding; (ii) the alleged unauthorized

exploitation of the Company's registered trademarks, goodwill and advertisement expenditure by the associate concerns of Respondents 2 to 4; and (iii) the various other acts of oppression and mismanagement alleged to have been committed by Respondents 2 to 6 in the conduct of the affairs of the Company.

14. Insofar as the alleged transfer of shares is concerned, the learned Counsel for the Petitioner contended that the impugned transaction was a product of fraud and misrepresentation and was never intended to operate as an outright transfer of ownership. It was submitted that Respondents 2 to 4 were admittedly not parties to the Joint Memorandum of Compromise executed amongst the promoters in respect of the other group companies and, therefore, could not derive any rights thereunder in relation to the Petitioner's shareholding in the 1st Respondent Company. It was further argued that the share transfer forms in Form SH-4 relied upon by the Respondents themselves demonstrate the fraudulent nature of the transaction, inasmuch as the Petitioner's signature appears only on the first page of the forms, whereas the particulars relating to the transferees are found only on the second page, which does not bear the Petitioner's signature. According to the Petitioner, the absence of his signature on the page containing the particulars of the transferees clearly establishes that the said particulars were subsequently inserted without his knowledge or consent. It was further submitted that no consideration whatsoever had passed either to the Petitioner or to the Company for the alleged transfer and that the essential requirements for a valid transfer of shares were therefore wholly absent.

15. The learned Counsel further contended that several documents relied upon by the Respondents, including the alleged resignation letters and the minutes of meetings, are fabricated and have been created by utilizing blank signed papers which had earlier been obtained from the Petitioner under the guise of completing the proposed loan transaction. According to the Petitioner, the Respondents have misused the Petitioner's signatures appearing on blank papers to create documents intended to justify their subsequent actions and to deprive the Petitioner of his rights in the Company.

16. With regard to the alleged diversion of the Company's intellectual property and business, the learned Counsel for the Petitioner submitted that the Respondents cannot derive any benefit from the License Agreement dated 31.03.2004, relied upon by them, inasmuch as the said agreement was valid only for a period of three years and stood expired by efflux of time. It was argued that even during the currency of the said agreement, no royalty or license fee had ever been paid to the Company for the use of its registered trademarks and goodwill. Consequently, the continued use of the Company's registered trademarks by the associate concerns of Respondents 2 to 4 after expiry of the license agreement constitutes an unauthorized commercial exploitation of the Company's intellectual property and diversion of its business.

17. The learned Counsel also invited the attention of this Tribunal to an undated ‘No-Objection Certificate’ allegedly issued in favour of R.R. Aqua

Industries, which was subsequently filed before the Trade Marks Registry only on 29.05.2019, i.e., after the interim order passed by this Tribunal on 20.03.2019 directing maintenance of the existing shareholding pattern. According to the Petitioner, the production of the said document after the grant of interim protection clearly demonstrates that the Respondents continued to deal with and exploit the Company's intellectual property even during the pendency of these proceedings. It was submitted that the subsequent filing of the said document before the Trade Marks Registry lends further support to the Petitioner's allegation that Respondents 2 to 4 have continuously acted in a manner prejudicial to the interests of the Company and persisted in the acts of oppression and mismanagement complained of in the present proceedings.

II. SUBMISSIONS OF RESPONDENTS 1 TO 4

18. Respondents 1 to 4 entered appearance and filed a common Counter Statement, stoutly denying each and every allegation of oppression, mismanagement, fraud and collusion contained in the Company Petition. At the very outset, the Respondents raise a preliminary objection to the maintainability of the present proceedings, contending that the Petition is founded on false and misleading averments, is an abuse of the process of this Tribunal and is liable to be rejected *in limine*. According to the Respondents, the entire edifice of the Petition rests upon the Petitioner's deliberate suppression of material facts relating to the transfer of his shareholding and his consequent cessation as a member of the Company. It is specifically contended that the Petitioner had voluntarily and validly

transferred his entire shareholding in the Company prior to the institution of the present proceedings and, therefore, had ceased to be a member of the Company on the date of presentation of the Company Petition. The Respondents submit that, once the Petitioner had divested himself of his entire shareholding, he ceased to possess the requisite qualification prescribed under Section 244 of the Companies Act, 2013 for maintaining a petition under Sections 241 and 242 of the Act. It is, their principal contention that the Company Petition is not maintainable at the threshold for want of *locus standi* and is liable to be dismissed on this preliminary issue alone, without entering into the merits of the allegations made by the Petitioner.

19. On the question of the impugned transfer of shares, Respondents 1 to 4 set up an entirely different factual narrative. According to them, the transfer of the Petitioner's shares in the 1st Respondent Company was neither fraudulent nor involuntary but was the culmination of a long-standing arrangement arrived at between the Petitioner and the 2nd Respondent pursuant to the settlement of disputes concerning the other group companies. It is their specific case that the families of the Petitioner and the 2nd Respondent were shareholders in three other companies, namely Pioneer Bakeries Private Limited ("PBPL"), Milka Bakers Private Limited ("MBPL") and Pioneer Bake House Private Limited ("PBH"), all of which became the subject matter of proceedings before this Tribunal in T.C.P. Nos. 7, 8 and 9 of 2016 arising out of disputes with the other stakeholders of the group companies.

20. It is averred that the said proceedings ultimately culminated in a comprehensive settlement embodied in a Joint Memorandum of Compromise dated 25.03.2016, which came to be recorded by this Tribunal by order dated 07.09.2016 (Exhibit R-1). According to the Respondents, the terms of the compromise envisaged a complete division of the business interests of the parties in the various group companies. Under the said arrangement, Pioneer Bakeries Private Limited (PBPL) was allotted to the other contesting stakeholders, whereas Milka Bakers Private Limited (MBPL) and Pioneer Bake House Private Limited (PBH) were allotted to the Petitioner and the 2nd Respondent. It is specifically pleaded that, in terms of Schedules 2 and 3 appended to the Joint Memorandum of Compromise, 12,000 equity shares in MBPL and 11,250 equity shares in PBH stood vested in the name of the 2nd Respondent.

21. The Respondents further contend that, consequent upon the aforesaid settlement, an understanding was reached between the families of the Petitioner and the 2nd Respondent that there would be a complete separation of their respective business interests in the group companies. According to them, it was mutually agreed that the 1st Respondent Company, New Hope Food Industries Private Limited, would ultimately vest exclusively with the family of the 2nd Respondent, whereas the Petitioner would acquire complete ownership and control over Milka Bakers Private Limited and Pioneer Bake House Private Limited. The Respondents assert that the mechanism agreed upon for implementing the said family arrangement was a reciprocal swap of shareholdings, whereby the Petitioner would transfer his shareholding in the 1st Respondent

Company to the 2nd Respondent's family and, correspondingly, the 2nd Respondent would relinquish his family's interest in MBPL and PBH in favour of the Petitioner. It is, therefore, the Respondents' specific case that the transfer of the Petitioner's shares in the 1st Respondent Company was not an isolated transaction brought about by fraud or misrepresentation, but formed an integral part of the larger family settlement and business reorganization mutually agreed upon between the parties.

22. Elaborating upon the aforesaid family arrangement, the Respondents contend that the reciprocal exchange of shareholdings was implemented in stages and was substantially acted upon by both sides even prior to the transfer of shares in the 1st Respondent Company. According to the Respondents, by March 2018, the shares which had been earmarked in favour of the 2nd Respondent in Milka Bakers Private Limited (MBPL) and Pioneer Bake House Private Limited (PBH) under the Joint Memorandum of Compromise had already been transferred and vested in the Petitioner without any monetary consideration being paid to the 2nd Respondent. It is their specific case that the said transfers were effected solely in implementation of the family arrangement and not pursuant to any commercial sale transaction. The Respondents rely upon the balance sheets of MBPL and PBH for the financial year ended 31.03.2018 (Exhibits R-2 and R-3) to demonstrate that the Petitioner had become the holder of the said shares and submit that these documents constitute contemporaneous evidence corroborating the reciprocal arrangement between the parties. According to the Respondents, having accepted the benefits flowing under the family settlement by acquiring complete

ownership over MBPL and PBH, the Petitioner is estopped from disputing the corresponding transfer of his shareholding in the 1st Respondent Company.

23. The Respondents further plead that the second and final phase of the reciprocal arrangement was implemented during the first and second weeks of February 2019, when the Petitioner voluntarily completed the transfer of his interest in the 1st Respondent Company. In this regard, the Respondents rely upon the following sequence of events:

(a) According to the Respondents, the Petitioner and his wife, Smt. A. Nageshwari, voluntarily executed share transfer deeds in Form SH-4 covering their entire shareholding in the 1st Respondent Company in favour of the proposed transferees. It is their case that the duly executed transfer instruments (Exhibits R-4 and R-5) were accompanied by delivery of the corresponding original share certificates, duly endorsed in favour of the transferees (Exhibits R-6 and R-7). The Respondents contend that the execution of the transfer deeds and delivery of the original share certificates conclusively establish that the transfer was conscious, voluntary and complete.

(b) It is further pleaded that a meeting of the Board of Directors of the 1st Respondent Company was convened on 04.02.2019, at which both the Petitioner and his wife participated in their capacity as Directors of the Company. According to the Respondents, the Board considered and approved the transfer of the shares held by the Petitioner and his wife in favour of the 2nd Respondent and his daughter-in-law, Ms. Krithiga, by passing appropriate resolutions. The Respondents rely upon the minutes of the Board Meeting (Exhibit R-8) and point out that the minutes bear the signatures of, *inter alia*, the Petitioner and his wife, thereby evidencing their participation in and approval of the transaction.

