SAYAJI

March 29, 2021

To,
General Manager
The Bombay Stock Exchange Limited
Phiroze Jeejeebhoy Towers,
Dalal Street, Fort
Mumbai
Maharashtra 400001

Company Code : 540728

ISIN : INE327G01032

Dear Sir/Ma'am,

Subject: Disclosure pursuant to Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

1. *NCLT (Ahmedabad Bench) Order in the matter of Ramesh B. Desai & Ors. Vs. Sayaji Industries Ltd. & Ors. TP 02 of 2018 (CP 35 of 1988 Transfer from GHC);*
and
2. *NCLAT Order in the matter of Ramesh B. Desai & Ors. Vs. Sayaji Industries Ltd. & Ors. (Company Appeal (AT) No. 35 of 2021)*

Pursuant to Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, please be informed that Hon'ble National Company Law Tribunal, Ahmedabad Bench ('***NCLT***') has *vide* its order dated January27, 2021 dismissed and disposed of the captioned petition against the Company whilst passing an ordering in favour of the Company.

The Hon'ble NCLT held that the main petitioner i.e. Ramesh B. Desai have no locus-standi to file the application under erstwhile Section 155 of the Companies Act, 1956 for alleged violation of erstwhile Section 77 of the Companies Act, 1956. The Hon'ble NCLT was pleased to pass a strict order against the petitioner(s) i.e., Ramesh B. Desai and Pushpaben Harshad Desai in the captioned petition on account of abuse of process of law and waste of precious judicial time by Ramesh B. Desai to reimburse the cost of litigation amounting to Rs. 25,00,000/- (Rupees Twenty-Five Lakh Only) to one of the Respondent in the captioned petition i.e. Sayaji Industries Limited ("***Company***"). In addition to this, Hon'ble NCLT imposed a cost of Rs. 25,00,000/- (Rupees Twenty-Five Lakh Only) on the petitioners to pay to PM Cares Fund as penal costs.

SAYAJI INDUSTRIES LIMITED AHMEDABAD

Sayaji Industries Limited
Maize Products, Chinubhai Nagar, P.O. Kathwada,
Ahmedabad - 382430, Gujarat, India
T: +91-79-22900881-85, 22901581-85
E: maize@sayajigroup.in **W:** www.sayajigroup.in

CIN No: L99999GJ1941PLC000471

SAYAJI

A copy of the aforementioned order given by the Hon'ble NCLT dated January 27, 2021 is enclosed herewith and marked as "***Annexure A***" for your records and reference of the exchange.

The Hon'ble NCLT directed Petitioners to pay a sum of Rs. 25,00,000/- as litigation costs to Respondent No. 1 i.e. the Company within a period of 30 days from the date of this order. Further, it was held that this is a clear-cut case of abuse of process of law and waste of precious judicial time, hence, a cost of Rs. 25,00,000/- was imposed on the petitioners for doing so under Rule 113 of NCLT Rules, 2016 and the same to be paid to PM Care Funds within a period of 30 days from the date of this order.

The aforesaid petitioners (Ramesh B. Desai & Ors) have filed appeal against the said Hon'ble NCLT's order in Hon'ble National Company Law Appellate Tribunal ("***NCLAT***") and Hon'ble NCLAT vide its order dated March 15, 2021 stayed Hon'ble NCLT order for imposition of cost subject to furnishing adequate security until pendency of the said Appeal. A copy of the said order of the Hon'ble NCLAT dated March 15, 2021 is enclosed herewith and marked as "**Annexure B**" for your records and future reference.

The counsels of the Company are advising and representing the Company in relation to the appeal filed with Hon'ble NCLAT by Ramesh B. Desai & Ors.

There has been no change in the shareholding pattern or management or control of the company before and after the aforesaid judgment of NCLT. However, the company thought it prudent to bring this to the notice of BSE, irrespective of its materiality. We will inform the exchange in relation to further developments in the captioned matter at relevant stages.

Kindly take the aforesaid on your records.

Thanking You,
For, Sayaji Industries Limited

R. H. Shah

(Rajesh H. Shah)
Company Secretary &
Sr. Executive Vice President

SAYAJI INDUSTRIES LIMITED AHMEDABAD

Encl.: As above

Sayaji Industries Limited
Maize Products, Chinubhai Nagar, P.O. Kathwada,
Ahmedabad - 382430, Gujarat, India
T: +91-79-22900881-85, 22901581-85
E: maize@sayajigroup.in **W:** www.sayajigroup.in

CIN No: L99999GJ1941PLC000471

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

TP 02 of 2018 (CP 35 of 1988 Transfer from GHC)

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.01.2021

Name of the Company: Ramesh B. Desai & Ors.
V/s.
Sayaji Industries Ltd. & Ors.

Section: 155 of the Companies Act, 1956

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 27th day of January, 2021.

SK

Company Petition No. TP 02 of 2018 (CP No. 35 of 1988) Transfer from Hon'ble High Court of Gujarat.

INDEX OF JUDGMENT

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1

TP 02 of 2018 (CP No. 35 of 1988 Transfer from Hon'ble Gujarat High Court)

[A petition under Section 155 of the Companies Act, 1956]

In the matter of:

1. Shri Ramesh B. Desai,
Having address at:
15, Maitri Society, Near Polytechnic.
Ahmedabad, 15
2. Shri S.C. Soni,
Having address at:
PrakasKunj Society Part III,
Post Polytechnic. Ahmedabad, 15
3. Shri H.B Patel
4. Smt. Minaxiben H. Patel
Having address at:
Nos. 3 and 4 of M/5/25/197,
Shastrinagar. Ahmedabad-14
5. Mr. H.B. Desai **(P- 2,3,4 & 5 are deleted as per Tribunal Order dtd. 12.04.2019)**
6. Mrs. Pushpaben Harshad Desai.
Having addressed at:
Nos 5 and 6 residing at
Sanjivan Bungalow, Phirozshah Street,
Shantacruz, (West) Bombay.
7. Mr. Hasmukhlal Chhotalal Sanghvi,
8. Mr. Bhartiben Hasmukhlal Sanghvi.
9. Smt. Jayaben C. Singhvi.
Nos. 7,8,9 residing at:
40, "Chandan" Near Golden tobacco.
S.V. Road. Ville Parle (West)
Bombay-800056 **(P- 7,8,9 are deleted as per Tribunal Order dtd. 12.04.2019)**

.....Petitioners

Versus

1. Secretary,
M/s. Sayaji Industries Ltd.
Having address at:
P.O. Kathwada. Maize Products,
Ahmedabad-382430
2. Shri Bipinbhai Vadilal Mehta
Managing Director,
M/s Sayaji Industries Ltd.
P.O. Kathwada-Maize Products
Ahmedabad-382430 (Deceased)
3. Shri Priyambhai Bipinbhai Mehta
Executive Director,
M/s. Sayaji Industries Ltd
Having address at:
P.O. Kathwada-Maize Products.
Ahmedabad-382430

4. Dr. Bihari Kanaiyalal Shah,
Director, M/s Sayaji Industries Ltd,
'Malkauns' Near Polytechnic,
Ambavadi, Ahmedabad-380015.

5. Shri Mahendrabhai N Shah.
Director M/s Sayaji Industries Ltd.
2, Valkeshwar Society, B/H.C.N. Vidyalaya,
Bhudarpura. Ahmedabad- 380006 **(R- 4 &,5 are deleted as per Tribunal Order dtd. 12.04.2019)**

6. Dr. Jayantilal J. Vora,
'Rashmikunj, Opp. Gandhigram,
Railway Drive. Ahmedabad-380006

7. Shri Kirtibhai Kothari,
Having address at:
'Giri Kunj', 7th Floor,
Marine Derive. Bombay. **(R- 6 & 7 are deleted as per Court's order dtd. 11.04.2007)**

8. Shri Vasantlal V. Mehta,
Having address at:
26,Valkeshwar Society,
Behind C.N. Vidyalaya,
Bhudarpura. Ambawadi.
Ahmedabad-380015.

9. Shri Dashrathbhai G. Patel,
Having adderss at:
1, Elliots Beach Road, Basant Nagar,
Madras – 600090

10. Shri Kishanbhai K. Mehta
Having address at:
5-3, Kalkaji Extension,
New Delhi-110019

11. Shri Viswajit M. Mehta
Having address at:
'Makrant', Old Padra Road,
Baroda-390015 **(R- 8,9, 10 & 11 are deleted as per Tribunal Order dtd. 12.04.2019)**

12. Shri Suhasbhai Vadilal Mehta

13. Smt. Chhayaben Vadilal Mehta
Having address at:
13, Lallubhai Park,
Nr. St. Xavier's College Corner,
Navrangpura, Ahmedabad-380009 ....Respondents.

Order reserved on 06.01.2021
Order delivered on 27.01. 2021

Coram: Madan B. Gosavi, Member (J)
Virendra Kumar Gupta, Member (T)

Appearance...

Learned Senior Counsel Mr. Shalin Mehta appeared for the Petitioners on behalf of Wadiya & Gandhi Co.

Learned Senior Counsel Mr. Mihir Thakore appeared for the Respondents.

Learned Counsel Mr. Hemang Shah appeared for the Respondent No. 12&13.

Learned Senior Counsel Mr. Devang Nanavati along with Learned Counsel Ms. Prachiti Shah appeared for Respondent No. 1

Learned Counsel Mr. Sandeep Singhi appeared for Respondents.

Learned Counsel Mr. Saurab Mehta appeared. Learned Counsel Mr. Jay Kansar appeared. Learned Counsel Mr. Zainab Bharmal appeared. Learned Counsel Mr. Trisha Baxi appeared.

[Per:VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)]

O R D E R

1. This petition has been filed under Section 155 of the Companies Act, 1956 for rectification of Register of Members.

2. This case is pending for adjudication for almost thirty three years. Firstly, this petition was filed before the Hon'ble High Court of Gujarat which was dismissed in-limine on the ground as being barred by limitation. As this was dismissed in summary manner on this preliminary issue, an appeal was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the decision of Hon'ble High Court of Gujarat and remanded the matter back to the High Court for decision on all issues raised in this case afresh in accordance with the law. It was also made absolutely clear by the Hon'ble

Supreme Courtthat their observations/findings given in the appeal disposd of by Hon'ble Supreme Court will not have any impact while such matter being considered and decided by the Hon'ble Court of Gujarat afresh. The Hon'ble High Court of Gujaratvideits order dated 27.08.2009framed the issues which are reproduced as under:

1. *Heard the learned Counsel appearing for both the sides on the aspects of framing of issues.*

2. *Considering the pleading and the controversy raised, following issues are framed :-*

   (a) *Whether the petition is bad in mis-joinder or non-joinder of the necessary parties or not?*

   (b) *Whether the petitioners prove that there was any fraud played in routing the monies of the company i.e. M/s. Sayaji Industries Limited for acquiring the shares or for getting the control over the management of the company as alleged or not ?*

   (c) *Whether there is any breach of the provisions of Section 77 of the Companies Act committed by any of the respondents or not ?*

   (d) *Whether there is any breach of provisions of Article 20 of the Articles of Association read with Section 36 of the Companies Act or not ?*

   (e) *Whether the petition is barred by limitation or not ?*

   (f) *Whether any direction deserves to be issued under Section 155 of the Companies Act for ratification of the register of shareholders or not ?*

   (g) *Whether status-quo ante deserves to be ordered or not ?*

(h) *Whether reliefs as prayed by the petitioners deserves to be granted or not ?*

(i) *The final operative order ?*

3. *The parties shall produce the documents in support of the evidence, which they may propose to lead on the basis of the aforesaid issues by separate list of documentary evidence within a period of three weeks from today.*

4. *S O to 24.9.2009.*

3. Thereafter, an application was filed before Hon'ble High Court of Gujarat wherein requests were made to reframe the issues and the Hon'ble High Court of Gujarat after considering the arguments made therein in a detailed manner held as under:

In light of the foregoing discussion of facts and law, framing of following additional issues would be said to be proper. Therefore the following additional issues are framed.

(i) Whether the petition is maintainable against newly added respondent Nos.11 to 14 in view of deletion of Section 155, by virtue ofCompanies (Amendment) Act, 1988? Whethertherefore, the petition would lie before theCompany Law Board under Section 111(4) of theCompanies Act, 1956?

(ii) Whether the petition is liable to bedismissed having regard to the familysettlement arrived at by means of Memorandum ofUnderstanding between two branches of family,namely B.V. Mehta's Branch and S.V. Mehta'sbranch since more than 30 years?

(iii) Whether rectification of Registerunder Section 155 of the Companies Act can begranted when transactions are not connected tothe issues of entries in the Register?

(iv) Whether petition is barred againstnewly added parties, by law of limitationand/or by principles of latches, waiver,acquiescence or estople?

(v) Whether the petition is entertainableat the instance of present petitioner who holda small fraction of share?

(vi) Whether the petitioner is entitled toseek rectification of Register of members ofthe company in favour of those newly addedrespondents who have never objected to and/orfiled any application for rectification ofentries at any stage?

This Application is allowed in aforesaidterms and to the above extent.

4. Thereafter, the case remained pending for disposal. After, Companies Act, 2013 came into operation pending proceedings before the High Court were to be transferred to NCLT as per Section 434(1)(c) of Companies Act, 2013. Hon'ble High Court, taking note of this provision, passed an order on 25.08.2018 and transferred this petition for disposal by the Tribunal.

5. This case was heard at length. The Parties were asked to give written submissions which have been given. The written submissions so given are reproduced as under:

1. **WRITTEN SUBMISSIONS ON BEHALF OF PETITIONER**

1. The captioned Company Petition has been preferred by the Petitioners against the Respondents under Section 155 of the Companies Act, 1956 ("**1956 Act**") *inter alia* seeking reliefs as more particularly prayed therein. It is submitted that

Respondent No. 2 and his family members (Respondents No. 2/1 to 2/3) acquired the shares of Respondent No. 1 company in violation of Section 77 of 1956 Act as well as Article 20 of Articles of Association of Respondent No. 1 (Page 87 of Company Petition) read with Section 36 of 1956 Act *inter alia* by purchasing shares of Respondent No. 1 from the funds of Respondent No. 1 itself. Thus, the names of Respondent No. 2 and his family members having been entered in the register of members of the Respondent No. 1 without sufficient cause, it is imperative that the said register of members of Respondent No. 1 be rectified by an Order of this Hon'ble Tribunal by exercising its powers under Section 155 of the 1956 Act.

2. It is submitted that the captioned Company Petition was heard at length by this Hon'ble Tribunal and pursuant thereto, the Petitioners are filing the present Written Submissions in support of their arguments in the captioned matter.

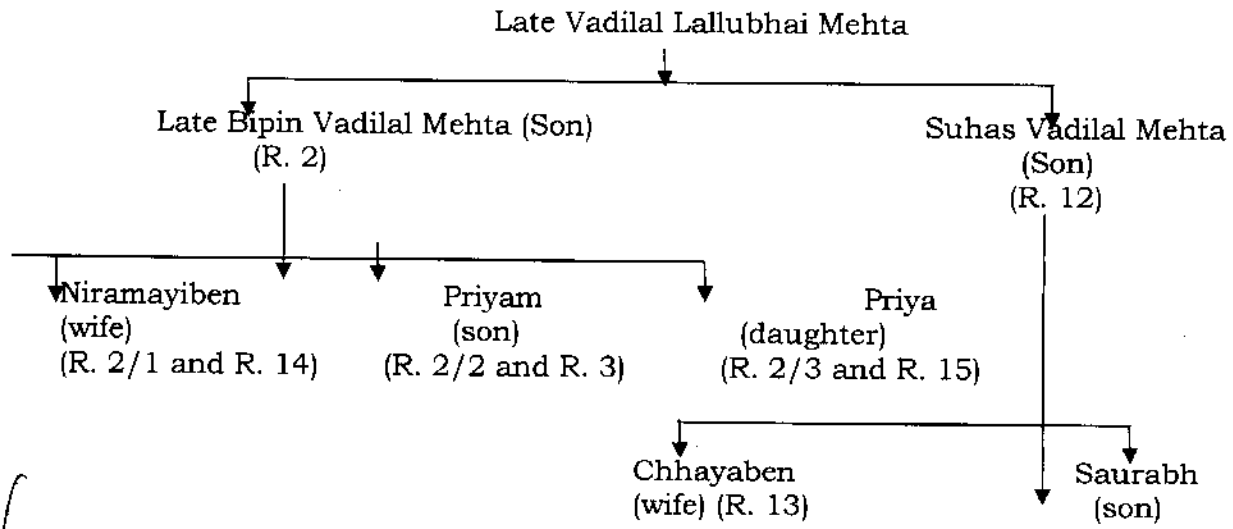
- **BRIEF FACTS OF THE CASE**

1. It is submitted that it is an admitted fact that the Petitionersare shareholders of Respondent No. 1 company – Sayaji Industries Limited. It is submitted that the captioned Company Petition was initially preferred by 9 (nine) Petitioners, however, owing to the demise of Petitioners No. 2 to 5 and 7 to 9, the said Petitioners were deleted as parties from the captioned Company Petition *vide* Order dated 12th April, 2019 passed by this Hon'ble Tribunal in IA No. 74 of 2019 filed by Petitioner No. 1 in the captioned Company Petition. It is submitted that thereafter, the captioned Company Petition is being contested and continued by the Petitioners No. 1 and 6.

2. It is submitted that Respondent No. 1 is a public limited company incorporated under the provisions of the 1956 Act. It is submitted that the Respondents No. 2 to 11 were the then Directors of Respondent No. 1 Company, at the time of filing of

captioned Company Petition. It is submitted that the Respondents No. 4 to 11 have been subsequently deleted as parties from the captioned Company Petition *vide* separate Orders passed by the Hon'ble Gujarat High Court and this Hon'ble Tribunal.

3. It is submitted that Respondent No. 2 and 12 are sons of Vadilal Lallubhai Mehta. Respondent No. 2/1 is the widow of Respondent No. 2. Respondent No. 3 (also impleaded as party Respondent No. 2/2) is the son of Respondent No. 2 and Respondent No. 2/3 is the daughter of Respondent No. 2. It is submitted that Respondent No. 13 is the wife of Respondent No. 12. It is submitted that for the sake of convenience, the Respondents No. 2, 2/1 (also joined as Respondent No. 14), 2/2 (also joined as Respondent No. 3) and 2/3 (also joined as Respondent No. 15) are hereinafter collectively referred as "Respondent No. 2 and his family". For ease of understanding, the aforesaid family relations of legal heirs of Vadilal Lallubhai Mehta concerning the present Petition are provided in the form of a chart hereunder:



4. It is submitted that on 30th January, 1982, a Memorandum of Understanding ("**MOU**") (Page to 45 of Company Petition) came to be executed between Respondent No. 2, Respondent No. 2/1 and

Respondent No. 3 on one hand, and Respondent No. 12 and Respondent No. 13 on behalf of themselves and their minor son, Saurabh Suhas Mehta, on the other hand. It is submitted that the MOU was confined to and between Respondent No. 2 and Respondent No. 12, as more particularly stated in Clause 3 of the MOU (Page 24 of Company Petition). For ready reference, Clause 3 of the MOU is reproduced hereunder:

> *"3. This understanding does not concern in any manner the property owned and held by Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta and each of the four daughters. This understanding is confined only to and between Shri Bipinbhai Vadilal Mehta and Shri Suhasbhai Vadilal Mehta and concerning some of the properties held by each of them."*

5. It is submitted that Clause 6 of the MOU (Page 25 of Company Petition) provides that the main object of the MOU was to entrust the management of some companies to Respondent No. 2 and others to Respondent No. 12 in the manner as detailed in the MOU. It is submitted that Clause 1 of Details of Understanding of the MOU (Page 25 of Company Petition) provides that the management of Respondent No. 1 and one C. V. Mehta Pvt. Ltd. (**"CVMPL"**) were to be entrusted to Respondent No. 2. It is submitted that for the said purpose, the transfer of about 13,000 (thirteen thousand) shares was to be undertaken as per Clause 4 of Details of Understanding of the MOU (Page 26 of Company Petition) read with Annexure II of the MOU (Page 44 of Company Petition) pursuant to fulfilment of obligations by Respondent No. 2 as provided in Clause 5 of MOU (Page 27 of Company Petition) including the other Clauses referred to therein. For ease of reference, Clauses 5 and 6 of the MOU and Clauses 1 and 4 (a) of the Details of Understanding stated in the MOU are reproduced hereunder:

"5. There is a Public Limited Company known as Sayaji Mills Ltd. and there are following private companies :-

i) Industrial Machinery Manufacturers Pr. Ltd.,

ii) C. Doctor & Co. Pr. Ltd.,

iii) Mehta Machinery Manufacturers Pr. Ltd.,

iv) Oriental Corporation Pr. Ltd., and

v) C. V. Mehta Pr. Ltd.

At present all these companies are managed by Shri Vadilal Lallubhai Mehta and Shri Suhasbhai Vadilal Mehta.

Bipinbhai Vadilal Mehta and Suhasbhai Vadilal Mehta and their Trusts and H.U.Fs.and Vimlaben Vadilal Trust and Vadilal Lallubhai Mehta H.U.F. held shares in these six companies. Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta also hold shares in these companies but they are not the subject matter of this understanding.

6. The main object of this understanding is to entrust the management of some of the Companies to Bipinbhai Vadilal Mehta and of others to Suhasbhai Vadilal Mehta by mutual transfer of shares and other procedures and by transfer of some properties from one to the other.

.....

DETAILS OF UNDERSTANDING

1. The management of Sayaji Mills Limited and C. V. Mehta Pr. Ltd., will be entrusted to Bipinbhai Vadilal Mehta.

.....

4. (a) The Shares of Sayaji Mills Ltd., and C. V. Mehta Pr. Ltd., held by Suhasbhai Vadilal Mehta and the members of his branch or the companies going to his share or Trusts or by Vadilal Lallubhai H.U.F. or by Vimlaben Vadilal Trust shall be sold or transferred to Bipinbhai Vadilal Mehta or as he may desire;....."

6. It is submitted that since CVMPL had various liabilities towards Vadilal Lallubhai Mehta and Respondent No. 12, among others, it was agreed in Clauses 10 to 12 of the MOU that such amounts were to be paid immediately and it was the responsibility of Respondent No. 2 to ensure that the liabilities of CVMPL were paid and discharged immediately (Pages 29 and 30 of the Company Petition). It is submitted that since Respondent No. 2 was to acquire large number of shares of Respondent No. 1 (approximately 13,000 shares) pursuant to the MOU, Respondent No. 2 was in *de facto* management of Respondent No. 1 since January, 1982 itself. For ease of reference, Clauses 10, 11 and 12 of the MOU are reproduced hereunder:

> *"10. C. V. Mehta Pr. Ltd. which is being allotted to Bipinbhai Vadilal Mehta has certain amounts to pay to the members of the family of Vadilal Lallubhai Mehta, Suhasbhai Vadilal Mehta, Suhasbhai Vadilal Trusts, Vadilal Lallubhai H.U.F., Vimlaben Vadilal Trust, Bhuriben Lallubhai Estate and the daughters and grand-children of Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta. C. V. Mehta Pr. Ltd., has also to pay substantial amount to C. Doctor & Co. Pr. Ltd. All such payments shall be made immediately and according to the entries in the books of account made upto date.*
>
> *11. Similarly, C. V. Mehta Pr. Ltd., has to recover considerable amounts from Mehta Machinery Manufacturers Pr. Ltd., Oriental Corporation Pr. Ltd. and from others. All such payments shall be made immediately and according to the entries made in the books of account made upto date.*
>
> *12. The outstanding dues and liabilities of C. V. Mehta Pr. Ltd. shall be adjusted as may be directed by Vadilal Lallubhai Mehta and in any event it shall remain the responsibility of Bipinbhai Vadilal Mehta to see that all the liabilities of C. V.*

Mehta Pr. Ltd. as mentioned above are fully paid and discharged immediately."

7. It is submitted that since Respondent No. 2 felt difficulties in execution and compliance of the MOU, at his request, a Memorandum of Modification (**"MOM"**) (Page 46 of Company Petition) came to be entered into between the parties to the MOUon 13th November, 1982*inter alia*for the purpose of modifying several clauses of MOU as per the request of Respondent No. 2. It is submitted that by way of the said MOM, Clauses 1, 2, 4, 7, 10, 11, 12, 19 and 24 of the MOU came to be altered and modified. It is submitted that the remaining Clauses of the MOU continued to be binding on the parties to the MOU.

8. It is submitted that Clause 3 of the MOM provides that the amount payable by CVMPL to Vadilal Lallubhai Mehta and Respondent No. 12, among others, was agreed and fixed between the parties at INR 39,24,154.88/- (Rupees Thirty Nine Lakhs Twenty Four Thousand One Hundred Fifty Four and Eighty Eight Paise). It is submitted that out of the above amount, a sum of INR 20,00,000/- (Rupees Twenty Lakhs only) was to be paid immediately by Respondent No. 2 to CVMPL on the same day or a day after share transfer forms of Respondent No. 1 were handed over by Respondent No. 12 and his family and the same was to be treated as a loan. It is noteworthy to mention here that as stated in Clause 3 of MOM, the transfer of management of Respondent No. 1 and appointment of Respondents No. 2 and 3 on Board of Directors of Respondent No. 1 was to take place only after the entire payment of INR 20,00,000/- (Rupees Twenty Lakhs only) was made by Respondent No. 2. It is imperative to mention here that Clause 3 of the MOM further provides that the Board of Directors of Respondent No. 1 were to give actual effect to transfer of shares in favour of Respondent No. 2 only after the payment of the aforesaid amount

of INR 20 Lakhs was made by him. For ready reference, Clause 3 of the MOM is reproduced below:

> *"3. It has been agreed and the parties hereto confirm that the amount to be brought in by Shri Bipinbhai Vadilal Mehta towards the amounts payable by C. V. Mehta Pvt. Ltd. to the members of the family of Shri Vadilal Lallubhai Mehta and of Shri Suhasbhai Vadilal Mehta, Suhasbhai Vadilal Trusts, Vadilal Lallubhai H.U.F., Vimlaben Vadilal Trusts, Bhuriben Lallubhai Estate and the daughters and grand children of Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta and to C. Doctor & Co. Pvt. Ltd. has been fixed by the parties at Rs. 39,24,154.88/- (Rupees Thirty Nine Lakhs Twenty Four Thousand One Hundred Fifty Four and Paise Eighty Eight only). Shri Bipinbhai Vadilal Mehta has agreed to pay and bring in immediately (and in any event latest on the day next after the day on which the Share Transfer Forms in respect of Sayaji Mills Ltd. are handed over by Shri Suhasbhai Vadilal Mehta and members of his family as mentioned hereafter) in C. V. Mehta Pvt. Ltd. a sum of Rs. 20,00,000/- (Rupees Twenty lacs only) towards the amount required to be paid by C. V. Mehta Pvt. Ltd. The said amount shall be treated as a loan and Shri Bipinbhal Vadilal Mehta is not to claim or demand any repayment of the said loan from C. V. Mehta Pvt. Ltd. as long as the management thereof does not pass into the hands of Shri Bipinbhai Vadilal Mehta as provided herein.*
>
> ***It is further agreed and understood that transfer of the management of Sayaji Mills Ltd., and the appointment of Shri Bipinbhai Vadilal Mehta and Shri Priyambhai Bipinbhai Mehta on the Board of Directors thereof are only to be made after Shri Bipinbhai Vadilal Mehta has paid and brought in C. V. Mehta Pvt. Ltd. the aforesaid sum of Rs. 20,00,000/- (Rupees Twenty lacs only)*** *and it is*

further agreed that this amount is to is brought and paid by Shri Bipinbhai Vadilal Mehta latest on the day next after the transfer forms in respect of the shares of Sayaji Mills Ltd. held by Shri Suhasbhai Vadilal Mehta and members of his family are handed over to Shri Vadilal Lallubhai Mehta on behalf of Shri Bipinbhai Vadilal Mehta and the members of his family. ***It is also further agreed that the actual effect is to be given to such share transfer of Sayaji Mills Ltd. by the Board of Directors of Sayaji Mills Ltd. only after the payment of the aforesaid amount of Rs. 20,00,000/- (Rupees Twenty lacs only) by Shri Bipinbhai Vadilal Mehta to C. V. Mehta Pvt. Ltd. and it is also clarified that these changes are made at the instance and request of Shri Bipinbhai Vadilal Mehta and are agreed to by Shri Suhasbhai Vadilal Mehta, in order to accommodate Shri Bipinbhai Vadilal Mehta."***

9. It is submitted that a perusal of the above-mentioned Clause 3 of MOM makes it abundantly clear that payment of INR 20 Lakhs by Respondent No. 2 to CVMPL for the purpose of discharging the liabilities of CVMPL was a pre-requisite for transfer of shares of Respondent No. 1 in favour of Respondent No. 2. In other words, it is submitted that the payment of INR 20 Lakhs by Respondent No. 2 to CVMPL for the purpose of discharging the liabilities of CVMPL was the agreed consideration for transfer of shares of Respondent No. 1 in favour of Respondent No. 2.