(c) The Respondents further state that, consequent upon the transfer of their shareholding, the Petitioner and his wife tendered separate letters of resignation dated 06.02.2019 from the office of Director of the Company (Exhibits R-9 and R-10). According to the Respondents, the resignations were thereafter placed before the Board of Directors at its meeting held on 08.02.2019, where the same were duly accepted and recorded. Reliance is placed upon the minutes of the Board Meeting dated 08.02.2019 (Exhibit R-11), which, according to the Respondents, are also signed by the Petitioner and his wife clearly acknowledging the cessation of their office as Directors of the Company.

(d) It is further pleaded that, following the cessation of the Petitioner's association with the Company, the Company issued cheques aggregating ₹7,60,000/-, comprising ₹6,00,000/- towards repayment of the outstanding loan allegedly advanced by the Petitioner to the Company and ₹1,60,000/- towards payment of salary for the final four months of his service with the Company. The Respondents rely upon the relevant cheque details and supporting documents (Exhibit R-12) to contend that all financial obligations due to the Petitioner were duly discharged contemporaneously with the transfer of shares and resignation from the Board.

(e) According to the Respondents, the transactions were reciprocal in nature and were implemented simultaneously by both branches of the family. It is specifically pleaded that the 2nd Respondent and his brother, A. Natarajan, executed and delivered the requisite transfer deeds together with the original share certificates in respect of their remaining shareholding comprising 1,000 equity shares each in Milka Bakers Private Limited and 500 equity shares each in Pioneer Bake House Private Limited in favour of the Petitioner. The Respondents further state that, in furtherance of the same family arrangement, the 2nd Respondent resigned from the office of Director of Pioneer Bake House Private Limited on 06.02.2019, and that the said resignation was duly acknowledged and accepted by the Petitioner. Reliance is placed upon Exhibits R-13 and R-14 in support of the aforesaid contention. According to the Respondents, the simultaneous transfer of shares and exchange of directorial control in the respective companies unmistakably demonstrate that the parties consciously implemented the reciprocal family settlement in its entirety, thereby negativing the Petitioner's allegation that the transfer of his shares in the 1st Respondent Company was brought about by fraud or misrepresentation.

24. Respondents 1 to 4 further contend that the Petitioner's version that the documents executed by him were intended merely to create a pledge of shares for securing a proposed loan is wholly untenable and contrary to the contemporaneous documentary record. Had the Petitioner's intention indeed been limited to pledging his shares as security for a proposed borrowing, there would have been no conceivable reason for either the Petitioner or his wife to execute letters of resignation from the office of Director of the Company. It is submitted that the execution of resignation

letters by both of them contemporaneously with the transfer of shares unmistakably establishes that the parties had consciously agreed to sever their association with the 1st Respondent Company in furtherance of the reciprocal family arrangement. The Respondents therefore contend that the Petitioner's attempt to explain away the execution of the resignation letters is wholly artificial and unsupported by any contemporaneous material.

25. The Respondents deny the very foundation of the Petitioner's allegation that the Company intended to raise a loan of ₹30 Crores from a private lender by pledging the shares of its shareholders. According to them, the financial position of the Company at the relevant point of time did not warrant or justify any such borrowing. It is pleaded that the Company had no outstanding term loans or working capital borrowings, all earlier banking facilities had already been discharged in full, whereupon the lending bank had issued a full satisfaction certificate acknowledging complete repayment of the dues (Exhibit R-16). The Respondents further state that the only borrowings then subsisting were vehicle loans availed from Sundaram Finance Limited, which were routine asset-specific borrowings having no bearing on the Company's working capital requirements.

26. It is also the Respondents' case that the existing manufacturing infrastructure of the Company was substantially underutilized and that the plant was operating at only about 40% to 45% of its installed production capacity. Reliance is placed upon the certificate issued by a Chartered Engineer (Exhibit R-17) to demonstrate that the Company possessed

adequate production capacity to substantially increase its output without any requirement for additional capital expenditure or expansion of manufacturing facilities. According to the Respondents, in view of the Company's healthy financial position, absence of institutional debt and availability of considerable spare manufacturing capacity, there existed no commercial necessity whatsoever for raising a loan of ₹30 Crores, much so from an unidentified private lender against a pledge of the shareholders' equity.

27. On the aforesaid basis, the Respondents contend that the Petitioner's narrative regarding an intended borrowing of ₹30 Crores from an anonymous private financier is wholly implausible and inherently unbelievable. It is submitted that no prudent commercial entity would propose to raise such a substantial loan from an undisclosed lender by obtaining blank transfer forms and incomplete pledge documents from its shareholders, particularly when the Company neither required such funding nor had any expansion project necessitating the same. The Respondents therefore assert that the entire story relating to the proposed loan transaction, pledge of shares and execution of blank documents has been subsequently invented solely for the purpose of challenging the transfer of shares and initiating the present proceedings. According to the Respondents, the allegations constitute deliberate falsehoods amounting to suppression of material facts, perjury and fraud upon this Tribunal, and on that ground alone the Company Petition is liable to be dismissed with exemplary costs.

28. The Respondents further attribute a distinct motive to the institution of the present proceedings. According to them, the Petitioner had, on 10.11.2014, borrowed a sum of ₹35,00,000/- from the 2nd Respondent, as evidenced by the documents produced as Exhibit R-18. Upon implementation of the reciprocal family arrangement during February 2019 and the consequent separation of the parties' business interests, the 2nd Respondent called upon the Petitioner to discharge the said outstanding liability. It is only to avoid repayment of the said loan, while at the same time retaining the benefit of the shares already obtained by him in Milka Bakers Private Limited (MBPL) and Pioneer Bake House Private Limited (PBH) pursuant to the family settlement, the Petitioner has sought to resile from the reciprocal arrangement and challenge the transfer of his shareholding in the 1st Respondent Company. According to the Respondents, the Petitioner is attempting to unjustly enrich himself by retaining complete control over MBPL and PBH while simultaneously laying claim to the shareholding in the 1st Respondent Company, thereby seeking to derive a double benefit contrary to the understanding mutually acted upon by the parties.

29. The Respondents further contend that the Company Petition is vitiated by deliberate suppression of material facts and lack of candour on the part of the Petitioner. It is specifically alleged that the Petitioner has consciously omitted to disclose the existence of the *inter se* arrangement relating to the group companies and the reciprocal understanding pursuant to the Joint Memorandum of Compromise. According to the Respondents, the Petitioner has also suppressed the material fact that the

shares earmarked to the 2nd Respondent in MBPL and PBH had already been transferred and vested in the Petitioner in furtherance of the family settlement, without payment of any monetary consideration. The Respondents further allege that the Petitioner has intentionally failed to disclose the voluntary execution of the share transfer deeds, the delivery of the original share certificates, and the execution of his own letter of resignation as Director of the Company, all of which, according to them, form integral parts of the same transaction.

30. It is further pointed out that Smt. A. Nageshwari, the Petitioner's wife, had also transferred her entire shareholding in the 1st Respondent Company and had tendered her resignation as a director contemporaneously with the Petitioner. However, according to the Respondents, she has neither been impleaded as a petitioner in the present proceedings nor has she challenged either her transfer of shares or her resignation from the Board of Directors. The Respondents submit that the omission to implead the Petitioner's wife, despite her being an active participant in the very transactions now impugned by the Petitioner, is deliberate and is indicative of the falsity of the Petitioner's case.

31. The Respondents also allege that the interim order dated 20.03.2019 was procured by the Petitioner by withholding material facts from this Tribunal and by depriving the Respondents of an effective opportunity to contest the grant of interim relief. According to them, although the Company Petition was moved on 20.03.2019, copies of the Petition were served upon the Respondents only on the evening of 19.03.2019 (Exhibit R-

15), leaving them with virtually no opportunity to examine the pleadings, collect the relevant records or place their defence before this Tribunal at the time the interim application was heard. The Respondents therefore contend that the ad-interim order came to be obtained *ex-parte* by suppression of the true facts and that the conduct of the Petitioner in securing the interim protection in such manner constitutes a further abuse of the process of this Tribunal. They accordingly submit that the Petition is liable to be dismissed not only on merits but also on account of material suppression, lack of bona fides and abuse of the process of law.

32. Respondents 1 to 4 further deny the allegations relating to the alleged non-disclosure of related party transactions, diversion of business to the Affiliate Entities and unauthorized exploitation of the Company's trademarks and goodwill. According to the Respondents, these allegations are wholly untenable and are belied by the Petitioner's own conduct and the contemporaneous records of the Company. It is their specific case that the Petitioner, together with his wife, remained actively associated with the management of the Company throughout the relevant period and was fully aware of every material decision taken in relation to its affairs. The Respondents state that the Petitioner served as the Chairman of the Board of Directors, regularly attended the meetings of the Board, participated in virtually all the Board Meetings convened by the Company, which averaged approximately ten meetings every financial year, and was intimately involved in the day-to-day management, administration and commercial operations of the Company. It is further pleaded that the Petitioner was drawing a monthly remuneration of ₹50,000/- from the

Company in consideration of the services rendered by him as Chairman and Director.

33. The Respondents further contend that the allegations regarding concealment of related party transactions are demonstrably false inasmuch as the Company's Annual Reports and Financial Statements for the relevant financial years contain complete and transparent disclosure of all related party transactions in accordance with the requirements of the Companies Act, 2013 and the applicable Accounting Standards. According to the Respondents, the Petitioner himself has produced the Annual Reports for the financial years 2015-2016, 2016-2017 and 2017-2018 as Annexures C, D and E to the Company Petition, and the said documents clearly disclose the impugned transactions under Note 22 to the Financial Statements read with Form AOC-2. It is specifically pleaded that the disclosures therein record that the transactions entered into with the related parties were undertaken in the ordinary course of business and on an arm's length basis, and therefore comply with the requirements of Sections 184 and 188 of the Companies Act, 2013.