10. It is submitted that the fraudulent transactions pertaining to the funds of Respondent No. 1 that followed the aforementioned understanding between the parties are the subject matter of the captioned Petition. The said transactions, detailed at Page 56 of Company Petition, in unequivocal terms indicate that Respondent No. 2 and his family fraudulently utilized the funds of Respondent No. 1 to transfer the INR 20 Lakhs to CVMPL through one of the vendors of Respondent No. 1 – Santosh Starch Products. It is

submitted that the very same funds were thereafter utilized to discharge the liabilities of CVMPL as per the MOU read with MOM *inter alia* resulting into transfer of shares of Respondent No. 1 in favour of Respondent No. 2 and his family. Thus, it is submitted that eventually, the consideration for transfer of shares of Respondent No. 1 in favour of Respondent No. 2 and family was fraudulently paid from the funds of Respondent No. 1 i.e. the company itself, which is *ex facie* in violation of Section 77 of 1956 Act as well as Article 20 of Articles of Association of Respondent No. 1 (Page 87 of Company Petition). For ease of reference, the transactions detailed at Page 56 of Company Petition are reproduced hereunder:

1. Details of ADVANCES by M/s. Sayaji Industries Ltd., to a supplier, M/s. Santosh Starch Products, 71, New Cloth Market, Ahmedabad				
Amount Rs.	**Date**	**Cheque No.**	**Bank's Name**	
10,00,000	12/13.11.82	853901	Punjab National Bank, Maskati Market Brach, Ahmedabad.	
5,00,000	13.11.82	953902	-do-	
5,00,000	25.11.82	853934	-do-	
2. Details of LOANS by the above supplier, i.e. M/s Santosh Starch Products to Shri Bipinbhai Mehta and his family				
Amount Rs.	**Date**	**Cheque No.**	**Bank's Name**	**Name of the Party**
7,00,000	13.11.82	887275	Punjab National Bank, Ahmedabad	Bipinbhai V. Mehta (HUF)
6,00,000	13.11.82	887276	-do-	Bipinbhai V. Mehta
7,00,000	13.11.82	887277	-do-	Priyambhai B. Mehta
3. Details of DEPOSITS made in Ms. C. V. Mehta Pvt. Ltd. by Shri Bipinbhai Vadilal Mehta				
Amount Rs.	**Date**	**Cheque No.**	**Bank's Name**	**Name of the Party**
6,00,000	13.11.82	185663	Punjab National Bank, Maskati Market Branch, Ahmedabad	Bipinbhai V. Mehta
7,00,000	13.11.82	188975	-do-	Bipinbhai V. Mehta (HUF)
7,00,000	13.11.82	185672	-do-	Priyambhai Bipinbhai

11. The aforesaid fraudulent transaction concerning the funds of Respondent No. 1 can be briefly stated as under:

(i) A sum of INR 20 Lakhs came to be advanced/ transferred by Respondent No. 1 in favour of Santosh Starch Products;
(ii) Thereafter, an amount of INR 20 Lakhs came to be transferred by Santosh Starch Products to Respondent No. 2 and his family;
(iii) Respondent No. 2 and his family transferred the said amount of INR 20 Lakhs to CVMPL, which was utilized to discharge the liabilities as per Clauses of MOU read with MOM.

It is submitted that as a result of the above transactions, the shares of Respondent No. 1 held by Respondent No. 12, were transferred in favour of Respondent No. 2 and his family. It is pertinent to note that as stated hereinabove, to effect the transfer of shares of Respondent No. 1, the funds utilized by Respondent No. 2 and his family were fraudulently availed from/ originated from Respondent No. 1 itself and hence, there is no *iota* of doubt that the aforesaid transaction amounts to utilization of funds of Respondent No. 1 company for purchase of its own shares.

12. It is submitted that similar modus was adopted by Respondent No. 2 and his family in August – September, 1983 involving some other merchants of Respondent No. 1 *inter alia* for payment of the balance amount of money to be paid by him under the MOU read with MOM. It is submitted that the details of the such transactions involving merchant named Tirupati Traders along with other individual merchants have been detailed at Pages 57 and 58 of the Company Petition. It is submitted that by entering into the said transactions, the Respondent No. 2 and his family once again fraudulently utilized the funds of Respondent No. 1 to purchase its shares, in utter violation of Section 77 of 1956 Act as well as Article 20 of Articles of Association of Respondent No. 1 (Page 87 of Company Petition).

13. It is submitted that the entire *modus operandi* adopted by Respondent No. 2 and his family for fraudulently utilizing the funds of Respondent No. 1 to purchase/ acquire the shares of Respondent No. 1 itself, came to the knowledge of Petitioners only in May, 1987 through a criminal complaint preferred by a member of the Union of the company (Page 88 to 95 of Company Petition). It is submitted that thereafter, the Petitioners made independent inquiries into the matter and attempted to collect the necessary material in relation to the aforementioned transactions. It is submitted that after gaining knowledge of the specific nature of the transactions, the Petitioners, in their capacity as shareholders of Respondent No. 1, addressed a Legal Notice dated 17th June, 1987 (issued on 19th June, 1987) (Page 59 of Company Petition) to the Respondents *inter alia* narrating the aforesaid facts and calling upon them to take necessary actions to rectify the share register of Respondent No. 1 to delete the names of members (Respondent No. 2 and his family) which were entered by fraud without any sufficient cause.

14. It is submitted that the Respondents (except Respondents No. 12 and 13) addressed an evasive reply letter dated 3rd August, 1987 (Page 74 of Company Petition), which was responded to by the Petitioners *vide* their rejoinder letter dated 9th September, 1987. It is submitted that since to satisfactory and/or affirmative response was forthcoming from the said Respondents, the Petitioners were constrained to prefer the present Company Petition before the Hon'ble High Court of Gujarat, at Ahmedabad.

15. It is submitted that in the first round of litigation, the captioned Company Petition came to be dismissed by the Hon'ble Gujarat High Court solely on the ground of limitation. It is submitted that the said Orders of the Hon'ble Gujarat High Court came to be challenged by the Petitioners before the Hon'ble Supreme Court of India by filing Civil Appeal No. 4766 of 2011. It is submitted that by its judgment dated 11th July, 2006 [(2006) 5 SCC 638] (Page 645 of Company Petition), the

Hon'ble Supreme Court of India was pleased to allow the said Civil Appeal, quash and set aside the Orders of the Hon'ble Gujarat High Court and further, remand the captioned Company Petition to the Hon'ble Gujarat High Court to decide the same afresh in accordance with law.

16. It is submitted that during the pendency of the captioned Company Petition before the Hon'ble Gujarat High Court, this Hon'ble Tribunal came to be established and all the matters pertaining to the Companies Act were transferred to this Hon'ble Tribunal in accordance with various Rules and Orders notified by the Legislature. It is submitted that in view thereof, by an Order dated 25th January, 2018, the captioned matter came to be transferred from the Hon'ble High Court to this Hon'ble Tribunal and pursuant thereto, the captioned Company Petition is being adjudicated by this Hon'ble Tribunal.

➢ **WRITTEN SUBMISSIONS ON BEHALF OF PETITIONERS**

17. It is submitted that the following are the issue-wise Written Submissions on behalf of the Petitioner in relation to the oral arguments advanced by the parties before this Hon'ble Tribunal:

I. PETITIONERS, BEING SHAREHOLDERS OF RESPONDENT NO. 1, ARE ENTITLED TO FILE THE PRESENT COMPANY PETITION UNDER SECTION 155 OF COMPANIES ACT, 1956:

18. It is submitted that it is an admitted fact that at the time of filing the captioned Company Petition, the Petitioners were shareholders of Respondent No. 1 and they (existing Petitioners) continue to be shareholders of Respondent No. 1 even as on date. It is indisputable that the quantum of shares of Respondent No. 1 held by the Petitioners is irrelevant and non – consequential to the captioned proceedings initiated under the provisions of Section 155 of 1956 Act. For ready

reference, sub sections (1) to (3) of Section 155 of 1956 Act are reproduced hereunder:

*"**155. Power of Court to rectify register of members** – (1) If –*

(a) the name of any person –

(i) is without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register, is, without sufficient cause, omitted therefrom; or

(b) default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become, or ceased to be, a member;

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either reject the application or order rectification of the register; and in the latter case, may direct the company to pay the damages, if any, sustained by any party aggrieved.

In either case, the Court in its discretion may make such order as to costs as it thinks fit.

(3) On an application under this section, the Court –

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

....."

19. It is submitted that as stated hereinabove, sub section (1) of Section 155 of 1956 Act recognises the following (3) three categories of persons

who are entitled to file a Petition for rectification of register under the said provision:

(i) the person aggrieved; or

(ii) any member of the company; or

(iii) the company itself.

20. It is reiterated that admittedly, the Petitioners were shareholders of Respondent No. 1 at the time of filing the captioned Petition and hence, they are covered under the abovementioned category (ii) i.e. 'any member of the company'. It is submitted that in contrast to the provisions of oppression and mismanagement, Section 155 of 1956 Act does not envisage any threshold limit of shareholding of a Petitioner for filing a Petition for rectification of register. It is submitted that the only requirement for entitling a Petitioner to maintain a Petition under Section 155 of the 1956 Act is that such person should fall under one of the 3 (three) categories mentioned hereinabove. Thus, as provided in Section 155 itself, the mere fact that the Petitioners were shareholders of Respondent No. 1 at the time of filing the captioned Petition sufficiently entitles the Petitioners to file the captioned Company Petition, irrespective of whether such shareholding was significant or not.

II. PETITION UNDER SECTION 155 OF COMPANIES ACT, 1956 IS MAINTAINABLE WHEN THE NAME OF ANY PERSON IS ENTERED IN THE REGISTER WITHOUT SUFFICIENT CAUSE, I.E., IN CONTRADICTION TO THE PROVISIONS OF SAID ACT:

21. As stated hereinabove, it is the case of the Petitioners that the Respondent No. 2 and his family utilized the funds of the Respondent No. 1 to acquire the shares of Respondent No. 1 itself. Thus, since the funds of Respondent No. 1 company were used to acquire its own shares, the same is *ex facie* in contradiction of Section 77 of the 1956 Act. In addition to the above, the use of funds of Respondent No. 1 company to acquire its own shares is also violative of Article 20 of the

Articles of Association of Respondent No. 1 (Page 87 of Company Petition), thereby in contradiction of Section 36 of 1956 Act.

22. It is submitted that Section 155 of 1956 Act mandates rectification of register of members of a company when the names of any member(s) are shown to be entered in the register of members without sufficient cause. It is submitted that the meaning of the term 'sufficient cause' occurring in Section 155 of 1956 Act is no more *res integra*. It is submitted that the Hon'ble Supreme Court of India has held the following in ***Ammonia Supplies Corporation (P) Ltd. v/s Modern Plastic Containers Pvt. Ltd. and Ors. [1998) 7 SCC 105] (Paragraph 31):***

"31. Sub-section (1) (a) of Section 155 refers to a case where the name of any person is without sufficient cause entered or omitted in the Register of Members of a company. The word 'sufficient cause' is to be tested in relation to the Act and the Rules. ***Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done****....."*

23. It is submitted that thus, it is a settled position of law that the term entered without 'sufficient cause' would mean that the same is done in contradiction of the 1956 Act or Rules. It is submitted that as stated hereinabove, the names of Respondents No. 2 and his family (Respondents No. 2/1 to 2/3) have been entered in the Register of Members of Respondent No. 1 company in violation of Section 77 and Section 36 of the 1956 Act and hence, without sufficient cause. It is submitted that thus, there is no *iota* of doubt that the captioned Company Petition preferred by the Petitioners for rectification of register of members of Respondent No. 1 under Section 155 of 1956 Act is maintainable.

III. THIS HON'BLE TRIBUNAL HAS JURISDICTION TO ENTERTAIN THE CAPTIONED COMPANY PETITION FILED UNDER SECTION 155 OF COMPANIES ACT, 1956:

24. At the outset, it is submitted that it is an admitted legal position that this Hon'ble Tribunal has the requisite jurisdiction to entertain, adjudicate and dispose of the captioned Company Petition filed under Section 155 of the 1956 Act. It is pertinent to note here that the captioned Company Petition was initially preferred by the Petitioners under the provisions of 1956 Act before the Hon'ble Gujarat High Court in view of the express jurisdiction vested with the Hon'ble Gujarat High Court under Section 10 read with Section 2 (11) of the 1956 Act. It is reiterated that in view of the establishment of this Hon'ble Tribunal during the pendency of the captioned Company Petition before the Hon'ble Gujarat High Court and considering the amendments notified by the Legislature from time to time *inter alia* for transfer of proceedings under the 1956 Act to this Hon'ble Tribunal, the captioned Company Petition came to be transferred to this Hon'ble Tribunal *vide* Order dated 25th January, 2018 passed by the Hon'ble Gujarat High Court.