34. The Respondents further submit that the Petitioner was not merely aware of the contents of the Annual Reports but had, in his capacity as Chairman and Director of the Company, signed the Financial Statements, the Board's Report and the Directors' Responsibility Statement for each of the relevant financial years. Having expressly certified, year after year, that the financial statements presented a true and fair view of the affairs of the Company and that the statutory disclosures had been duly made, the

Petitioner is, precluded from now alleging suppression of related party transactions or financial impropriety. The Respondents contend that the Petitioner cannot be permitted to approbate and reprobate by affirming the correctness of the Company's accounts and statutory disclosures during his tenure as Chairman and Director and thereafter, upon his exit from the Company, challenging the very same accounts as being false or fraudulent. It is, their case that the Petitioner's conduct attracts the principles of acquiescence and estoppel and completely undermines the allegations of oppression and mismanagement founded upon the alleged non-disclosure of related party transactions and misuse of the Company's trademarks and business.

35. Respondents 1 to 4 further deny the Petitioner's allegation that the so-called "Affiliate Entities" were created as vehicles for siphoning the business, goodwill and intellectual property of the Company. According to the Respondents, the said concerns have been in existence for several years and their establishment, nature of business and use of the relevant trade names were all well within the knowledge of the Petitioner, who actively participated in the management of the Company throughout the relevant period. It is specifically pleaded that New Way Food Products commenced business in the year 2004, Grandway Foods and Allied Industries in 2013, R.R. Aqua Industries in 2014, and R.K. Fruit Juice and Beverages in 2017, all long before the institution of the present proceedings. The Respondents submit that these concerns were neither recently incorporated nor clandestinely operated, and that their existence and business activities

were openly carried on with the knowledge and acquiescence of the Petitioner.

36. It is further pleaded that New Way Food Products has been manufacturing and marketing bread products under the trade name "NEW WONDER" continuously since the year 2004, and that the bakery industry in which the parties operate is largely localized, functioning through a common network of distributors and dealers. According to the Respondents, the Petitioner, being actively involved in the day-to-day affairs of the Company and its business operations, was fully aware not only of the existence of these concerns but also of the use of the "NEW WONDER" brand by them over a prolonged period. The Respondents further point out that the Petitioner's allegations are contradicted by the Petition itself, inasmuch as the typed set filed by the Petitioner contains, at page 218, an advertisement relating to "NEW WONDER" bread featuring the photographs of the Petitioner and his wife. According to the Respondents, the Petitioner's own production of the advertisement clearly demonstrates his active association with and knowledge of the use of the "NEW WONDER" brand by New Way Food Products.

37. The Respondents further contend that there was never any unauthorized exploitation of the Company's intellectual property. It is their specific case that the 1st Respondent Company consciously restricted its manufacturing activities to cakes and allied bakery products and never engaged in the manufacture of bread. According to the Respondents, in view of the Company's decision not to manufacture bread products, it had,

under a License Agreement dated 31.03.2004, expressly licensed the artistic works relating to "NEW WONDER BREAD" and "NEW WONDER RUSK" in favour of New Way Food Products. The Respondents emphasize that the Petitioner himself was a witness to the execution of the said License Agreement and was, therefore, fully aware of the rights granted thereunder. It is contended that the Petitioner's allegation of unauthorized use of the Company's trademarks is contrary to the very agreement to which he was a witness.

38. The Respondents further submit that the commercial dealings between the Company and the so-called Affiliate Entities were transparent and were undertaken with the knowledge and approval of the Board of Directors. In this regard, it is pleaded that Grandway Foods and Allied Industries supplied rusk products to the Company during the year 2014 pursuant to a duly approved Board Resolution, in which the Petitioner himself had participated. Reliance is placed upon Exhibit R-19 to contend that the transactions between the Company and Grandway Foods were authorized by the Board and cannot now be characterized as acts of oppression or diversion of business.

39. In answer to the allegation that the advertisement expenditure of the Company had been utilized for promoting the business of the Affiliate Entities, the Respondents state that each of the concerns independently accounted for and incurred its own advertisement expenditure in its respective books of account. They rely upon the documents produced as Exhibit R-20 series to contend that the advertisement expenses relating to

the Affiliate Entities were separately reflected in their financial statements and were not borne by the 1st Respondent Company, as alleged by the Petitioner.

40. The Respondents also dispute the allegation relating to R.K. Fruit Juice and Beverages and R.R. Aqua Industries. According to them, the said entities are engaged in the manufacture and sale of fruit juices and packaged drinking water, which fall under Class 32 of the Trade Marks classification. It is specifically pleaded that the Company does not possess any registered trade mark in Class 32, and therefore the allegation that the said entities have infringed or exploited the Company's registered trademarks is wholly misconceived. The Respondents further point out that the Petitioner himself has been purchasing packaged drinking water marketed under the brand "Milka Wonder Drops" from R.R. Aqua Industries for use in his own hotel business, and rely upon Exhibit R-21 in support of the said contention. According to the Respondents, the Petitioner's own conduct in commercially dealing with the said products is wholly inconsistent with his present allegation that the use of the mark was illegal or unauthorized.

41. Without prejudice to the aforesaid factual contentions, the Respondents submit that the Petitioner's grievance, insofar as it relates to the alleged infringement, misuse or unauthorised exploitation of the Company's registered trademarks and the claim for damages arising therefrom, falls exclusively within the domain of the law relating to intellectual property and trade marks. According to the Respondents, such

disputes cannot be adjudicated in proceedings under Sections 241 and 242 of the Companies Act, 2013, the scope of which is confined to allegations of oppression and mismanagement in the affairs of the Company. It is therefore contended that, even assuming without admitting that any issue relating to the Company's trademarks survives, the appropriate remedy lies before the competent forum under the Trade Marks Act, 1999, and not before this Tribunal in the present Company Petition.

42. Respondents 1 to 4 also deny the Petitioner's allegations relating to unaccounted cash sales, suppression of turnover, incorrect reporting under the Goods and Services Tax laws, fictitious trade receivables, removal of manufacturing equipment and misuse of the Company's vehicles. According to the Respondents, these allegations are wholly vague, speculative and unsupported by any documentary material whatsoever. It is contended that the Petitioner has merely made sweeping accusations without identifying any specific transaction, record or document in support thereof and that such bald averments cannot constitute a valid foundation for a petition alleging oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013.

43. Insofar as the allegation regarding substantial cash sales and incorrect GST reporting is concerned, the Respondents deny that any sales were effected outside the books of account or that there was any suppression of turnover or evasion of statutory taxes. According to the Respondents, the Company has consistently maintained its books of account in accordance with law and has regularly filed its statutory returns

before the concerned authorities. It is their case that the Petitioner has not produced even a single document to substantiate the allegation of unaccounted cash transactions or incorrect GST reporting and has merely sought a fishing and roving enquiry on the basis of conjectures and surmises.

44. The Respondents similarly refute the allegation that the trade receivables reflected in the Company's financial statements are fictitious or inflated. According to them, a substantial portion of the outstanding receivables pertains to the period prior to the financial year 2015 and relates to the Company's attempts to expand its business into overseas markets. It is further pleaded that the receivables have been consistently disclosed in the audited financial statements of the Company together with the requisite ageing analysis and other particulars prescribed under the applicable Accounting Standards. The Respondents emphasise that the Petitioner himself, in his capacity as Chairman and Director of the Company, had approved and signed the Annual Reports containing these disclosures and therefore cannot now be permitted to contend that the receivables are fabricated or manipulated.

45. The Respondents further deny the allegation that manufacturing equipment, testing instruments or quality control machinery belonging to the Company had been removed and diverted to the factories of the alleged Affiliate Entities. Likewise, the allegation that the Company's vehicles were utilized for the benefit of the Affiliate Entities without authority or reimbursement is also denied. According to the Respondents,

these allegations are wholly unsupported by any inventory records, inspection reports, transport documents or any other material capable of substantiating the Petitioner's assertions. It is their case that the Petitioner has failed to produce any evidence whatsoever to demonstrate that any asset belonging to the Company had been removed, diverted or misappropriated by Respondents 2 to 4.

46. The Respondents therefore contend that each of the allegations relating to cash sales, GST reporting, trade receivables, diversion of assets and misuse of Company vehicles is devoid of factual foundation and has been raised solely to create an impression of widespread financial irregularity without any supporting material. According to them, the Petition is founded upon mere suspicion and conjecture rather than credible evidence and does not disclose any act of oppression or mismanagement warranting interference by this Tribunal under Sections 241 and 242 of the Companies Act, 2013. The Respondents accordingly pray that the Company Petition be dismissed with exemplary costs and that the ad-interim order dated 20.03.2019 directing maintenance of the original shareholding pattern be vacated.

III. SUBMISSIONS OF RESPONDENTS 5 AND 6

47. Respondents 5 and 6 have filed a separate Counter Statement denying in toto the allegations levelled against them in the Company Petition. They contend that they have been unnecessarily impleaded in the proceedings without any legal or factual basis and that the allegations made against them are scandalous, reckless and intended only to malign

their professional reputation. It is their specific case that the 6th Respondent was appointed as the Statutory Auditor of the 1st Respondent Company at its 18th Annual General Meeting held on 27.09.2014 and continued in that capacity until his resignation. Upon his resignation, the 5th Respondent firm was appointed as the Statutory Auditor of the Company at the 21st Annual General Meeting held on 29.09.2017 for a period of five years in accordance with the provisions of the Companies Act, 2013. The Respondents submit that, during their respective tenures, they discharged only the statutory functions entrusted to them as auditors of the Company and did not perform any accounting, bookkeeping, internal audit, management consultancy or financial advisory services for the Company. According to them, the Company maintained an independent accounts department responsible for preparation and maintenance of its books of account and financial records, and the statutory auditors merely audited the financial statements in the discharge of their professional duties. It is contended that Respondents 5 and 6 are neither necessary nor proper parties to the present proceedings and have been impleaded solely with a view to cast aspersions upon their integrity and professional conduct without any supporting material.