25. It is submitted that the scope of jurisdiction of a court defined under the provisions of 1956 Act (now this Hon'ble Tribunal) in relation to Section 155 of 1956 Act has been dealt with in detail by the Hon'ble Supreme Court of India in ***Ammonia Supplies Corporation (P) Ltd. v/s Modern Plastic Containers Pvt. Ltd. and Ors. [1998) 7 SCC 105] (Paragraphs 24 to 31),*** the conclusion of which is provided in Paragraph 31 of the said Judgment,which is reproduced hereinafter for immediate reference:

"31. .....So we conclude that the principle of law as decided by the High Court that the jurisdiction of the court under Section 155 is summary in nature cannot be faulted. Reverting to the second limb of submission by learned counsel for the appellant that the Court should not have directed for seeking permission to file suit only because a party

for dispute's sake states that the dispute raised is a complicated question of facts including fraud to be adjudicated. The Court should have examined itself to see whether even prima facie what is said is complicated question or not. Even dispute of fraud, if by a bare perusal of the document or what is apparent on the face of it on comparison of any disputed signature with that of the admitted signature the Court is able to conclude no fraud, then it should proceed to decide the matter and not reject it only because fraud is stated."

26. In addition to the above, it is submitted that in the case of ***Mrs. E.V. Swaminathan v/s K.M.M.A. Industries and Roadways Pvt. Ltd. and Ors. [1992 SCC OnLine Mad 401] (Paragraph 16),*** the wide scope of powers of company court under Section 155 of 1956 Act are narrated by the Hon'ble Madras High Court as under:

"11. Therefore, section 155 (3) (a) of the Act confers jurisdiction on the company court to decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand. Section 155 (3) (b)of the Act confers further powers on the court generally to decide any question which is necessary or expedient to decide in connection with the application for rectification. Thus, Section 155 (3) (a) and (b) confers powers of great amplitude on the company court to decide all questions which the court considers necessary or even expedient to decide in an application for rectification of share register. There is nothing in the section which debars the court from deciding any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register. If the contention that, when complicated questions of fact and law arise, the court should decline to consider any application filed under section 155of the Act on its merits has to be upheld, the jurisdiction of the court can be ousted by conduct of parties by setting up unnecessary pleas and stating that the matter

involved complicated questions of law and fact. The result of such a situation will be that the wide powers that have been conferred on the company court under section 155of the Act will be rendered purposeless and nugatory and the very object of introducing a section like 155 will be defeated."

27. It is submitted that thus, as settled by the Hon'ble Supreme Court, for deciding any question pertaining to rectification of register including questions raised within the peripheral field of rectification, it is the court under Section 155 alone which would have jurisdiction. It is submitted that as stated hereinabove, wide powers are conferred on the company court under Section 155 and this Hon'ble Tribunal can also decide complicated questions of fact and law under section 155 pertaining to the title of shares and there is no mandate to relegate the parties to a Suit unless forgery has been alleged by the parties. It is submitted that Section 59 of the Companies Act, 2013 (**"2013 Act"**) also provides for rectification of register and this Hon'ble Tribunal has ample jurisdiction under the said provision as well to adjudicate upon the issue of violation of Section 77 and Section 36 of the 1956 Act requiring rectification of register of members of Respondent No. 1. It is submitted that in the present case, admittedly, there is no allegation of forgery of any document and hence, this Hon'ble Tribunal has the requisite jurisdiction to adjudicate and dispose of the captioned Company Petition.

IV. RESPONDENTS NO. 2 AND HIS FAMILY (RESPONDENTS NO. 2/1 TO 2/3) HAVE CONTRADICTED/ VIOLATED THE PROVISIONS OF SECTION 77 AS WELL AS ARTICLE 20 OF ARTICLES OF ASSOCIATION READ WITH SECTION 36 OF 1956 ACT:

28. It is submitted that the crux of the captioned Company Petition is that the Respondent No. 2 and his family utilized the funds of Respondent No. 2 to acquire the shares of Respondent No. 1 pursuant to the MOU read with MOM. It is submitted that the transactions evidencing the

blatant contradiction of provisions of 1956 Act, especially Section 77, are detailed at Pages 56 to 58 of the Company Petition. It is pertinent to mention here that the said transactions have not been denied by the Respondent No. 2 and his family at any point of time in the captioned proceedings. For ease of understanding and ready reference, the said transactions involving M/s Santosh Starch Products are briefly depicted as under:

Date	**Particulars**	**Ref. Pg. No.**
13th November, 1982	A sum of INR 15,00,000/- (Rupees Fifteen Lakhs only) was advanced by Respondent No. 1 to a supplier namely, M/s Santosh Starch Products.	56
13th November, 1982	On the same day, M/s Santosh Starch Products advanced a sum of INR 20,00,000/- (Rupees Twenty Lakhs only) to Respondent No. 2 and his family.	56
13th November, 1982	On the very same day, to fulfil his obligations under the MOU read with MOM, Respondent No. 2 and his family paid an equivalent amount of INR 20,00,000/- (Rupees Twenty Lakhs only) to CVMPL, which was admittedly utilized by CVMPL to pay and discharge its liabilities, which was a pre-condition for transfer of shares of Respondent No. 1 in favour of Respondent No. 2 and his family.	56
25th November, 1982	The balance amount of INR 5,00,000/- (Rupees Five Lakhs only) in addition to the earlier sum of INR 15,00,000/- (Rupees Fifteen Lakhs only) came to be transferred by Respondent No. 1 to M/s Santosh Starch Products *inter alia* to cover/ reimburse the entire payment of INR 20,00,000/- (Rupees Twenty Lakhs only) advanced by M/s	56

	Santosh Starch Products to Respondent No. 2 and his family.	

29. It is submitted that as stated hereinabove, Clause 3 of the MOM (Page 47 of Company Petition) cast an obligation on Respondent No. 2 to immediately pay a sum of INR 20,00,000/- (Rupees Twenty Lakhs only) to CVMPL, which was to be treated as a loan and was to be utilized towards payment of liabilities owed by CVMPL to members of the family of Vadilal Lallubhai Mehta and Respondent No. 12, as more particularly provided therein. It is submitted that the said Clause 3 further provided that the actual effect was to be given to transfer of shares of Respondent No. 1 in favour of Respondent No. 2 and his family only after the payment of aforesaid INR 20,00,000/- (Rupees Twenty Lakhs only) to CVMPL, which effect was given on 17th November, 1982 (Page 413 to 426 of Company Petition). Stated simpliciter, under the MOU read with MOM, the payment of INR 20 Lakhs by Respondent No. 2 to CVMPL for discharging its liabilities was fixed as the consideration for transfer of shares of Respondent No. 1 in favour of Respondent No. 2 and his family. It is also pertinent to note that as per the said Clause, it was after the payment of aforesaid sum to CVMPL by Respondent No. 2 that the transfer of management of Respondent NO. 1 was to be made in favour of Respondent No. 2 and Respondent No. 3. Hence, what was envisaged under the MOU read with MOM was that the aforesaid amount of consideration for acquiring the shares of Respondent No. 1 was to be paid by Respondent No. 2 from his own funds and not from the funds of Respondent No. 1.

30. It is submitted that there was no illegality and/or contradiction of provisions of 1956 Act by mere advancing of money by Respondent No. 1 to M/s Santosh Starch Products on 13th November, 1982. However, the violation and contradiction of provisions of 1956 Act, particularly Section 77 of 1956 Act, occurred when M/s Santosh Starch Products

transferred the said amount to the personal accounts of Respondent No. 2 and his family, which was utilized to pay CVMPL as obligated under the MOU read with MOM *inter alia* for discharging the liabilities of CVMPL, resulting into transfer of shares of Respondent No. 1 in favour of Respondent No. 2 and family. Thus, the substance of the present matter is that Respondent No. 2 and his family fraudulently acquired the shares of Respondent No. 1 out of funds of Respondent No. 1 itself.

31. It is submitted that similar *modus operandi* was adopted by the Respondent No. 2 and his family once again, when the funds of Respondent No. 1 were routed through M/s Tirupati Traders and other individual vendors of Respondent No. 1, which was eventually transferred to Respondent No. 2 and his family who again utilized it for payment to CVMPL for discharging its liabilities as required under the MOU read with MOM *inter alia* to acquire the shares of Respondent No. 1. In short, Respondent No. 2 and his family fraudulently used the funds of Respondent No. 1 to acquire its shares by routing its monies through traders and by getting fictitious loans from such traders to pay requisite monies into CVMPL which was the consideration for acquiring management and control of Respondent No. 1 and CVMPL, thereby expressly violating the provisions of 1956, more particularly Section 77 of the said Act.

32. At this juncture, it is imperative to refer to the Counter Affidavit filed by Respondent No. 2 (Page 497 of Company Petition) before the Hon'ble Supreme Court of India in Special Leave Petition (Civil) No. 9835 of 2000 filed by the Petitioners of the captioned Company Petition. It is submitted that in paragraphs 4 and 6 of the said Counter Affidavit (Page 501 and 503 of Company Petition), the Respondent No. 2 has categorically admitted to the entire scheme of transaction narrated hereinabove and detailed at Page 56 of Company Petition, which unequivocally proves blatant violation and contradiction of Section 77 of the 1956 Act by Respondent No. 2. It is submitted that the relevant

portions of paragraphs 4 and 6 of the Counter Affidavit of Respondent No. 2 is reproduced hereunder for ready reference:

"4.....At the time of execution of the said Memorandum of Understanding the members of the family of Vadilal Mehta, Suhas Vadilal Mehta, Suhas Vadilal Trust and other Trust and relatives of late Shri V. L. Mehta and my brother Mr. Suhas had a credit balance of approximately Rs. 40 lacs in M/s. C. V. Mehta Pvt. Ltd. It was a condition precedent that all these payments were to be made immediately by M/s C. V. Mehta Pvt. Ltd. so that the payment could be made to Respondent No. 9 and 10 hereto."

"6. Late Shri V. L. Mehta utilised his position as Chairman and Managing Director of the Respondent No. 3 Company. He planned out a design with the help of the Petitioner No. 1, who was the Administrative Manager of the Respondent No. 3 Company and a close confidant of late Shri V. L. Mehta. He therefore managed to advance a sum of Rs. 23 lacs to M/s. Santosh Starch Products from the funds of the Company. It may be stated that when these funds were advanced by the Company, I was not a Director when the initial two instalments were paid on 13th November, 1982. Third instalment was paid on 25th November, 1982 and the cheque in respect whereof was signed by the Petitioner No. 1 who was fully in know of the arrangement. I was not having cheque signing authority till April, 1983. ***It is significant to note that when M/s. Santosh Starch Products paid a total loan of Rs. 20 lacs to me and my family members, the same were deposited by me in Punjab National Bank to the account of C. V. Mehta Pvt. Ltd. and the same were withdrawn by Respondent No. 9 and his family members as stated hereinabove****....."*

33. It is submitted that a perusal of the above statements made on oath by Respondent No. 2 in his Affidavit filed before the Hon'ble Supreme Court of India made it evident that it is an admitted fact that the monies advanced by Respondent No. 1 to M/s Santosh Starch Products was in turn transferred to Respondent No. 2 and his family. Further,

the same monies were transferred by Respondent No. 2 and his family to CVMPL as a pre-condition of the MOU and MOM, which was utilized to pay and discharge the liabilities of CVMPL. It is reiterated that as agreed in the MOU and MOM, the infusion of a sum of INR 20 Lakhs into CVMPL to pay and discharge its liabilities was nothing but the consideration for transfer of shares of Respondent No. 1 in favour of Respondent No. 2 and family (Clause 3 of MOM at Page 47 of MOM). It is submitted that thus, the above unequivocal admission on part of Respondent No. 2 leaves no *iota* of doubt that the funds of Respondent No. 1 were used by Respondent No. 2 to purchase the shares of Respondent No. 1 itself.

34. It is submitted that by orchestrating the aforesaid transactions, whereby, the funds of Respondent No. 1 were utilized by Respondent No. 2 and his family members to buy the shares of Respondent No. 1 itself, the Respondent No. 2 played an egregious fraud on the Respondent No. 1 company, its shareholders as well as on the statute i.e. 1956 Act. It is submitted that such fraudulent actions on part of Respondent No. 2 and his family came to the knowledge of Petitioners only through a criminal complaint filed by a Trade Unionist highlighting the above transactions (Page 88 of Company Petition).

35. Before adverting to the provisions of the 1956 Act, it is noteworthy to mention here that the Petitioners neither had any knowledge of the subject transactions prior to May, 1987 and nor was the Petitioner No. 1 involved in the said transactions as alleged by the Respondent No. 2. It is submitted that there is an inherent fallacy in the said argument for the mere fact that the entire transaction, which perpetrated the illegality and contravened the provisions of 1956 Act, occurred by transfer of funds from the personal bank accounts of Respondent No. 2 and his family, which could never have been known to the Petitioners nor could the Petitioners have had access to such personal bank accounts of said Respondents at any point in time. It is reiterated that there was no illegality in advancing of monies to M/s Santosh Starch

Products by Respondent No. 1, but the illegality occurred only when the very same funds were used by Respondent No. 2 and his family as consideration for purchase of shares of Respondent No. 1.

36. It is submitted that Section 77 of the 1956 Act reads as under:

*"**77. Restrictions on purchase by company, or loans by company for purchase, of its own or its holding company's shares.**– (1) No company limited by shares, and no company limited by guarantee and having a share capital, shall have the power to buy its own shares, unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 100 to 104 or of section 402.*

*(2) No public company, and no private company which is a subsidiary of a public company, shall give, whether **directly or indirectly, and whether by means of a loan**, guarantee, the provision of security or otherwise, **any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company**....."*

37. It is submitted that thus, Section 77 of the 1956 Act expressly bars a company from purchasing its own shares by providing any financial assistance, whether directly and/or indirectly, for the purpose of and/or in connection with the purchase of its own shares. It is submitted that a perusal of the subject transactions at Page 56 to 58 of Company Petition unequivocally shows that the advances given from Respondent No. 1 were nothing but a financial assistance which was utilized by Respondent No. 2 and his family to acquire the shares of Respondent No. 1 company itself by payment of monies to CVMPL in the nature of a loan. It is submitted that such financial assistance was provided directly as well as indirectly in as much as a part of the financial assistance was transferred from Respondent No. 1 prior to payment of monies by Respondent No. 2 to CVMPL and balance

amount of consideration was reimbursed by Respondent No. 1 after transfer of monies by Respondent No. 2 to CVMPL. It is submitted that thus, eventually, it was Respondent No. 1 from whose account the consideration amount provided under the MOU read with MOM was paid, against which the shares of Respondent No. 1 came to be acquired by Respondent No. 2 and his family members. It is submitted that thus, there is no escaping the conclusion that the entire scheme of transaction designed by Respondent No. 2 and his family to purchase the shares of Respondent No. 1 was in the teeth of Section 77 of 1956 Act.

38. It is pertinent to reiterate here that the main object of the MOU read with MOM was mutual transfer of shares of certain companies between Respondent No. 2 and Respondent No. 12 *inter alia* to entrust the management of such companies to the said Respondents. It is submitted that in pursuance of such understanding, the shares of Respondent No. 1 were to be transferred in favour of Respondent No. 2 subject to an amount of INR 20,00,000/- (Rupees Twenty Lakhs only) being brought in and paid by Respondent No. 2 to CVMPL for discharging its liabilities. Thus, it is submitted that the actual effect of the transfer of shares of Respondent No. 1 in favour of Respondent No. 2 was to take place only when the aforesaid amount was paid by Respondent No. 2 to CVMPL rendering it as the consideration for the said shares. Therefore, the said amount of INR 20 Lakhs was to be brought in from the personal funds of Respondent No. 2 only. It is submitted that the use of funds of Respondent No. 1 for infusing the aforesaid amount of INR 20 Lakhs clearly evidences violation of Section 77 of the 1956 Act.

39. In addition to the above, the same was also in gross violation of Article 20 of the Articles of Association of Respondent No. 1 (Page 87 of Company Petition), which expressly states that none of the funds of Respondent No. 1 should be employed in the purchase of or lent on the shares of Respondent No. 1. It is submitted that Section 36 of the 1956

Act provides that the Articles of Association of a company would be binding on the company and its members, as more particularly stated therein. It is submitted that thus, by acting in violation of Article 20 of the Articles of Association, the Respondent No. 2 and his family have blatantly contradicted Section 36 of the 1956 Act as well, requiring this Hon'ble Tribunal to exercise its powers under Section 155 of 1956 Act. For immediate reference, relevant extract of Article 20 of the Articles of Association of Respondent No. 1 is reproduced below:

"20 (i) None of the funds of the Company shall be employed in the purchase of or lent on shares of the Company..."

40. It is submitted that the only defence argued by the Respondents No. 2 and his family members to wriggle out of the contours of Section 77 is that the monies paid by them to CVMPL were utilized for discharging the liabilities of CVMPL only and that they allegedly paid separate consideration for acquiring the shares of Respondent No. 1 under the MOU and MOM. At the outset, it is submitted that the Respondents No. 2 and his family have miserably failed to place on record any evidence whatsoever to even remotely suggest that any separate consideration was paid by them to acquire the shares of Respondent No. 1. Moreover, there is no pleading and/or evidence whatsoever placed on record by the Respondents No. 2 and his family to even remotely show that the said Respondents had a financial capacity equivalent to or more than the amount that was mandated to be paid under the MOU read with MOM as a pre-condition for acquiring the shares of Respondent No. 1. In fact, it is submitted that as stated hereinabove, the payment of monies by Respondent No. 2 and his family to CVMPL for discharging its liabilities was itself the consideration agreed for transfer of shares of Respondent No. 1 to Respondent No. 2 and his family. Thus, the admission that the monies transferred by Respondent No. 2 and his family to CVMPL for discharging its liabilities originated from Respondent No. 1 itself proves the contradiction and violation of

Section 77 as well as Article 20 of Articles of Association by the said Respondents.

41. Assuming whilst denying that any separate consideration was paid by Respondent No. 2 for acquiring the shares of Respondent No. 1, it is submitted that even then the infusion of INR 20 Lakhs into CVMPL by Respondent No. 2 from the funds of Respondent No. 1 would be in violation of Section 77 as well as Article 20 read with Section 36 of 1956 Act. It is submitted that as stated hereinabove, the payment of INR 20,00,000/- (Rupees Twenty Lakhs only) by Respondent No. 2 to CVMPL was a mandate for effecting the transfer of shares of Respondent No. 1 in favour of Respondent No. 2 irrespective of any separate amount being paid by for such shares. It is reiterated that thus, the payment of said INR 20,00,000/- (Rupees Twenty Lakhs only) to CVMPL for discharge of its liabilities was also the consideration for purchase of shares of Respondent No. 1 by Respondent No. 2. It is submitted that Section 77 (2) attracts any indirect financial assistance rendered by a company by way of a loan in connection with purchase of shares. It is submitted that in the present case, Respondent No. 1 itself gave, by means of a loan, financial assistance to Respondent No. 2 to the extent of INR 40 Lakhs and his family to pay off the liabilities of CVMPL which was condition precedent for purchase of shares of Respondent No. 1 by Respondent No. 2. Thus, the said transaction runs smack into Section 77 (2), as well as Article 20 read with Section 36 of 1956 Act, rendering the said purchase of shares a nullity.

42. It is submitted that the consequence of entering the name of any member in the register of members of a company in violation and/or contradiction to the 1956 Act i.e. entering such name without sufficient cause is already dealt with by the Hon'ble Supreme Court of India in paragraph 31 of ***Ammonia Supplies Corporation (P) Ltd. v/s Modern Plastic Containers Pvt. Ltd. and Ors. [1998) 7 SCC 105]***, which has been detailed hereinabove. Admittedly, the names of Respondent No. 2 and his family members have been entered in the register of members

of Respondent No. 1 in violation of Section 77 of 1956 Act and Article 20 of Articles of Association read with Section 36 of 1956 Act and hence, without sufficient cause. In view of the above, it is submitted that this is a fit case for this Hon'ble Tribunal to exercise its powers under Section 155 of the 1956 Act and rectify the register of members of Respondent No. 1 as prayed for by the Petitioners in the captioned Company Petition.

43. It is submitted that the law pertaining to the legality of purchase of its own shares by a limited company has already been laid down by the Hon'ble Supreme Court of India in ***Ramesh B. Desai and Ors. v/s Bipin Vadilal Mehta and Ors. [(2006) 5 SCC 638] (Paragraph 11),*** wherein it has been categorically held by the Hon'ble Apex Court any valuable consideration paid out of the assets of a company would make the transaction amounting to a purchase and therefore, invalid.It is pertinent to note that the aforementioned proposition of law was not an observation on the facts of this case, but a position of law settled by the Hon'ble Supreme Court and hence, a binding precedent. It is submitted that thus, in view of the law settled by the Hon'ble Supreme Court, the subject transactions are required to be rendered invalid and necessary rectifications are required to be carried out in the register of Respondent No. 1.

44. It is also profitable to refer to the decision of the Hon'ble Supreme Court of India in ***Mannalal Khetan and Ors. v/s Kedar Nath Khetan and Ors. [(1977) 2 SCC 424] (Paragraphs 20 and 21),*** wherein the Hon'ble Supreme Court has categorically propounded that if anything is against the law though it may not be prohibited in a statute but only a penalty is annexed, even then such agreement is void. It has been further held that in every case where a penalty is provided in a statue for doing an act which may not be prohibited, such act would even then be rendered unlawful. The simple reason for this is that a statute would not inflict a penalty for a lawful act. It is submitted that by applying the said proposition of law, the conclusion arrived at is that even if sub-

section (4) of Section 77 of 1956 Act provides for inflicting penalty for violation of the said Section, such penalty would not legalize the unlawful and illegal transactions and the same would be rendered unlawful and void. Thus, in other words, it is submitted that a penal provision in sub-section (4) of Section 77 of the 1956 Act would not impede the power of this Hon'ble Tribunal to declare the illegal and contradictory transactions as null and void and order rectification of register under the provisions of Section 155 of the 1956 Act.

45. It is further submitted that Hon'ble High Court of Madras in the case of ***Sabaratnam Chettiar v/s Official Liquidators, Travancore National and Quilon Bank Ltd.*** reported in ***[1943] 13 Comp Cases 61 (Mad)***, has held the following at internal ***Page 67***:

"If a company therefore purchases its own shares no matter where, a member who has sold the shares to the company cannot be removed from the register because the purchase must be deemed to have been not validly made as it is ultra vires of the company. In Bellerby v. Rolland and Marwood's Steamship Co., Ltd., where a shareholder surrendered shares in consideration of the company releasing the shareholder from further liability in respect thereof it was held to be a purchase of the shares by the company and therefore illegal and null and void. ***On this principle it was held that a shareholder who sold the shares and whose name was removed from the register was entitled to be restored to the register 7 years after the transaction****...."*

46. It is submitted that even in view of the above proposition of law, the subject transactions being in violation of Section 77 and Section 36 of 1956 Act, are required to be set at naught and all the benefits accrued to the Respondents No. 2 and his family in furtherance of such illegal transactions are required to be reversed by granting *status quo ante* as prayed for by the Petitioners in the captioned Company Petition.

V. THE CAPTIONED COMPANY PETITION IS WITHIN FILED WITHIN LIMITATION:

47. It is submitted that from a perusal of Section 155 of the 1956 Act, it is clear that no specific time period of limitation is provided in the said provision *inter alia* for preferring a Company Petition under Section 155 of the 1956 Act. It is submitted that thus, a Petition under Section 155 of the 1956 Act may be entertained by this Hon'ble Tribunal within a reasonable time period from the date of knowledge of the wrongdoing. It is submitted that the reasonable time period would have to be adjudicated by this Hon'ble Tribunal on the facts of each case. It is submitted that in the present case, the Petitioners have categorically stated that they acquired the knowledge of the fraudulent transactions undertaken by the Respondent No. 2 and his family only in May, 1987. It is submitted that thereafter, the Petitioners got issued a Legal Notice dated 17th June, 1987 (Page 59 of Company Petition). However, since no satisfactory response was forthcoming from the said Respondents, the Petitioners immediately filed the captioned Company Petition under Section 155 of the 1956 Act in October – November, 1987 *inter alia* seeking reliefs as more particularly prayed therein. It is submitted that thus, there is no delay and/or latches on part of the Petitioners in preferring the captioned Company Petition. Thus, it is submitted that the captioned Company Petition being filed within a reasonable period, the same is not liable to be dismissed on the ground of limitation.

48. Without prejudice to the above, it is submitted that even if it is held that a Petition under Section 155 of the 1956 Act attracts limitation period of 3 (three) years under the residuary Article 137 of Limitation Act, 1963 (**"Limitation Act"**), even then the time period for filing the captioned Company Petition begins to run only from the date of knowledge of the fraudulent transactions entered into by the Respondent No. 2 and his family i.e. from May, 1987. It is submitted that a perusal of the captioned Company Petition (Paragraph 21 at Page 19) evidently shows that the Petitioners have specifically pleaded that

they acquired knowledge of the entire fraudulent transactions in detail only when a specific criminal complaint (Page 88 of Company Petition) was filed by a Trade Unionist of the Respondent No. 1 in respect thereof. It is submitted that it has been further pleaded by the Petitioners that they came to know about such fraudulent transactions only in May, 1987, where after, they enquired into the matter and collected available additional material. For immediate reference, paragraph 21 of the Company Petition (Page 19) is reproduced below:

"21. The petitioners further say that though the share transfers were effected in the year 1982, the petitioners could not have detected the fraud earlier, but they came to know about the fraud in detail when the specific criminal complaint was filed by some interest persons, the office bearers of the Union of the Company before the Criminal Court at Narol and they came to know by or about in the month of May, 1987. Hereto annexed and marked as Annexure 'I' is the copy of the said complaint. Thereafter enquired into the matter and collected whatever additional material available. Petitioner No. 1 gave notice dated 14-6-87. However, respondents 2 to 11 wasted too much time in correspondence and thereafter this petition is filed immediately."