48. Insofar as the events surrounding the transfer of shares during February 2019 are concerned, the 6th Respondent has set out his own version of the events and has denied the Petitioner's allegation that the share transfer documents were executed under the guise of creating a pledge in favour of an anonymous lender. According to the 6th Respondent, during the first week of February 2019, both the Petitioner

and the 2nd Respondent informed him that they had mutually agreed to exchange their respective shareholdings pursuant to the family settlement and sought his advice regarding the statutory formalities required to give effect to the said arrangement. The 6th Respondent states that, at the request of both parties, he travelled to Erode on 06.02.2019 and reached the factory office of the Company approximately at 10.00 a.m. The Petitioner arrived at the office at about 11.30 a.m., whereupon both the Petitioner and the 2nd Respondent produced before him the share transfer deeds, which, had already been duly executed and signed by the parties on 04.02.2019, together with the minutes of the Board Meeting dated 04.02.2019, recording the approval of the transfer of shares. It is averred that both the Petitioner and the 2nd Respondent appeared to be cordial and were acting in furtherance of the mutually agreed family arrangement. The 6th Respondent further states that the letters of resignation tendered by the Petitioner and his wife from the office of Director were exchanged in his presence, whereupon he advised the parties that an appropriate meeting of the Board of Directors should be convened for formally taking the resignations on record and completing the necessary statutory compliances. Acting upon the said advice, a Board Meeting was convened on 08.02.2019, wherein the resignations were accepted and recorded. The 6th Respondent therefore categorically denies that he was involved in procuring the Petitioner's signatures on blank papers or incomplete documents or that any proposal for obtaining a loan of ₹30 Crores against a pledge of shares was discussed in his presence. He characterises the Petitioner's entire narrative relating to an intended loan transaction, anonymous lender, pledge of shares and execution of blank documents as wholly false, inherently improbable and an afterthought invented solely for the purpose of challenging the completed transfer of shares.

49. Respondents 5 and 6 further contend that several surrounding circumstances completely belie the Petitioner's version of events. They point out that the Petitioner's wife, Smt. A. Nageshwari, who had simultaneously transferred her shareholding in the Company and tendered her resignation from the office of Director, has neither challenged the validity of those transactions nor supported the Petitioner's allegations in the present proceedings. According to Respondents 5 and 6, the omission to implead her as a party to the Company Petition or to challenge her transfer of shares and resignation from directorship materially weakens the Petitioner's case and is indicative of the falsity of the allegations now made. It is further pleaded that, following the settlement embodied in the Joint Memorandum of Compromise executed in the year 2016, the Petitioner, who was then well into his seventies, had on several occasions expressed to the 2nd Respondent as well as to the 6th Respondent his desire to gradually retire from active business owing to his advancing age and health-related issues. According to the Respondents, the Petitioner's eventual resignation from the office of Director and transfer of his shareholding were entirely consistent with the said intention and formed part of the broader family arrangement separating the business interests of the parties. Respondents 5 and 6 further deny the allegation that the statutory records, share transfer forms or other corporate documents were retained in the custody of the 6th Respondent. It is asserted that all statutory registers, share certificates, minutes books and corporate records

were at all material times maintained by and remained in the custody of the Company itself. The Respondents also point out that the Petitioner had, in his capacity as Chairman and Director, signed the Annual Reports, Financial Statements and Directors' Responsibility Statements for the financial years ended 31.03.2016, 31.03.2017 and 31.03.2018, which have in fact been produced by the Petitioner himself as Annexures C, D and E to the Company Petition. According to Respondents 5 and 6, having certified the correctness of the financial statements and statutory disclosures during the relevant years, the Petitioner is estopped from subsequently alleging that the trade receivables were fictitious, the accounts were manipulated or that the statutory auditors had committed professional misconduct in certifying the financial statements. On the aforesaid premises, Respondents 5 and 6 pray that the Company Petition be dismissed with exemplary costs, contending that the allegations against them are wholly frivolous, unsupported by any evidence and have been made only with a view to tarnish their professional standing.

IV. REJOINDER OF THE PETITIONER

50. The Petitioner filed a Rejoinder dated 06.08.2019, traversing the averments contained in the Counter Statements filed by Respondents 1 to 6 reiterating that the transfer of his shareholding was procured by fraud and misrepresentation. The Petitioner specifically disputes the defence founded upon the alleged reciprocal "swap of shares" and the family arrangement and, in substance, raises the following contentions:

(i) **The alleged "swap of shares" is a subsequent invention:** The Petitioner contends that the entire defence based upon an alleged reciprocal exchange of shareholdings is an afterthought introduced only after institution of the present proceedings. According to the Petitioner, neither Respondents 1 to 4 nor any member of the family of the 2nd Respondent was a party to T.C.P. Nos. 7, 8 and 9 of 2016 or to the Joint Memorandum of Compromise dated 25.03.2016, and therefore no rights can be claimed by them under the said settlement. It is pleaded that, under the compromise, the Petitioner relinquished his shareholding in Pioneer Bakeries Private Limited (PBPL) only in consideration of Jayakrishnan and his family members surrendering their shareholding in Milka Bakers Private Limited (MBPL) and Pioneer Bake House Private Limited (PBH). In addition to surrendering his own rights in PBPL, he had also paid a sum of ₹41,00,000/- from his personal funds towards acquisition of the shareholding held by Jayakrishnan and his family in MBPL and PBH. It is further contended that the 2nd Respondent's name found place in the schedules to the Joint Memorandum of Compromise only as the Petitioner's nominee or "Associate", solely because of the trust and confidence reposed in him by the Petitioner at the relevant point of time, and not because the 2nd Respondent had any independent entitlement under the settlement.

(ii) **There was no reciprocal consideration for the Petitioner's shares:** The Petitioner further disputes the Respondents' assertion that the transfer of his shareholding in the 1st

Respondent Company formed part of a reciprocal exchange. According to him, the 2nd Respondent's actual shareholding in the other companies was insignificant, comprising only 1,000 equity shares (approximately 3.85%) in MBPL and 200 equity shares (approximately 2.12%) in PBH, whereas the Petitioner and members of his family together held approximately 87.49% of the shareholding in MBPL and 95.74% in PBH. It is contended that the surrender by the 2nd Respondent of such negligible shareholding could never constitute reciprocal consideration for the transfer by the Petitioner and his wife of their aggregate 46.96% shareholding in the 1st Respondent Company. The Petitioner further pleads that MBPL and PBH had, in any event, ceased to carry on business since 2015 and March 2018 respectively, and therefore the alleged exchange of shareholdings was commercially irrational. It is also pointed out that the 2nd Respondent himself had signed the balance sheet of PBH for the financial year ended 31.03.2018, reflecting the altered shareholding pattern, and yet there is not a single Board Resolution, minute book entry, correspondence or contemporaneous record evidencing the alleged agreement for a reciprocal swap of shares.

(iii) **The transfer documents themselves disclose the fraud:** The Petitioner reiterates that the share transfer forms in Form SH-4 relied upon by the Respondents themselves expose the fraudulent nature of the transaction. According to him, the printed format of Form SH-4 is such that his signatures appear only on the first page, whereas the particulars relating to the transferees are contained entirely on the second page, which does not bear his signature. It is further alleged that, except for the handwritten date, all other particulars appearing in the transfer forms had already been filled in before the documents were produced. The Petitioner further points out that the Respondents have not produced any material whatsoever evidencing payment of consideration for the alleged transfer of shares. He also contends that, if the original resignation letters are summoned and examined by this Tribunal, they would reveal that his signatures had been obtained on blank papers and that the body of the resignation letters, including the dates, had been subsequently typed or printed over the signed sheets.

(iv) **The chronology of events is inherently inconsistent:** The Petitioner also attacks the Respondents' version on the ground that the sequence of events relied upon by them is internally inconsistent. According to him, while the Respondents claim that the transfer deeds in Form SH-4 and the Board Meeting approving the transfer are both dated 04.02.2019, the resignation letters relied upon by them bear the date 06.02.2019, and yet another Board Meeting allegedly held on 08.02.2019 records acceptance of the resignations as though all concerned parties had participated therein. The Petitioner further refers to a letter dated 27.03.2019 issued by the Company's Accountant, Murugesan, wherein the letter is stated to have referred to his presence at the time of the transfer on yet another date. According to the Petitioner, these conflicting versions regarding the dates of execution of the various documents and the alleged meetings unmistakably demonstrate that the documents relied upon by the Respondents have been subsequently fabricated and manipulated.

(v) **The loan and salary payments are irrelevant to the dispute:** The Petitioner does not dispute receipt of the sums of ₹6,00,000/- towards repayment of the loan advanced by him to the Company and ₹1,60,000/- towards salary arrears. However, he contends that these payments have no nexus whatsoever with the alleged transfer of shares and cannot be relied upon to infer his consent to the impugned transaction. The Petitioner further submits that the alleged personal loan of ₹35,00,000/- advanced by the 2nd Respondent to him during the year 2014 was an independent personal transaction having no connection with either the affairs of the Company or the present Company Petition and that the Respondents are attempting to introduce irrelevant issues only to prejudice his case.

(vi) **The allegations of oppression and mismanagement are reiterated:** In relation to the allegations concerning diversion of business and misuse of the Company's intellectual property, the Petitioner contends that the License Agreement dated 31.03.2004, heavily relied upon by the Respondents, was valid only for a period of three years and had long since expired. According to him, no royalty was ever fixed or paid pursuant to the said agreement. The Petitioner also questions the authenticity of the agreement by pointing out that his signature appears thereon merely as a witness alongside the common seal of the Company, suggesting that his signature may have been lifted from another document. It is further contended that the 2nd Respondent had executed the said agreement on behalf of the Company while simultaneously representing his own brother, thereby acting on both sides of the transaction in complete disregard of the principles governing arm's length dealings and in violation of the requirements of Sections 184 and 188 of the Companies Act, 2013. The Petitioner further submits that the Respondents have failed to furnish any detailed break-up of the advertisement expenditure of ₹53,12,182/- or any satisfactory explanation regarding the substantial trade receivables reflected in the Company's accounts. According to the Petitioner, the Respondents' own assertion that the Company's manufacturing facility was operating at only 40% to 45% of its installed capacity gives rise to a legitimate inference that substantial production and sales were being carried on outside the books of account. It is further alleged that the Respondents have deliberately failed to produce the Company's asset register despite specific allegations regarding removal of machinery and equipment. The Petitioner also places reliance upon an alleged 'No-Objection Certificate' issued in favour of R.R. Aqua Industries, which was filed before the Trade Marks Registry on 29.05.2019, subsequent to the interim order passed by this Tribunal on 20.03.2019, and contends that the said document (Annexure M) constitutes further evidence of the continuing collusive acts of oppression and mismanagement by Respondents 2 to 6.