49. It is further submitted that in response to the untenable grounds of limitation raised by the Respondents, the Petitioners have categorically stated that the Petitioner No. 1, who was also named as a witness in the criminal complaint, did not know of the filing of the said criminal complaint. It is submitted that the specific knowledge of the fraudulent transactions was acquired by the Petitioners only through the criminal complaint filed against Respondents No. 2 and 3 by a Trade Unionist of Respondent No. 1. It is submitted that it has also been clarified by the Petitioners that it is thereafter that the Petitioners undertook independent inquiries and gathered available material before issuing the notice (Pages 135 to 138 and Pages 481 to 484 of Company Petition). It is pertinent to note here that no evidence whatsoever has been placed on record by any Respondent whatsoever to dislodge the date of knowledge of the Plaintiffs of the fraudulent transactions

perpetrated by Respondent No. 2 and his family. Even otherwise, no allegations whatsoever have been raised by the Respondents *inter alia* to even remotely indicate that the then Petitioners No. 2 to 9 had knowledge of the fraudulent transactions in the year 1982. Thus, it is submitted that there is no *iota* of doubt that the Plaintiffs having acquired knowledge in May, 1987, the captioned Company Petition is well within limitation. It is submitted that for immediate reference, the explanation provided by the Petitioner No. 1 at Pages 135 to 138 is reproduced below:

> *"9. I say that the deponent has mixed up two aspects regarding issuance of notice regarding filing of the complaint. I say that I deny that notice was got issued on 17.6.87. it has been issued on 19.6.87 though it may be dated 17.6.87. I say that even otherwise, there is no contradiction which is pointed out which would detract from the fact that the petitioners came to know about the said transactions only in May 1987. I do not know about the date of filing of the complaint. I say that deponent has twisted facts stated in para – 21 of the petition. It is clearly stated in the petition that the detailed facts came in light only when criminal complaint was filed. However, petitioners came to know about the transactions in May 1987. There is nothing inconsistent about the same and there is nothing false about the same also. I deny that we were knowing about the said transaction from November 1982 as alleged. I have clearly stated that I came to know about the modus operandi of respondent no. 2 and 3 and the fact that they had conspired and thought out device to use the company's funds only when the said transactions came in light. It may be that I was Administrative Manager, but I would not know and I could not have known the criminal intentions behind the said transaction. In fact, I never knew the original intention harboured by respondents nos. 2 and 3 behind the said transaction except when as stated in the petition when I came to know about the same in or about May 1987, and when detailed*

criminal complaint was filed. I say that the factum of the transaction is different from the criminal intention harboured behind the said transaction and no such knowledge can be imputed to me. I say that it was too much to suggest that Administrative Officer would pierce the veil and know the working of the minds of respondents no. 2 and 4. I say that fact that the other family members of the respondent nos. 2 and 4 may be working as Directors along with respondent nos. 2 and 3 is hardly relevant. As a shareholder I am not concerned with the internal family arrangements of respondent nos. 2 and 3 and his family members and I have always made it clear that I am exercising my rights as a shareholder. I say that notice was served on 19.6.87 though it is dated 17.6.87 and the said fact is not correct. I, therefore, say that there is no estoppel against me or any of the petitioners, I say that nothing is alleged against the petitioner nos. 2 to 9 and therefore, in any view of the matter, fact that 9 shareholders have come out with the petition is very relevant and they all could not be estopped by law or equity on such flimsy preliminary objections."

50. It is submitted that in the judgment passed by the Hon'ble Supreme Court pertaining to the captioned matter ***[(2006) 5 SCC 638] (Paragraphs 18, 20 and 23)***, the Hon'ble Supreme Court has provided various *prima facie* observations *inter alia* accepting that the Petitioners could not have gained knowledge of the fraudulent transactions before May, 1987. It is submitted that the Hon'ble Supreme Court has further observed that even if it was assumed that Petitioner No. 1 could have gained knowledge of the subject transactions as alleged by the Respondents No. 2 and his family, no knowledge has been imputed with respect to the other Petitioners i.e. Petitioners No. 2 to 9, who had filed the captioned Company Petition in 1987. It is submitted that thus, it was observed by the Hon'ble Supreme Court that the allegations that the Petitioners always had knowledge of the subject transactions since 1982 could not be accepted unless evidence to that effect was led by

the parties. It is submitted that however, even after 2006 till date i.e. after the remand of the captioned matter by the Hon'ble Supreme Court for deciding the same afresh, no new evidence has been led by any party to even remotely suggest that the Petitioners had knowledge of the subject transactions since 1982. Thus, in view thereof, it is submitted that the captioned Company Petition cannot be rejected on the ground of limitation and the same is required to be adjudicated on the merits of the case.

51. It is submitted that the only case of the Respondents (except Respondent No. 12 and 13), sans any evidence *much less* cogent evidence, is that the Petitioner No. 1 ought to have known of the fraudulent transactions since 1982 and hence, limitation for filing the captioned Company Petition ended in 1985. It is submitted that to buttress the above untenable argument, the said Respondents submitted that Petitioner No. 1 was the Administrative Manager of Respondent No. 1 in the year 1982 and was a close confidant of Vadilal Mehta and Respondent No. 12. The said Respondents further submitted that being in such a position he could neither have been blind to the transfer of large number of shares to Respondent No. 2 and his family on 17th November, 1982 nor could he have been blind to transfer of control and management of Respondent No. 1 to Respondent No. 2 and his family. The Respondent No. 1 also submitted that in fact, the cheque for last tranche of advances of INR 5 Lakhs made by Respondent No. 1 to M/s Santosh Starch Products on 25th November, 1982 was signed by Respondent No. 1, which was knowingly not paid towards purchase of any goods or as advances (Page 483 of Company Petition). The Respondent No. 1 submitted that since the Petitioner No. 1 was knowing the above, he ought to have shown reasonable diligence and enquired the reason for such payment. The said Respondents further submitted that the Petitioners claim to have acquired knowledge of fraudulent transactions from the criminal complaint, however, there are no averments concerning Tirupati Traders in the said complaint and no averments have been provided for the same in

the captioned Petition. Further, in the Affidavit signed along with the Petition (Page 22 of Company Petition) the Petitioner No. 1 has claimed that whatever is stated in the Petition is true to his knowledge, and hence, on the basis thereof, the said Respondents claim that Petitioner No. 1 had knowledge of the fraudulent transactions since 1982, rendering the captioned Company Petition barred by limitation.

52. At the outset, it is reiterated that there is not even an inkling of assertion that the then Petitioners No. 2 to 9 had any knowledge of the fraudulent transactions in the year 1982 and hence, on this ground alone, the issue of Petition being barred by limitation is required to be rejected and the captioned Petition is to be adjudicated on its own merits. It is submitted that it was argued by the Respondents that none of the Petitioners except Petitioner No. 1 had filed Affidavit in the captioned matter *inter alia* confirming the captioned Company Petition. At the outset, it is stated that the same is completely false, which is evident from the record itself. It is submitted that the Petitioners No. 6 and 8 have also filed separate Affidavits (Pages 547A to 547E of Company Petition) in the captioned matter *inter alia* reiterating that they did not have any knowledge of the fraudulent transactions undertaken by Respondent No. 2 and his family. It is submitted that for immediate reference, the averments made on oath by the said Petitioners in their Affidavits are reproduced below:

"2. I say that I am filing this affidavit since certain allegations are made against me as a shareholder by saying that I was knowing about the transactions and that I had the knowledge about the offending transactions, which have taken place in the year 1982.

3. I, along with my late husband Harshadbhai Desai had joined in the petition to mitigate our rights u/s 155 of the Companies Act. It is not correct to say that we were acting at the behest of Ramesh B. Desai – petitioner no. 1 herein. We were acting independently to mitigate our rights as shareholders.

4. I categorically state that neither myself nor my late husband ever knew about the said transactions. By the very nature of things as

shareholders, I could neverhave known about the said transactions and the said transactions were not even disclosed by way of statement u/s 173 of the Companies Act and the information was withheld from the shareholders. I, therefore, say that even though my husband has expired, I have decided to continue with the petition in my own right as well as the transferred shares of my husband and I maintain that we are entitled to the reliefs as prayed for in the petition."

53. Without prejudice, it is submitted that the submissions of aforementioned Respondents is wholly based on surmises and conjectures and there is no evidence whatsoever to even remotely suggest *much less* prove that Petitioner No. 1 had knowledge of the fraudulent transactions since the year 1982. It is submitted that as stated on oath in the pleadings filed in the captioned Petition, the Petitioner No. 1 acquired knowledge of the fraudulent transactions only in May, 1987 and anything to the contrary is required to be rejected in its entirety.

54. It is submitted that even otherwise, the insinuation that merely because Petitioner No. 1 was an administrative manager of Respondent No. 1 and/or that he was signatory to the cheque of INR 5 Lakhs, he ought to have had knowledge of the fraudulent transactions is completely absurd and misconceived. It is submitted that as stated hereinabove, there was no illegality in advancing any moneys from Respondent No. 1 to M/s Santosh Starch Products. However, the illegality and contradiction of provisions of 1956 Act occurred when the said monies transferred by M/s Santosh Starch Products to the personal accounts of Respondent No. 2 and his family, were utilized by them for payment to CVMPL as mandated under the MOU read with MOM, resulting into transfer of shares of Respondent No. 1 in favour of Respondent No. 2 and his family. It is submitted that the Petitioner No. 1 could never have acquired knowledge of the fraudulent transactions that occurred from the personal accounts of Respondent No. 2 and his family, which is when the illegality was committed by them. It is submitted that thus, even change of management and/or transfer of shares on 17th November, 1982 could not have imparted any knowledge

as to the fraudulent transactions which were perpetrated from the personal accounts of Respondents No. 2 and his family.

55. It is reiterated that the Petitioners acquired knowledge of the fraudulent transactions through the criminal complaint only in May, 1987, pursuant to which, the Petitioners undertook independent inquiries and gathered available material. It is submitted that during such inquiries, the Petitioners realised the *modus operandi* that was repeated with Tirupati Traders and other merchants, which was narrated by the Petitioners in their legal notice (Page 59 of Company Petition) and the same was incorporated in the captioned Petition by reference in the form of a chart at Annexure – C (Page 56 of Company Petition). It is submitted that thus, in view of the above, it is once again submitted that the Petitioners having acquired knowledge of the fraudulent transactions in May, 1987, the captioned Petition is well within limitation.

56. In addition to the above, it is submitted that the case of the Petitioners in the captioned Company Petition squarely falls under Section 17 (1) of the Limitation Act which provides that in when a suit or an application is based upon the fraud of the defendant or respondent or his agent, then the limitation for the same *shall* not begin to run until the plaintiff or applicant has discovered such fraud. It is submitted that as stated hereinabove, the Petitioners discovered the fraudulent transactions entered into by the Respondents No. 2 and his family only in May, 1987 and in the absence of any evidence to the contrary, there is no *iota* of doubt that limitation as provided under Section 17 would begin to run only from May, 1987. Thus, in view of the above, the captioned Company Petition is well within limitation as provided under the Limitation Act.

57. It is submitted that even otherwise, the names of Respondents No. 2 and his family which were fraudulently entered in the register of members of Respondent No. 1, continued to be reflected in the said

register even at the time of filing of the captioned Company Petition in the year 1987. It is submitted that thus, even otherwise, the illegalities committed by the Respondent No. 2 and his family constitute a continuing wrong, for which a fresh period of limitation begins to run at every moment of the time during such wrong i.e. there is a continuing cause of action in favour of the Petitioners under Section 22 of the Limitation Act. Thus, it is submitted that hence, on this ground also, the captioned Petition is well within limitation and there is no delay and/or latches as alleged or otherwise.

58. It is submitted that the judgment of the Hon'ble Supreme Court in ***The Kerala State Electricity Board, Trivandrum v/s T. P. Kunhaliumma [(1976) 4 SCC 634],*** reliedupon by the Respondents *inter alia* to suggest applicability of Article 137 of Limitation Act is of no avail and cannot help them in the captioned Petition. It is submitted that a perusal of the said judgment clearly shows that the same pertains to applications or petitions filed before a civil court (Paragraph 22), whereas the captioned Petition was filed under the 1956 Act not before any civil court, but before the Hon'ble Gujarat High Court. Thus, the said judgment is not applicable to the present case.

59. Similarly, the judgment of Hon'ble Punjab and Haryana High Court in ***Jagjit Rai Maini v/s Punjab Machinery Works (P) Ltd. [1995 SCC OnLine P&H 317]*** relied upon by the Respondents also does not further their case. It is submitted that in the said judgment (Paragraph 12), it is clearly stated that since there was no averment in the petition as to when petitioner acquired knowledge of the transfer of shares, it was presumed that he had knowledge from date of allotment basis which it was declared to be barred by limitation. It is submitted that on the contrary, in the captioned Petition (Paragraph 21 at Page 19), the Petitioners have, in no uncertain terms, made averments as to when they acquired knowledge of the fraudulent transactions i.e. in May, 1987, which has not been countered by any cogent evidence till date. Thus, it is submitted that even the said judgment of the Hon'ble Punjab

and Haryana High Court is not applicable to the facts of the present case. Accordingly, the captioned Petition having been filed immediately after gaining knowledge of the fraudulent transactions is well within limitation.

VI. THE CAPTIONED COMPANY PETITION IS NOT A PROXY/ SPONSORED LITIGATION:

60. It is submitted that lastly, a miserable attempt has been made by the Respondents (except Respondents No. 12 and 13) *inter alia* to contend that the captioned Company Petition is sponsored by the Respondent No. 12 and the same has been filed by Petitioner No. 1 at the behest of Respondent No. 12 as a proxy litigant. At the outset, it is required to be noted that the entire argument of the said Respondents is based on assumptions, surmises and conjectures only. It is submitted that no evidence *much less* any cogent evidence has been placed on record by the said Respondents to even remotely support the above argument.

61. It is submitted that the entire argument of the said Respondents as far as sponsored/ proxy litigations is concerned, revolves on the following aspects:

(i) That the father of Petitioner No. 1 was working in the Respondent No. 1 company since 1948, after which the Petitioner No. 1 joined the said company in 1965;

(ii) That the longevity of service by the father of Petitioner No. 1 and Petitioner No. 1 himself in Respondent No. 1 when Vadilal Mehta and Respondent No. 12 were in management of Respondent No. 1 made them close confidante of Vadilal Mehta and Respondent No. 12;

(iii) That Petitioner No. 1 was an administrative manager with Respondent No. 1, which was a very high position and even enjoyed higher pay than the Directors at the relevant time (Page 411 of Company Petition);

(iv) That Petitioner No. 1 resigned from Respondent No. 1 after resignations of Vadilal Mehta and Respondent No. 12;

(v) That Petitioner No. 1 was authorized signatory of Respondent No. 1 by way of Power of Attorney executed in his favour in the year 1971 (Page 465 of Company Petition);

(vi) That Petitioner No. 1/ Respondent No. 12 had previously filed various litigations against Respondent No. 2:

- Ramesh B. Desai v/s Union of India and Ors. [***AIR 1988 Delhi 288***];
- Claim filed by Respondent No. 12 and 13 against Respondent No. 2 and his family before Vadilal Mehta in or around 1985;
- Criminal complaint filed by Trade Unionist wherein Petitioner No. 1 was named as a witness.

(vii) That Petitioner No. 1 was a witness to the Will of Vadilal Mehta (Page 469 of Company Petition);

(viii) That the Annexures in the captioned Petition are claimed to be true copy of originals, which could have been provided purportedly only by Respondent No. 12.

62. It is submitted that a perusal of the above clearly shows that all the allegations raised by the Respondents are nothing but a figment of their own imagination without any proof that Respondent No. 12 has either sponsored the present Company Petition or that the Company Petition is filed by Petitioners as proxy of Respondent No. 12. Before dealing with the above allegations, is noteworthy to mention here that no allegations whatsoever have been raised by the said Respondents against the then Petitioners No. 2 to 9. It is submitted that there is no submission whatsoever to even remotely suggest that Petitioners No. 2 to 9 are proxy Petitioners and/or they have also been sponsored by Respondent No. 12. It is submitted that in view of absence of any such insinuation against the remaining Petitioners, the present issue is required to be rejected on this ground alone, without even venturing further into the same.

63. Even otherwise, it is submitted that mere longevity of service by Petitioner No. 1 cannot *ipso facto* mean that all actions taken by him would be at the behest of Respondent No. 12 and the said fact is not enough to come to any conclusion in respect of the above issue. It is submitted that a perusal of Page 465 of captioned Petition shows that apart from Petitioner No. 1, there were 5 (five) other personnel who were holding authority through the Power of Attorney, which was executed at the instance of entire Board of Respondent No. 1 and not Respondent No. 12 alone. Further, it is incomprehensible as to how the Petitioner No. 1 could have been rendered as proxy litigant merely by being a witness to the Will of Vadilal Mehta (Page 469 of Company Petition), who was the father of Respondent No. 2 and Respondent No. 12. It is pertinent to note that there is no allegation and/or evidence that Petitioner No. 1 is a witness to the Will of Respondent No. 12. Moreover, a perusal of Page 469 of Company Petition would show that Petitioner No. 1 was not the only witness to the Will of Vadilal Mehta., but there were 2 (two) witnesses as is stated therein.

64. It is pertinent to note that the claim made by Respondents No. 12 and 13 before Vadilal Mehta under the provisions of MOU has no relation and/or connection to Petitioner No. 1 and the Respondents have miserably failed to establish the same. It is submitted that even in the proceedings before the Hon'ble Delhi High Court ***[AIR 1988 Delhi 288]***, it is submitted that the Hon'ble Court had clearly held that the it was not appropriate to decide the said matter solely on the argument of proxy litigation and in fact, the said matter was disposed of after adjudication on all aspects in the matter. It is submitted that in the quashing petition filed before the Hon'ble Gujarat High Court (ref. List of dates regarding proxy litigation filed by Respondents – item no. 26), Petitioner No. 1 was not even a party to the said petition or to the criminal complaint (Page 88 of Company Petition) and hence, there is no substance in the argument that the said matters were filed by Petitioner No. 1 at the instance of Respondent No. 12. It is submitted

that as stated hereinabove, Petitioners had made independent inquiries after gaining knowledge of the fraudulent transactions in May, 1987 and had gathered available material including documents placed as Annexures to the captioned Company Petition. It is submitted that once again, irrelevant arguments have been put forth by the Respondents to wriggle out of the merits of the matter and to shy away from the fraudulent actions committed by them.

65. Even otherwise, it is submitted that it is a trite principle of law that decisions of criminal courts/ in criminal matters are not binding on civil courts in civil disputes. It is also well settled that findings recorded by a criminal court do not have any bearing on matters before civil courts even it be between the same parties involving the same subject matter and both the cases are required to be decided independently on the basis of evidence adduced therein. ***[Kishan Singh v/s Gurpal Singh and Ors. (2010) 8 SCC 775, (Paragraphs 11, 18]***. Thus, it is submitted that nothing recorded and/or held in the criminal complaint or the quashing proceedings pertaining to the criminal complaint have any bearing on the captioned Company Petition, which is required to be decided on its own merits.

66. It is submitted that the captioned Petition has been filed by the Petitioners as shareholders, which is permitted under Section 155 of the 1956 Act. It is submitted that there is no evidence whatsoever that the present proceedings are either sponsored and/or proxy at the behest of any person including Respondent No. 12. It is submitted that the Respondents have attempted to digress from the merits of the matter by raising trivial issues, which neither have any support in fact or evidence. It is submitted that thus, it is required that such assumptions and conjectures of Respondents be rejected and the captioned Company Petition be allowed in its merits.

VII. PRESENT COMPANY PETITION DOES NOT SEEK TO CHALLENGE THE MOU AND/OR MOM IN ANY MANNER WHATSOEVER:

67. It is reiterated that the captioned Company Petition has been preferred by the Petitioners under Section 155 of the 1956 Act as shareholders of Respondent No. 1 *inter alia* seeking rectification of register of members of Respondent No. 1 to remove the names of members which have been added without sufficient cause. It is submitted that the captioned Company Petition in no manner seeks to challenge the MOU and/or MOM executed *inter se* between the families of Respondent No. 2 and Respondent No. 12. It is submitted that the MOU and MOM executed between the said families provide the consideration for which the shares of Respondent No. 1 were to be transferred in favour of Respondent No. 2 and his family i.e. payment of monies to CVMPL for discharging of its liabilities. It is submitted that it is only for the said reason that the MOU and MOM have been relied upon in the captioned Company Petition, to unequivocally show the use of funds of Respondent No. 1 company by Respondent No. 2 and his family to purchase the shares of Respondent No. 1 itself.

68. It is submitted that thus, the judgments pertaining to challenging family arrangement, which have sought to be relied upon by the Respondents ***[K. K. Modi v/s K. N. Modi and Ors. (1998) 3 SCC 573 and Hari Shankar Singhania and Ors. v/s Gaur Hari Singhania and Ors., (2006) 4 SCC 658]*** have no application to the captioned Company Petition, which is solely for seeking reliefs under Section 155 of the 1956 Act.

➢ **RELIEFS**:

69. It is submitted that in view of what has been submitted hereinabove, the captioned Company Petition is required to be allowed in its entirety and the prayers as prayed for in the captioned Company Petition are required to be granted with costs. Accordingly, it is submitted that:

A. The Register of Members of Respondent No. 1 is required to be rectified by deleting the names of Respondent No. 2 and his family which have been entered without sufficient cause;

B. Direction to maintain *status quo ante* in respect of the shareholding of Respondent No. 1 as well as all the benefits arising out of such shares, as it existed prior to acquisition of shares of Respondent No. 1 fraudulently by Respondent No. 2 and his family including the additional acquisition of shares undertaken by Respondent No. 2 and family as detailed by Petitioner No. 1 in its Additional Affidavit dated 4th October, 2015 (Pages 635 to 706 of Company Petition).

C. Damages be awarded to the Petitioners as provided under sub-section (2) of Section 155 of 1956 Act;

D. Declaration that the fraudulent transactions perpetrated by Respondents No. 2 and his family were in violation of and contradiction to Section 77 and Section 36 of 1956 Act and accordingly, appropriate declaration and direction regarding the title of disputed shares.

2.Written submissionon behalf of Respondents No. 12 and 13.

The present written submissions are submitted on behalf of respondent no. 12 – Suhas Vadilal Mehta and respondent no. 13 – Mrs. Chhayaben Suhasbhai Mehta.

Sayaji Industries Chairman was Vadilal Lallubhai Mehta. Sometime in 1967, the group owned the following units:

a. Maize Products, Kathwada
b. Topiaco Products, Chalakudy, kerala
c. Sayaji Mills at Baroda
d. Sayaji Mills no.2 at Mumbai
e. Shubhalaxmi Mills at Cambay

f. Over and above host of trading companies which were Pvt. Ltd. Companies

Bipin V. Mehta was the elder son of Vadilal L. Mehta. He was living in Mumbai and he was in exclusive charge of the three textile mills as mentioned at (c) to (e) hereinabove. In 1972, due to heavy losses, Sayaji Mills at Baroda and Shubhalaxmi Mills at Cambay were sold. Thereafter, Bipin V. Mehta continued to be in exclusive charge of Sayaji Mills No.2 at Bombay.

Before dealing with the issue raised in the present mater it would be pertinent to bring to the notice of the Hon'ble Tribunal the conduct of respondent no. 2 – Bipin Vadilal Mehta.

1. Shri Vadilal Lallubhai Mehta was the father of respondent no. 2 – Bipinbhai and respondent no. 12 – Suhasbhai. Shri Vadilal Lallubhai Mehta was the Chairman of Sayaji Mills Limited. Whereas respondent no. 2 – Bipinbhai and respondent no. 12 – Suhasbhai were the Managing Directors and on the Board of Directors. During the year 1975, a Board of Directors meeting was to be convened on 23.12.1975.The same was convened on 26.12.1975. At the said meeting the Chairman pointed out that incorrect stock statements were filed before the Banks in regard the stocks of Sayaji Mills No. 2 as existing on 30.09.1975. The Chairman as well as the Board of Directors were taken back and they looked towards Bipin V. Mehta who was in exclusive charge as a Managing Director of Sayaji Mills No. 2 until 12.11.1975. Two letters were produced, one written by Shri N.C. Gajarawala - General Manager and one of the constituted attorneys and Shri S. N. Bavdekar – Management Accountant and one of the constituted attorneys of Sayaji Mills No.2. It was alleged vide the said letters that the Chairman had instructed them to file the said incorrect statements with the Banks. Shri S. N. Bavdekar was cross examined by the Board of Directors and he revealed that the said statement was filed at the behest of Shri N.C. Gajarawala. The

Chairman pointed out to the Board of Directors that Bipin V. Mehta was the Managing Director and was in control of day-to-day running of Sayaji Mills no. 2. The Board of Directors came to the conclusion that Bipin V. Mehta who was in exclusive charge of Sayaji Mills Ltd. No.2 and Shri Gajarawala are responsible for filing incorrect stock reports with the Banks and that Shri Bavdekar had appended his signature at the instance of the Managing Director (i.e. present respondent no. 2 – Bipin V. Mehta) and the General Manager. The Board of Directors resolved that ***"Bipin V. Mehta shall abstain from exercising any powers or performing any duties of Managing Director of the Company"***. The Board of Directors also resolved to authorise the Chairman to negotiate for sale of the block of Sayaji Mills no. 2 as well as to look into the Bank affairs and set right the irregularities with the Banks. (Kindly refer to page no. 710 onwards)

2. On 02.03.1976, the Board of Directors meeting was convened wherein respondent no. 2 – Bipin V. Mehta had addressed a letter to the Chairman on 25.02.1976. The said letter was circulated to the Board of directors. The entire Board except respondent no. 12 – Bipin V. Mehta were surprised at the false allegations that had been made therein. Mr. Bipin V. Mehta had left the meeting half-way as he had a flight to catch. The Secretary informed the Board of Directors that all the papers pertaining to acceptance of public deposits, revised advertisement, guarantee confirmation letters and balance confirmation certificates of Dena Bank and Punjab National Bank were in the possession of Mr. Bipin V. Mehta. **The Board of Directors viewed this seriously and requested the Secretary to inform Mr. Bipin V. Mehta that the Board had considered such action as dereliction of duty not only as a Managing Director but also as a Director. The Board of Directors therefore resolved to remove Bipin V. Mehta as a Managing Director of the Company and bring in Shri Vadilal L. Mehta as the Managing Director.** Thus on 15.08.1976 onwards

for a period of five years, Bipin V. Mehta was not re-appointed as Managing Director of Sayaji Mills no.2. (Kindly refer to page no. 717 onwards)

A query had been put forth by this Hon'ble Tribunal to Mr. Mihir Thakore, Senior Advocate for respondent no. 1 - Company as to why Vadilal L. Mehta and Suhas V. Mehta were desperate to see the ouster of Bipin V. Mehta. Since Mr. Thakore, Senior Advocate did not have an answer to the same, Mr. Devang Nanavati, Senior Advocate appearing for respondent no. 2 – Bipin V. Mehta informed the Hon'ble Tribunal that Bipin V. Mehta had opted/walked out of the Company as he had a different style of working (i.e. forward style of working). The truth is that respondent no. 2 - Bipin V. Mehta had been removed from his post despite the minutes of meetings being available with the company. Respondent no. 1 and 2 had hidden this part from the Tribunal.

3. **Memorandum of Understanding (i.e. MOU)**:

The Memorandum of Understanding was executed on 30.01.1982 for dividing the assets betweenrespondent no. 2 - Bipin V. Mehta and his family branch and respondent no. 12 - Suhas V. Mehta and his family branch. The whole purpose for executing the MOU was to ensure that peace and harmony prevails in the family and there is no dispute in the absence of Shri Vadilal L. Mehta. I rely upon para no. 4(a) which reads as under:

> *"4. (a) The Shares of Sayaji Mills Ltd., and C. V. Mehta Pr. Ltd., held by Suhasbhai Vadilal Mehta and the members of his branch or the companies going to his share or Trusts or by Vadilal Lallubhai H.U.F. or by Vimlaben Vadilal Trust shall be sold or transferred to Bipinbhai Vadilal Mehta or as he may desire;....."*

At this juncture, it would be pertinent to refer to clause no. 10 of the MOU and which reads as under:

> *"10. C. V. Mehta Pr. Ltd. which is being allotted to Bipinbhai Vadilal Mehta has certain amounts to pay to the members of the family of Vadilal Lallubhai Mehta, Suhasbhai Vadilal Mehta, Suhasbhai Vadilal Trusts, Vadilal Lallubhai H.U.F., Vimlaben Vadilal Trust, Bhuriben Lallubhai Estate and the daughters and grand-children of Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta. C. V. Mehta Pr. Ltd., has also to pay substantial amount to C. Doctor & Co. Pr. Ltd.* ***All such payments shall be made immediately and according to the entries in the books of account made upto date****."*

(Emphasis Supplied)

At the time of execution of the MOU, it was agreed by respondent no. 2 - Bipin V. Mehta and respondent no. 12 - Suhas V. Mehta that the amount of Rs. 40 lakhs that Bipin V. Mehta had to deposit would be brought in ***immediately***. Thus, Bipin V. Mehta had accepted the said condition without any demur and thereby signed the MOU. Bipin V. Mehta had to bring Rs. 20 lakhs and only then would the shares be transferred. It is not the case of either parties that the MOM as well as MOU had been executed without reading and understanding it or that there was force, threat or coercion.