(vii) **Signing of financial statements does not preclude the present challenge:** Lastly, the Petitioner disputes the Respondents' contention that, having signed the Annual Reports and Directors' Responsibility Statements, he is estopped from questioning the correctness of the Company's accounts. According to the Petitioner, a shareholder-director can certify the financial statements only on the basis of disclosures made by the management and the interested directors. He submits that Section 184 of the Companies Act casts a mandatory obligation upon interested directors to disclose their interest in related party transactions, and unless such statutory disclosures are made, a non-interested director cannot reasonably be expected to discover concealed related party dealings merely from the financial statements. The Petitioner contends that his signatures on the Annual Reports cannot operate as a bar to questioning transactions which were allegedly concealed from him in violation of the statutory requirements. It is further stated that his wife was taking appropriate steps to have herself impleaded in the present proceedings, thereby explaining her absence as a party to the Company Petition.

V. SUR – REJOINDER OF THE RESPONDENTS 1 TO 4

51. Respondents 1 to 4 thereafter filed a Sur-Rejoinder dated 14.10.2019, reiterating the averments contained in their Counter Statement and specifically dealing with the additional pleas raised by the Petitioner in the Rejoinder. At the outset, the Respondents dispute the Petitioner's contention that the defence based on the alleged reciprocal swap of shareholdings is an afterthought. According to the Respondents, the very fact that the 2nd Respondent was not a party to T.C.P. Nos. 7, 8 and 9 of 2016 explains why he did not figure as a contesting party to those proceedings or to the Joint Memorandum of Compromise. However, it is pointed out that Schedules 2 and 3 appended to the Joint Memorandum of Compromise, which ultimately formed part of the order passed by this Tribunal on 07.09.2016, specifically identify the 2nd Respondent as the transferee of the shares in Milka Bakers Private Limited (MBPL) and Pioneer Bake House Private Limited (PBH), with an exhaustive description of the number of shares to be transferred in his favour. According to the

Respondents, the deliberate inclusion of the 2nd Respondent's name in the schedules to the compromise demonstrates the existence of a conscious and binding understanding between the parties regarding the ultimate division of the business interests of the respective families. They contend that the said compromise, having culminated in a judicial order of this Tribunal, binds the Petitioner, who cannot now seek to disown or reinterpret its terms after having derived the benefits flowing therefrom.

52. The Respondents further submit that the Petitioner's attempt to describe the 2nd Respondent as a mere "nominee" or "Associate" is wholly untenable. According to them, if the 2nd Respondent had in fact held the shares only as a nominee or without any beneficial interest, the Petitioner was under a statutory obligation to make the requisite disclosures relating to beneficial ownership in terms of Section 90 of the Companies Act, 2013 and the rules framed thereunder. It is pointed out that no such declaration or statutory compliance was ever made by the Petitioner, thereby completely falsifying his present stand that the 2nd Respondent had no beneficial interest in the shares. The Respondents therefore contend that the plea of nomination has been introduced only as an afterthought to avoid the consequences of the family arrangement.

53. It is further submitted that the Petitioner has admittedly accepted and retained the benefits arising out of the compromise and the subsequent transfer of the 2nd Respondent's shareholding in MBPL and PBH in his favour. Having appropriated the benefits under the family arrangement and the consent order of this Tribunal, the Petitioner, cannot

now be permitted to challenge the corresponding transfer of his own shareholding in the 1st Respondent Company or contend that the arrangement never existed. The Respondents submit that such conduct amounts to approbation and reprobation, which is impermissible in law, and characterizes the Petitioner's stand as a deliberate attempt to mislead this Tribunal by suppressing material facts and asserting mutually destructive pleas. They further allege that the Petitioner's conduct amounts to perjury and abuse of the process of law.

54. Respondents 1 to 4 further contend that the Petitioner's allegations of fraud stand completely contradicted by the contemporaneous documentary evidence. According to them, the first page of Form SH-4 itself contains complete particulars relating to the shares transferred, including the details necessary to identify the subject matter of the transfer, and there is no ambiguity or scope for suggesting that the Petitioner believed that he was executing documents relating merely to a pledge of shares. It is further pointed out that the execution of the transfer deeds was accompanied by delivery of the original share certificates, participation in the Board Meeting approving the transfer, execution of letters of resignation by both the Petitioner and his wife and the recording of the same in the Board Minutes. These contemporaneous acts constitute an integrated transaction and are wholly irreconcilable with the Petitioner's present plea that he intended merely to create a pledge in favour of an unidentified lender. The Respondents also reiterate that the allegations relating to suppression of related party transactions are contrary to the Company's own audited financial statements, which had been signed and

approved by the Petitioner himself. According to them, the Annual Reports expressly disclose all related party transactions in compliance with the Companies Act, 2013 and the applicable Accounting Standards, thereby rendering the Petitioner's present allegations wholly untenable.

55. With regard to the allegations concerning the use of the trade mark "MILKA" by R.R. Aqua Industries, the Respondents once again contend that the Company does not hold any registration in Class 32 under the Trade Marks Act, 1999. They further point out that the Petitioner himself had admittedly purchased packaged drinking water marketed under the brand "Milka Wonder Drops" from R.R. Aqua Industries for use in his own hotel business and, having voluntarily transferred his entire shareholding in the Company and ceased to be a member thereof, lacks the necessary locus standi to question the issuance of any 'No-Objection Certificate' by the Company in favour of R.R. Aqua Industries.

56. The Respondents also answer the Petitioner's criticism of the License Agreement dated 31.03.2004 by submitting that the Petitioner himself consciously signed the said document in the capacity in which he appears therein and cannot now be permitted to contend that his signature was lifted from another document or misused. According to the Respondents, no material whatsoever has been produced by the Petitioner to substantiate such an allegation.

57. Lastly, the Respondents emphasize that the Petitioner is not an inexperienced or gullible individual who could have innocently signed

share transfer documents believing them to relate merely to a pledge of shares. It is pointed out that the Petitioner has, over the years, served as a director in several companies, has been actively engaged in the hotel industry and in share transactions, and possesses considerable commercial experience. The Respondents further rely upon Exhibits R-22 and R-23, which, according to them, demonstrate that the Petitioner himself was accustomed to writing and recording minutes of meetings in his own handwriting. In such circumstances, they submit that the Petitioner's plea that he blindly signed transfer deeds, resignation letters and other corporate documents without understanding their contents is wholly unbelievable. They reiterate that, in any event, the Company had no commercial necessity to borrow ₹30 Crores, and therefore the story of a proposed loan transaction is inherently improbable.

58. In support of the aforesaid submissions, the learned Counsel appearing for Respondents 1 to 4 also filed a detailed Synopsis of Arguments, placing reliance upon, *inter alia,* the decisions in **Rachakonda Siva Kumar v. Zetatek Industries Ltd.; Bhagwat Sharan (Dead) through LRs. v. Purushottam, (2020) 6 SCC 387; Rajasthan State Industrial Development & Investment Corporation Ltd. v. Diamond & Gem Development Corporation Ltd., (2013) 5 SCC 470; K.S.P. Valli v. Richfield Agencies Pvt. Ltd., [2006] 132 Comp Cas 848 (CLB); Mathu v. Cherchi, 1990 (1) KLT 416; Kumar Dinesh Seth v. MRO-TEK Ltd.; Srikanta Datta Narasimharaja Wadiyar v. Sri Venkateswara Real Estate Enterprises Pvt. Ltd., [1991] 72 Comp Cas 211 (Kar); Kole Investment and Trading Co. Pvt. Ltd. v. Sulochana Neelkanth Kalyani, [2018] 207 Comp**

Cas 113 (NCLAT); Anil Gupta v. Yogesh Mahajan, MANU/NC/0177/2016; A.P. State Financial Corporation v. GAR Re-Rolling Mills, (1994) 2 SCC 647; and M.R. Shah v. Vardhman Dye-Stuff Industries Pvt. Ltd., [2005] 128 Comp Cas 710 (CLB). On the strength of the aforesaid authorities, it is contended that (i) a person who has voluntarily divested himself of his shareholding ceases to possess the qualification necessary to maintain a petition under Sections 241 and 242 read with Section 244 of the Companies Act, 2013; (ii) a party who has accepted and retained the benefits arising from a transaction or a consent decree cannot subsequently challenge the same by approbating and reprobating; (iii) allegations of fraud must be pleaded with specificity and proved by cogent evidence, the burden lying entirely upon the person alleging fraud; and (iv) a person who has actively participated in, approved and acquiesced in the management and affairs of a company cannot subsequently complain that the very acts in which he participated constitute oppression and mismanagement.

VI. POINTS FOR DETERMINATION

59. We have heard the elaborate submissions of the learned Counsel appearing for the Petitioner, the learned Counsel appearing for Respondents 1 to 4 and the learned Counsel appearing for Respondents 5 and 6. We have also carefully perused the Company Petition, the Counter Statements filed by Respondents 1 to 4 and Respondents 5 and 6, the Rejoinder filed by the Petitioner, the Sur-Rejoinder filed by Respondents 1 to 4, the written submissions, the synopsis of arguments, the authorities

relied upon by the respective parties and the entire typed sets of documents placed on record.

60. Upon consideration of the pleadings, rival submissions and the materials available on record, the following issues arise for determination in the present Company Petition:

(i) Whether the Petitioner has established that the transfer of the equity shares held by him and his wife in the 1st Respondent Company in favour of the 2nd Respondent and Ms. Krithiga was brought about by practising fraud, misrepresentation or any other vitiating circumstance so as to warrant annulment of the said transfer and the connected corporate actions in exercise of the powers conferred upon this Tribunal under Section 242(2) read with Section 243 of the Companies Act, 2013?

(ii) Whether, having regard to the defence raised by the Respondents that the Petitioner had voluntarily transferred his entire shareholding prior to the institution of the present proceedings, the Petitioner does not possess the requisite *locus standi* and satisfied the eligibility requirements prescribed under Section 244 of the Companies Act, 2013 for maintaining the present petition under Sections 241 and 242 of the Act?

(iii) Whether the Petitioner has succeeded in establishing that the affairs of the 1st Respondent Company have been conducted in a manner oppressive to him or prejudicial to the interests of the Company, or that the affairs of the Company have been mismanaged within the meaning of Sections 241 and 242 of the Companies Act, 2013, so as to warrant interference by this Tribunal?

(iv) Whether the allegations levelled against Respondents 5 and 6, in their capacity as the Statutory Auditors of the Company, disclose any actionable misconduct or collusion warranting any direction against them in the present proceedings?

(v) To what reliefs, if any, are the parties entitled?

VII. ANALYSIS AND FINDINGS

ISSUE NO. (I):

61. The principal relief sought in the present Company Petition is the annulment of transfer of the Petitioner's shareholding in the 1st Respondent Company. The entire edifice of the Petition rests upon the allegation that the Petitioner's signatures on the share transfer forms (Form SH-4), the alleged Pledge Agreement and other connected documents were obtained by fraud and misrepresentation under the guise of creating a pledge of shares to secure a proposed loan of ₹30 Crores from an unidentified private lender. According to the Petitioner, he never intended to transfer his shares and believed that the documents executed by him were merely intended to facilitate the proposed loan transaction.

62. It is trite that fraud is a serious allegation carrying grave civil consequences. The burden of proving fraud lies entirely upon the person who alleges it, and the standard of pleading and proof required is

considerably higher than that applicable to ordinary civil disputes. Fraud cannot be inferred on the basis of suspicion, conjecture or probabilities alone but must be established by clear, cogent and convincing evidence. The principles enunciated by the Hon'ble Supreme Court in *Bishundeo Narain v. Seogeni Rai*, AIR 1951 SC 280 and *Bhagwat Sharan (Dead) through LRs. v. Purushottam*, (2020) 6 SCC 387 continue to hold the field. Tested on the aforesaid principles, we are unable to accept the Petitioner's version for the reasons recorded hereinafter.

63. The first and foremost circumstance which militates against the Petitioner's case is the contemporaneous documentary record. The documents produced by the Respondents disclose a sequence of events which are wholly consistent with a voluntary transfer of ownership and wholly inconsistent with the creation of a mere pledge. The materials placed before this Tribunal show that:

(a) the Petitioner and his wife executed Form SH-4 transferring their entire shareholding in favour of the 2nd Respondent and Ms. Krithiga;

(b) the original share certificates were simultaneously delivered after due endorsement;

(c) the Board of Directors, at its meeting held on 04.02.2019, approved the registration of the transfers, and the minutes of the meeting bear the signatures of the Petitioner and his wife;

(d) the Petitioner and his wife submitted letters of resignation from the office of Director on 06.02.2019;

(e) the Board, at its meeting held on 08.02.2019, accepted the resignations and recorded the same in the minutes, which again bear their signatures; and

(f) the Company simultaneously settled the Petitioner's outstanding dues by issuing cheques towards repayment of the loan advanced by him and payment of salary.

64. Each of the above events forms part of a continuous and coherent transaction. Significantly, none of these acts is ordinarily associated with a pledge of shares. A pledge merely creates a security interest while ownership and membership continue with the pledgor. A pledgor continues to remain a shareholder, retains his membership rights unless otherwise contracted, and ordinarily continues as Director unless he independently resigns. Consequently, execution of transfer deeds, delivery of original share certificates, registration of transfers, resignation from the Board and settlement of service dues cannot, in ordinary commercial practice, be regarded as acts incidental to creation of a pledge.

65. The Petitioner has not offered any satisfactory explanation as to why he and his wife simultaneously resigned from the Board if the intention was merely to secure a loan. The explanation subsequently offered in the Rejoinder, namely that blank signed papers were subsequently converted into resignation letters, is unsupported by any independent evidence. No handwriting expert has been examined. No forensic examination has been sought. No contemporaneous protest or complaint immediately after the alleged discovery has been produced. Such a plea, raised only after the

Respondents produced the original documents, cannot by itself dislodge the evidentiary value of the contemporaneous records.

66. Equally unconvincing is the very foundation of the Petitioner's case, namely that the Company intended to borrow ₹30 Crores from an anonymous private financier by pledging the shareholding of its shareholders. The Respondents have placed on record materials to show that the Company had already discharged its institutional borrowings, that the only subsisting liabilities related to vehicle finance, and that its manufacturing facilities were operating only at about 40% to 45% of installed capacity. These facts have not been effectively rebutted.

67. If the Company truly intended to raise finance of such magnitude, one would ordinarily expect some documentary trail in the form of correspondence with the lender, a term sheet, sanction letter, valuation report, due diligence papers or at least a completed pledge agreement identifying the lender and the financial terms. No such document has been produced by the Petitioner. Indeed, according to the Petitioner's own case, he neither knew the identity of the proposed lender nor retained copies of any of the documents allegedly executed by him. Such conduct appears inherently improbable, particularly when viewed in the context of the Petitioner's own experience.

68. The Petitioner was not an inexperienced investor unfamiliar with corporate transactions. Admittedly, he had been Chairman of the Company since inception, had served as Director in several companies,

had actively participated in the affairs of group companies, was engaged in the hospitality business and was also involved in share transactions. The materials placed by the Respondents also show that the Petitioner himself was accustomed to recording Board proceedings. In these circumstances, it is difficult to accept that such a person would execute transfer deeds covering his entire shareholding, deliver original share certificates, resign as Director and settle all his accounts with the Company merely on the assurance that the documents related to a proposed pledge.

69. The defence set up by the Respondents regarding the reciprocal family arrangement also finds considerable support from the documentary record. The Joint Memorandum of Compromise dated 25.03.2016, which culminated in an order of this Tribunal in T.C.P. Nos.7 to 9 of 2016, specifically identifies the 2nd Respondent as the transferee of specified shares in MBPL and PBH. The Petitioner's attempt to explain this by describing the 2nd Respondent as merely an "Associate" or nominee is not supported by any contemporaneous record. No declaration of beneficial ownership under Sections 89 or 90 of the Companies Act was ever filed. More importantly, it is an admitted position that the shares standing in the name of the 2nd Respondent in MBPL and PBH ultimately came to be transferred in favour of the Petitioner. Having accepted the benefit flowing from those transfers, the Petitioner cannot selectively repudiate the corresponding obligation said to arise from the same overall arrangement. Whether the commercial values of the respective shareholdings were exactly equivalent is not a matter which this Tribunal is required to evaluate in proceedings of the present nature. Family settlements

frequently involve commercial adjustments which may not correspond to strict market valuation. Unless fraud is independently established, mere disparity in value cannot invalidate a transaction voluntarily entered into between parties. The principle that a party cannot simultaneously accept the benefits of a transaction while rejecting its corresponding obligations is too well settled to require elaboration.

70. The conduct of the Petitioner's wife also assumes significance. The Petitioner's wife transferred her entire shareholding under identical transfer deeds, resigned from the office of Director by an identical resignation letter and participated in the same sequence of events. Yet, she has neither challenged the validity of the transfer nor questioned her resignation. Although the Rejoinder states that she is taking steps to implead herself in these proceedings, no such application is ever pursued. Likewise, the Company Petition is conspicuously silent regarding the transfer of her shares, the circumstances surrounding her resignation and the benefits admittedly received by the Petitioner under the family settlement relating to MBPL and PBH. The suppression of these material facts materially affects the credibility of the Petitioner's version. Proceedings under Sections 241 and 242 invoke the equitable jurisdiction of this Tribunal. A litigant seeking equitable relief is expected to place before the Tribunal the complete factual matrix. Selective disclosure of facts and suppression of material circumstances disentitle a party from obtaining discretionary relief.

71. Considerable emphasis was laid by the Petitioner on the alleged inconsistencies regarding the dates appearing in the documents. We are unable to attach much significance to this submission. The chronology disclosed by the records appears entirely consistent with the Respondents' version, namely:

(i) approval and execution of the transfer on 04.02.2019;
(ii) submission of resignations on 06.02.2019; and
(iii) formal acceptance of those resignations by the Board on 08.02.2019.

This sequence neither appears unnatural nor gives rise to any inference of fabrication. Minor variations regarding the sequence in which ancillary events occurred cannot outweigh the substantial body of contemporaneous documentary evidence establishing the transaction.

72. For all the aforesaid reasons, we are of the considered view that the Petitioner has failed to discharge the burden of proving that the transfer of his shareholding was procured by fraud, coercion or misrepresentation. On the contrary, the documentary evidence overwhelmingly supports the Respondents' case that the transfer formed part of a voluntarily implemented family arrangement, which was acted upon by both sides.

73. Accordingly, **Point No. (i) is answered against the Petitioner**. We hold that the transfer of the shares held by the Petitioner and his wife in the 1st Respondent Company was a valid and completed transaction and

no case has been made out for its annulment under Section 242(2) read with Section 243 of the Companies Act, 2013.

ISSUE NO. (II)

74. The determination on Point No. (i) substantially concludes the issue of maintainability. The maintainability of a petition under Sections 241 and 242 is governed by Section 244 of the Companies Act, 2013, which confers the right to invoke the jurisdiction of this Tribunal only upon a member of the company satisfying the prescribed eligibility requirements. Membership of the company on the date of institution of the proceedings is, therefore, a condition precedent for maintaining a petition under Sections 241 and 242, unless the statutory requirement is waived in accordance with law.

75. The principal objection raised by Respondents 1 to 4 is that the Petitioner had ceased to be a member of the 1st Respondent Company prior to the institution of the present proceedings by reason of the transfer of his entire shareholding in favour of the 2nd Respondent and Ms. Krithiga. According to the Respondents, in view of the transfer having been voluntarily executed, approved by the Board of Directors and duly recorded in the statutory records of the Company, the Petitioner lacked the requisite locus standi to institute the present proceedings.

76. The Petitioner, on the other hand, sought to overcome this objection by contending that the transfer itself was the product of fraud and misrepresentation and was therefore void. It was argued that where the very act complained of as oppressive is the fraudulent deprivation of membership, the Tribunal cannot non-suit the petitioner merely because the impugned transfer has already been recorded in the register of members.

77. We are in agreement with the legal proposition canvassed on behalf of the Petitioner that, where a shareholder alleges that he has been fraudulently divested of his shareholding by the very acts complained of as constituting oppression, the Tribunal cannot mechanically reject the petition on the ground that the petitioner's name does not stand in the register of members. Where such an approach to be adopted, the very person accused of fraud would be permitted to rely upon the consequences of the alleged wrongful act to defeat the jurisdiction of the Tribunal. It is for this reason that this Tribunal has first examined, in considerable detail, the validity of the impugned transfer while dealing with Point No. (i).

78. Having undertaken that exercise, we have already recorded a categorical finding that the transfer of shares executed by the Petitioner and his wife was neither procured by fraud nor induced by misrepresentation. We have further held that the transfer formed part of a voluntary and completed transaction implemented pursuant to the reciprocal family arrangement between the parties. Consequently, the very

foundation upon which the Petitioner sought to sustain his membership disappears.

79. The documentary evidence establishes that:

(i) the transfer deeds in Form SH-4 were voluntarily executed;
(ii) the original share certificates were delivered;
(iii) the Board of Directors approved and registered the transfers on **04.02.2019**;
(iv) the Petitioner and his wife thereafter resigned from the office of Directors; and
(v) all these events occurred prior to the presentation of the present Company Petition on **12.03.2019**.

Therefore, on the date when the present proceedings were instituted, the Petitioner had already ceased to be a member of the 1st Respondent Company.

80. Once the challenge to the transfer fails, the consequence under Section 244 necessarily follows. The right to maintain a petition under Sections 241 and 242 is not available to a person who is no longer a member of the company. In the absence of membership, the jurisdictional requirement prescribed under Section 244 is not satisfied.

81. In this regard, we find considerable force in the submission advanced on behalf of the Respondents, supported by the decision of the Hon'ble NCLAT in **Kole Investment and Trading Co. Pvt. Ltd. v. Sulochana Neelkanth Kalyani**, wherein it has been held that a person who has voluntarily divested himself of his shareholding cannot maintain

proceedings under Sections 241 and 242 of the Act. The said principle squarely applies to the facts of the present case.

82. Much reliance was placed by the Petitioner upon the interim order dated 20.03.2019, whereby this Tribunal directed maintenance of the original shareholding pattern pending disposal of the Company Petition. In our considered view, the said submission is misconceived. The interim order was passed at the threshold only as a protective measure to preserve the subject matter of the litigation pending adjudication. Such an ad-interim arrangement neither determined the rights of the parties nor conferred upon the Petitioner any substantive status as a shareholder. Interim orders are necessarily subject to the final adjudication of the rights of the parties and cannot override the conclusions ultimately reached on the merits.

83. In view of our finding that the impugned transfer of shares is valid and binding, it necessarily follows that the Petitioner was not a member of the 1st Respondent Company on the date of institution of the present proceedings and, consequently, did not satisfy the eligibility requirement prescribed under Section 244 of the Companies Act, 2013.

84. Accordingly, **Point No. (ii) is answered against the Petitioner**, and we hold that the present Company Petition is not maintainable under Section 244 of the Companies Act, 2013.

ISSUE NO. (III)

85. Although our findings on Point Nos. (i) and (ii) are by themselves sufficient to non-suit the Petitioner, having regard to the elaborate pleadings and submissions advanced by the parties over the course of these proceedings, we consider it appropriate to examine the allegations of oppression and mismanagement on their own merits as well.

86. The jurisdiction of this Tribunal under Sections 241 and 242 of the Companies Act, 2013 is equitable in nature. It is well settled that every act of illegality, breach of contract, breach of fiduciary duty or commercial disagreement does not amount to oppression or mismanagement. The conduct complained of must disclose a continuous course of oppressive conduct, lacking in probity and fair dealing, which is burdensome, harsh and wrongful to the petitioner in his capacity as a member of the company. Likewise, allegations of mismanagement must relate to the manner in which the affairs of the company are conducted and must disclose prejudice either to the company itself or to the interests of its members. Mere suspicion, isolated transactions, commercial disagreements or stale grievances cannot constitute oppression within the meaning of Sections 241 and 242. The aforesaid principles stand authoritatively settled by the decisions of the Hon'ble Supreme Court in **Shanti Prasad Jain v. Kalinga Tubes Ltd.**, AIR 1965 SC 1535; **Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.**, (1981) 3 SCC 333; and **Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad**, (2005) 11 SCC 314.

87. The principal allegation of oppression relates to the use of the Company's trademarks "WONDER" and "MILKA" by the so-called Affiliate Entities. The Respondents have placed on record materials demonstrating that the concerns namely New Way Food Products, Grandway Foods and Allied Industries, R.R. Aqua Industries and R.K. Fruit Juice and Beverages have been carrying on business from the years 2004, 2013, 2014 and 2017 respectively. Admittedly, throughout this period the Petitioner remained the Chairman of the Board of the Company and actively participated in its management. The Petitioner does not dispute that he attended the Board Meetings of the Company over the relevant period, signed the Annual Reports and Financial Statements, participated in the management of the business and drew remuneration from the Company. The documentary record further establishes that New Way Food Products had been manufacturing and marketing bread products under the "NEW WONDER" brand from as early as the year 2004. The Respondents have also produced the License Agreement dated 31.03.2004, under which the Company permitted the use of the artistic works relating to "NEW WONDER BREAD" and "NEW WONDER RUSK". The Petitioner admittedly appears as a witness to the said agreement. More importantly, the Petitioner's own typed set contains an advertisement promoting "NEW WONDER" bread carrying the photographs of the Petitioner and his wife. This circumstance completely undermines the Petitioner's plea that the use of the brand by New Way Food Products was clandestine or unknown to him.

88. Equally significant is the fact that the Company admittedly confined its business substantially to cakes and confectionery, whereas the Respondents have consistently maintained that bread products were marketed by New Way Food Products under the aforesaid arrangement. The allegation relating to R.R. Aqua Industries and R.K. Fruit Juice and Beverages is equally unconvincing. The Respondents have specifically pleaded that these concerns deal with products falling under Class 32, whereas the Company admittedly possesses no registration in that class. The Petitioner has not produced any material to establish otherwise. The Respondents have also produced documents showing that the Petitioner himself had purchased "Milka Wonder Drops" packaged drinking water from R.R. Aqua Industries for use in his own hotel business. Such conduct is wholly inconsistent with the allegation that the Respondents were surreptitiously misappropriating the Company's intellectual property.

89. The allegations relating to non-disclosure of related party transactions also do not merit acceptance. The audited financial statements for the relevant financial years, admittedly signed by the Petitioner himself, contain disclosures relating to related party transactions under Note 22 read with Form AOC-2. The Petitioner's answer is that he was unaware of the beneficial interests of the concerned parties and that disclosures under Section 184 were not made. While such an argument may have some relevance in an appropriate factual context, no independent material has been placed before this Tribunal to establish that any particular related party transaction was concealed from the Board or that any statutory disclosure was deliberately suppressed. The Petitioner

has not identified a single transaction which was omitted from the financial statements or demonstrate how the audited disclosures were false. A mere assertion that the interested directors did not make proper disclosures cannot, by itself, displace contemporaneous audited financial statements which the Petitioner himself approved over several successive financial years.

90. The allegations relating to advertisement expenditure also remain wholly unsubstantiated. The Petitioner relies principally upon the fact that the Company incurred advertisement expenditure exceeding ₹53 lakhs. However, beyond asserting that such advertisements also benefited the Affiliate Entities, no specific advertisement, invoice or expenditure item has been identified. On the contrary, the Respondents have produced materials to show that the respective concerns independently incurred advertisement expenditure in their own books of account. No evidence has been produced to establish diversion of corporate funds.

91. The allegations concerning cash sales, suppression of GST, fictitious trade receivables, diversion of machinery and misuse of Company vehicles are stated in the broadest possible terms. The Petition does not identify:

i. any particular cash transaction;
ii. any suppressed invoice;
iii. any GST return alleged to be false;
iv. any customer whose transaction was omitted from the books;
v. any machinery alleged to have been removed;
vi. any inventory showing shortage;
vii. any vehicle alleged to have been diverted; or

viii. any documentary evidence establishing diversion of Company assets.

92. Indeed, the Petition itself proceeds on the footing that the true position can be ascertained only if this Tribunal appoints an investigator or directs a forensic audit. In our considered view, this reverses the legal burden. A forensic audit or investigation under Sections 210, 212 or 213 cannot be directed merely to enable a litigant to discover whether a cause of action exists. The party seeking such extraordinary relief must first place before the Tribunal sufficient *prima facie* material indicating fraud, diversion of funds or mismanagement. No such foundational material has been produced in the present case.

93. We also find no merit in the submission that utilization of only 40% to 45% of installed manufacturing capacity necessarily implies large-scale unaccounted production. Installed capacity and actual production depend upon several commercial factors including market demand, supply chain requirements, seasonal fluctuations, working capital, labour availability and business strategy. The inference sought to be drawn by the Petitioner is purely speculative and unsupported by any independent evidence. Likewise, the challenge to the trade receivables is founded merely upon the Petitioner's perception that such receivables appear commercially high. The Respondents have explained that a substantial portion pertains to earlier years and export markets. The audited financial statements disclose the receivables together with the statutory ageing analysis. The Petitioner,

who signed those very financial statements, has produced no evidence demonstrating that the receivables are fictitious.

94. Having considered the pleadings, documentary evidence and rival submissions in their entirety, we are of the considered view that the Petitioner has failed to establish any continuous course of oppressive conduct or any act of mismanagement within the meaning of Sections 241 and 242 of the Companies Act, 2013. What emerges from the record is essentially a dispute arising out of a concluded family arrangement and the subsequent transfer of shareholding between two erstwhile business associates. The Petitioner has sought to convert that private dispute into proceedings alleging oppression and mismanagement by making wide-ranging allegations relating to the affairs of the Company. However, save and except the challenge to the transfer of shares—which has already been negatived by us—none of the remaining allegations is supported by cogent or convincing evidence.

95. Accordingly, **Point No. (iii) is answered against the Petitioner.** We hold that no act of oppression or mismanagement in the affairs of the 1st Respondent Company has been established warranting interference by this Tribunal under Sections 241 and 242 of the Companies Act, 2013.

ISSUE NO. IV

96. The Petitioner has impleaded Respondents 5 and 6, who are the Statutory Auditors of the 1st Respondent Company, alleging that they actively colluded with Respondents 2 to 4 in perpetrating the alleged fraud

relating to the transfer of the Petitioner's shares and in facilitating various acts of oppression and mismanagement. It is further alleged that Respondents 5 and 6 acted in violation of Section 144 of the Companies Act, 2013 by simultaneously rendering professional services to the Company, the so-called Affiliate Entities and members of the family of Respondents 2 to 4, thereby placing themselves in a position of conflict of interest and facilitating the alleged diversion of business and manipulation of the Company's accounts.

97. Respondents 5 and 6 have categorically denied each of the aforesaid allegations. According to them, the 6th Respondent was appointed as the Statutory Auditor of the Company in the year 2014 and, upon his resignation, the 5th Respondent firm was appointed as the Statutory Auditor in the year 2017. It is their specific case that throughout their respective tenures they discharged only the statutory functions entrusted to them under the Companies Act, 2013 and never rendered accounting, bookkeeping, internal audit, management consultancy or financial advisory services to the Company. They have further denied having retained custody of any statutory records or having participated in the alleged procurement of signatures on blank papers or incomplete documents.

98. The principal allegation against the 6th Respondent relates to the events of February 2019. However, the version put forward by the 6th Respondent is that he was informed by both the Petitioner and the 2nd Respondent that they had mutually agreed to exchange their respective

shareholdings pursuant to the family arrangement and that he was merely consulted regarding the statutory formalities required to give effect to the said transaction. According to him, when he reached the Company's office on 06.02.2019, the transfer documents had already been executed and the Board Minutes dated 04.02.2019 approving the transfer had already been prepared. He has consistently maintained that he merely advised the parties that a Board Meeting should be convened for formally recording the resignations of the Petitioner and his wife and completing the necessary statutory compliances.

99. We find no material on record to disbelieve the said explanation. More importantly, we have already recorded a finding under Point No. (i) that the Petitioner has failed to establish that the transfer of shares was procured by fraud or misrepresentation. Once the foundational allegation of fraud fails, the consequential allegation that Respondents 5 and 6 colluded in the commission of such fraud necessarily loses its substratum.

100. Equally, the allegations that Respondents 5 and 6 violated Section 144 of the Companies Act or suppressed related party transactions are unsupported by any acceptable evidence. Except making broad assertions that the auditors were also associated with the Affiliate Entities and members of the family of Respondents 2 to 4, the Petitioner has not produced any engagement letters, invoices, professional records or any other documentary material establishing that Respondents 5 and 6 rendered services prohibited under Section 144 of the Act. Similarly, no material has been placed before this Tribunal to establish that the auditors

knowingly certified false financial statements or deliberately omitted to report material irregularities. The allegations remain entirely general in nature and lack the particulars required to sustain a finding of professional misconduct.

101. It is also pertinent to note that the financial statements and Annual Reports for the relevant financial years, which have been certified by the Statutory Auditors, were simultaneously approved and signed by the Petitioner himself in his capacity as Chairman and Director of the Company. While the Petitioner's signature on the financial statements may not, by itself, preclude him from challenging the correctness of the accounts in an appropriate case, such challenge must nevertheless be supported by cogent material demonstrating falsification, concealment or deliberate misstatement. No such material has been produced before this Tribunal.

102. We are therefore of the considered view that the allegations levelled against Respondents 5 and 6 are entirely derivative of the Petitioner's principal allegation that the transfer of his shares was fraudulent and that the affairs of the Company were being mismanaged. Since neither of these foundational allegations has been established, no independent cause of action survives against Respondents 5 and 6. Even otherwise, allegations of professional misconduct against Chartered Accountants are matters falling within the statutory disciplinary framework under the Chartered Accountants Act, 1949, and cannot, in the absence of cogent evidence linking such misconduct to acts of oppression or mismanagement, furnish

an independent basis for granting relief under Sections 241 and 242 of the Companies Act, 2013.

103. Accordingly, **Point No. (iv) is answered against the Petitioner**. We hold that the Petitioner has failed to establish any collusion, professional misconduct or other actionable wrongdoing on the part of Respondents 5 and 6 warranting any direction against them in the present proceedings. Consequently, the reliefs sought against Respondents 5 and 6 are liable to be rejected.

ISSUE NO. (V)

104. In view of our findings on Point Nos. (i) to (iv), it necessarily follows that the Petitioner has failed to establish any ground warranting interference by this Tribunal under Sections 241 and 242 of the Companies Act, 2013. We have held that the transfer of the Petitioner's shareholding was neither vitiated by fraud nor induced by misrepresentation; that the Petitioner had ceased to be a member of the 1st Respondent Company prior to the institution of the present proceedings and, consequently, did not satisfy the eligibility requirements under Section 244 of the Act; that none of the allegations of oppression and mismanagement levelled against Respondents 1 to 4 has been substantiated by cogent evidence; and that no independent case has been made out against Respondents 5 and 6, the Statutory Auditors of the Company.

105. Consequently, the Petitioner is not entitled to any of the substantive reliefs sought in the Company Petition, including the annulment of the transfer of his shares, restoration of his shareholding, declaration of his continuance as a Director, supersession of the existing Board of Directors, framing of a scheme for future management of the Company, recovery of alleged undue gains, protection of the Company's intellectual property, appointment of an independent Administrator, conduct of a forensic audit, or investigation into the affairs of the Company by the Serious Fraud Investigation Office.

106. The allegation of fraud advanced by the Petitioner, forming the very foundation of the Petition, having been rejected by this Tribunal, the consequential allegation invoking Section 447 of the Companies Act, 2013 also necessarily fails. In the absence of any finding that the Respondents have committed fraud within the meaning of the Act, no direction under Section 447 can be issued.

107. Before parting with the matter, it is necessary to observe that although the transfer of the shareholding of Smt. A. Nageshwari, the Petitioner's wife, has been referred to by both parties in the course of their pleadings and arguments, she has neither been impleaded as a petitioner nor sought any independent relief before this Tribunal. Equally, the Company Petition contains no substantive prayer challenging the validity of the transfer effected by her or questioning her resignation from the office of Director. We therefore refrain from recording any adjudication upon her rights or liabilities. We only observe that the documentary evidence

relating to her transfer and resignation forms part of the same transaction and stands on the same evidentiary footing as the documents executed by the Petitioner.

ORDER

108. In view of the foregoing discussion and the findings recorded on Point Nos. (i) to (v), this Tribunal is of the considered view that the Petitioner has failed to establish any case warranting interference under Sections 241 and 242 of the Companies Act, 2013. The Company Petition is devoid of merits and is liable to be dismissed.

109. Accordingly, the following order is passed:

(i) Company Petition No. 366 of 2019 stands **dismissed**.

(ii) The ad-interim order dated **20.03.2019**, together with all consequential and interim orders passed during the pendency of the present proceedings, shall stand **vacated**.

(iii) Consequently, the 1st Respondent Company is at liberty to give effect to the transfer of the shares of the Petitioner and Smt. A. Nageshwari as approved by the Board of Directors at its meeting held on **04.02.2019**, to give effect to the resignation of the Petitioner and Smt. A. Nageshwari from the office of Directors as recorded by the Board on **08.02.2019**, and to carry out all consequential statutory compliances and filings before the Registrar of Companies or any other statutory authority, in accordance with law.

(iv) Since the allegations of fraud and misrepresentation have not been established, the prayers seeking annulment of the transfer of shares, restoration of the Petitioner's shareholding, declaration of his continuance as a director, supersession of the existing Board, appointment of an Administrator, conduct of a forensic audit, investigation by the Serious Fraud Investigation Office, and all other consequential reliefs sought in the Company Petition stand rejected.

(v) All pending interlocutory applications, if any, shall stand **closed**.

(vi) Having regard to the relationship between the parties and the facts and circumstances of the case, there shall be **no order as to costs**.

110. It is clarified that the findings and observations contained in this judgment are confined solely to the adjudication of the present Company Petition under Sections 241, 242, 243, 244, 246 and 447 of the Companies Act, 2013. Nothing contained herein shall be construed as expressing any opinion on the merits of any independent civil, contractual, intellectual property, disciplinary or other proceedings that may be initiated by any of the parties before any competent forum in accordance with law, all of which shall be decided on their own merits and in accordance with law, uninfluenced by the observations contained in this order.

-sd-	**-sd-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)