4. **Memorandum of Modification (i.e. MOM)**:

This Memorandum of Modification was executed on 13.11.1982 between respondent no. 2 – Bipin V. Mehta and respondent no. 12 - Suhas V. Mehta in view of difficulties faced by respondent no. 2 – Bipin V. Mehta and which is reflected in the foregoing para:

> *"WHEREAS, the parties hereto had arrived at an understanding and recorded the same by a Memorandum of Understanding dated 30th January,1982 hereinafter called, "the said Memorandum of Understanding" and WHEREAS in the execution and compliance of the said memorandum of Understanding,* ***Shri***

Bipinbhai Vadilal Mehta felt certain difficulties and requested Shri Suhasbhai Vadilal Mehta to make some modifications in the said Memorandum of Understanding and WHEREAS Shri Suhasbhai Vadilal Mehta has agreed to and accepted to make certain modification, AND WHEREAS the parties hereto are desirous of recording the said modifications in the said Memorandum of Understanding between them."

(Emphasis supplied)

Clause no. 3 of the said MOM reads as under:

"3. It has been agreed and the parties hereto confirm that the amount to be brought in by Shri Bipinbhai Vadilal Mehta towards the amounts payable by C. V. Mehta Pvt. Ltd. to the members of the family of Shri Vadilal Lallubhai Mehta and of Shri Suhasbhai Vadilal Mehta, Suhasbhai Vadilal Trusts, Vadilal Lallubhai H.U.F., Vimlaben Vadilal Trusts, Bhuriben Lallubhai Estate and the daughters and grand children of Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta and to C. Doctor & Co. Pvt. Ltd. has been fixed by the parties at ***Rs. 39,24,154.88/-*** *(Rupees Thirty Nine Lakhs Twenty Four Thousand One Hundred Fifty Four and Paise Eighty Eight only).* ***Shri Bipinbhai Vadilal Mehta has agreed to pay and bring in immediately (and in any event latest on the day next after the day on which the Share Transfer Forms in respect of Sayaji Mills Ltd. are handed over by Shri Suhasbhai Vadilal Mehta and members of his family as mentioned hereafter) in C. V. Mehta Pvt. Ltd. a sum of Rs. 20,00,000/- (Rupees Twenty lacs only) towards the amount required to be paid by C. V. Mehta Pvt. Ltd.*** *The said amount shall be treated as a loan and Shri Bipinbhal Vadilal Mehta is not to claim or demand any repayment of the said loan from C. V. Mehta Pvt. Ltd. as long as the management thereof does not pass into the hands of Shri Bipinbhai Vadilal Mehta as provided herein.*

It is further agreed and understood that transfer of the management of Sayaji Mills Ltd., and the appointment of Shri Bipinbhai Vadilal Mehta and Shri Priyambhai Bipinbhai Mehta on the Board of Directors thereof are only to be made after Shri Bipinbhai Vadilal Mehta has paid and brought in C. V. Mehta Pvt. Ltd. the aforesaid sum of Rs. 20,00,000/- (Rupees Twenty lacs only) *and it is further agreed that this amount is to is brought and paid by Shri Bipinbhai Vadilal Mehta latest on the day next after the transfer forms in respect of the shares of Sayaji Mills Ltd. held by Shri Suhasbhai Vadilal Mehta and members of his family are handed over to Shri Vadilal Lallubhai Mehta on behalf of Shri Bipinbhai Vadilal Mehta and the members of his family.* ***It is also further agreed that the actual effect is to be given to such share transfer of Sayaji Mills Ltd. by the Board of Directors of Sayaji Mills Ltd. only after the payment of the aforesaid amount of Rs. 20,00,000/- (Rupees Twenty lacs only) by Shri Bipinbhai Vadilal Mehta to C. V. Mehta Pvt. Ltd. and it is also clarified that these changes are made at the instance and request of Shri Bipinbhai Vadilal Mehta and are agreed to by Shri Suhasbhai Vadilal Mehta, in order to accommodate Shri Bipinbhai Vadilal Mehta."***

Since, M/s. C. V. Mehta Pvt. Ltd. had to pay an amount of Rs. 39,24,154/- to respondent no. 12 – Suhas V. Mehta and his branches, it was agreed that the said amount be broken up into 2 parts comprising of Rs. 20 lakhs and Rs 19,24,154/-. These amounts were required to be paid by respondent no. 2 – Bipin V. Mehta from his own personal funds/sources and not by utilising the funds of respondent no. 1 - company

Therefore, as per the MOM Bipin V. Mehta had to first deposit an amount of Rs. 20 lakhs with M/s. C.V. Mehta Pvt. Ltd. and immediately respondent no. 12 shall sign the share transfer form for transferring **8626 shares of Sayaji Mills Ltd.** in favour of respondent no. 2. Upon

receipt of the balance amount (i.e. Rs. 19,24,157/-), the management of M/s. C. V. Mehta would then pass on to respondent no. 2 – Bipin V. Mehta and until then respondent no. 12 - Suhas V. Mehta shall remain in control of M/s. C. V. Mehta Pvt. Ltd. including the 9000 shares of respondent no. 1 – company which were allotted to M/s. C. V. Mehta Pvt. Ltd..

As respondent no. 2 - Bipin V. Mehta did not have the requisite financial assistance, he adopted a novel method. He was in de-facto management of respondent no. 1, an amount of Rs. 20 lakhs from transferred from the account of respondent no. 1 into the account of M/s. Santosh Starch Products vide three separate transactions as under:

Transaction No.	Amount	Date	Cheque no.
1	10,00,000	12/13.11.1982	853901
2	5,00,000	13.11.1982	853902
3	5,00,000	25.11.1982	853934

All the three cheques were drawn upon Punjab National Bank, Maskati Branch, Ahmedabad.

M/s. Santosh Starch Products was an old supplier of maize raw material to respondent no. 1. No delivery challan for delivery of raw material is placed on record to show that raw material had been delivered to respondent no. 1 – company.

On 13.11.1982, M/s Santosh Starch Products vide three transactions transferred an amount of Rs. 20 lakhs into the accounts of respondent no. 2 and respondent no. 3 as under:

Transaction No.	Amount	Date	Cheque no.	Deposit in account
1	7,00,000	13.11.1982	887275	Bipin V. Mehta (HUF)
2	6,00,000	13.11.1982	887276	Bipin V. Mehta
3	7,00,000	13.11.1982	887277	Priyam B. Mehta

All three cheques were drawn on Punjab National Bank, Ahmedabad.

Nothing is placed on record to show as to why and what was the need for M/s. Santosh Starch Products to transfer an amount of Rs. 20 lakhs into the accounts as specified in the aforesaid table? The entire pleadings by respondent no. 1 to 3 are silent on this aspect and which was conveniently scuttled by respondent's no. 1 to 3.

At this juncture, it would be pertinent to state that while executing the MOU on 30.01.1982, respondent no. 2 – Bipin V. Mehta had stepped in as a de-facto Managing Director of respondent no. 1.

Thus, Rs. 20 lakhs as specified in clause no. 3 was the pre-cursor/pre-requisite/pre-condition to set the ball rolling towards implementation of the share transfer of respondent no. 1 company to respondent no. 2 – Bipin V. Mehta and his family members. Had this amount of Rs. 20 lakhs not been brought in by respondent no. 2 then not a single share of respondent no. 1 - company would be transferred to him and his family members. Followed by Rs. 19,24,154/- as mentioned in clause no. 4 of the MOM. These amounts were to be paid by respondent no. 2 from his own funds and not by utilizing the money from the account of respondent no. 1 transferred to M/s. Santosh Starch Products to respondent's no. 2 and 3 and ultimately to M/s. C. V. Mehta Pvt. Ltd..

5. **Whether respondents no. 12 and 13 had knowledge of transaction of money**:

Respondent's no. 12 and 13 did not have any knowledge as to how the amount of Rs. 20 lakhs was deposited into the personal accounts of respondent no. 2 by M/s Santosh Starch Products. Upon execution of MOM on 13.11.1982 and the transfer of Rs. 20 lakhs, respondent's no. 12 and 13 who in good faith and belief had signed the share transfer forms of Sayaji Mills Ltd. in favour of respondent no. 2 – Bipin V. Mehta. The respondent's no. 12 and 13 came to know about the manner and mode of the transactions only when they received the legal notice dated 17.06.1987 (page no. 59) on 20.06.1987. (Kindly refer to affidavit filed on page no. 163 and para no. 4). Respondent's no. 1 to 3 have not denied the same in their subsequent affidavits.

6. **Allegation of sponsored litigation or proxy litigation**:

A contention was put forth on behalf of respondent's no. 1 to 3 that the present petition is a sponsored petition or proxy litigation as respondent no. 12 wanted to wrest back control of respondent no. 1 - company. A lot had been submitted on the said contention as well as long notes were submitted but no cogent evidence was produced. The contention of sponsored litigation or proxy litigation is false, frivolous and whimsical and is made without an iota of evidence being placed on record of present proceedings. Law mandates that strong cogent evidence is placed on record to enable this Hon'ble Tribunal or even a prudent man to arrive at a conclusion that the present matter is a sponsored litigation or proxy litigation. On perusal of the entire pleadings, only averments are made by respondent's no. 1 to 3 and no evidence is produced to substantiate the same.

The reliance placed upon a selected sentence from the judgment rendered by the Hon'ble Delhi High Court in the case that had been filed by petitioner no. 1does not in any manner convey that respondent's no. 12 and 13 had sponsored the petitioners for filing of present petition or the matter before the Hon'ble High Court of Delhi. While rendering its judgment, the Hon'ble High Court of Delhi had specifically used the expression ***"it seems"***. Thus, it was only an assumption and nothing more beyond that as the Hon'ble High Court at Delhi was also not surewhether it was a proxy litigation or sponsored litigation. Law does not follow/rely upon ***presumptions*** or ***assumptions***; law needs cogent evidence and which respondents no. 1 to 3 have failed to produce before this Hon'ble Tribunal or any Hon'ble Court.

Assuming for a moment and without accepting that the contention as put forth by respondent's no. 1 to 3 is true, then there was no need for respondent's no. 12 and 13 to wait for over 4 years. The litigation could very well have been initiated within few days or few months or even within one year from the date of signing of MOM. Hence, the contention of sponsored litigation or proxy litigation to wrest back control of

respondent no. 1 – company as raised by respondent's no. 1 to 3 is false, frivolous, and whimsical. The said contention is raised by respondent's no. 1 to 3 only for the sake of argument and nothing more.

7. **Acceptance of transaction of Rs. 20 lakhs by Respondents no. 1 and 2**:

It is quite surprising that respondent no. 1 and respondent no. 2 make different claims about the three transactions from Sayaji Mills Ltd. to M/s. Santosh Starch Products and which is as under:

(a) Stand of respondent no. 1 – Company (affidavit page no. 96 onwards. Para no. 7 page no. 104):

It is the stand of respondent no. 1 - company that *"the amount of Rs. 20 lakhs was given by it to M/s. Santosh Starch Products during day-to-day functioning of the company and no irregularity had been committed by the company nor had the company suffered any loss at the hands of its management. The respondent no. 1 – company had also denied that respondent no. 2 had devised any scheme to use the funds of the company for the purpose of giving effect to the MOU and the MOM and company's fund had not been used for any personal gain of respondent no. 2 or his family members".*

(b) Stand of respondent no. 2 – Bipin V. Mehta (affidavit page no. 112 onwards. Para no. v page no. 119 and para no. 7 page no. 124):

Respondent no. 2 – Bipin V. Mehta had filed an affidavit on 22.03.1988 when the matter was pending for consideration before the Hon'ble High Court and at para no. "v" it was stated as under:

"v. ....He and his branch had purchased the shares of respondent no. 1 company from their own resources and not out of the funds of the respondent no. 1 company, whether directly or indirectly."

Whereas, at para no. 7 on page no. 124 it was stated as under:

"7. .....It is denied that the company advanced a sum of Rs. 20 lacs to M/s. Santosh Starch Products, the supplier of maize to the company as alleged or that these amounts were paid in personal account of myself and the members of my family as alleged. It is further denied that the same amount was transferred in M/s C. V. Mehta Pvt. Ltd. in order to complete a pre-planned way of transaction to get and control of M/s Sayaji Industries Ltd. as alleged or at all. ..... "

(c) Stand of respondent no. 2 – Bipin V. Mehta (affidavit page no. 467 onwards. Para no. 6 page no. 503):

Respondent no. 2 – Bipin V. Mehta had filed an affidavit before the Hon'ble Supreme Court where he had stated as under:

"4.....At the time of execution of the said Memorandum of Understanding the members of the family of Vadilal Mehta, Suhas Vadilal Mehta, Suhas Vadilal Trust and other Trust and relatives of late Shri V. L. Mehta and my brother Mr. Suhas had a credit balance of approximately Rs. 40 lacs in M/s. C. V. Mehta Pvt. Ltd. ***It was a condition precedent that all these payments were to be made immediately by M/s C. V. Mehta Pvt. Ltd. so that the payment could be made to Respondent No. 9 and 10 hereto****."*

"6. Late Shri V. L. Mehta utilised his position as Chairman and Managing Director of the Respondent No. 3 Company. He planned out a design with the help of the Petitioner No. 1, who was the Administrative Manager of the Respondent No. 3 Company and a close confidant of late Shri V. L. Mehta. He therefore managed to advance a sum of Rs. 23 lacs to M/s. Santosh Starch Products from the funds of the Company. It may be stated that when these

funds were advanced by the Company, I was not a Director when the initial two instalments were paid on 13th November, 1982. Third instalment was paid on 25th November, 1982 and the cheque in respect whereof was signed by the Petitioner No. 1 who was fully in know of the arrangement. I was not having cheque signing authority till April, 1983. ***It is significant to note that when M/s. Santosh Starch Products paid a total loan of Rs. 20 lacs to me and my family members, the same were deposited by me in Punjab National Bank to the account of C. V. Mehta Pvt. Ltd. and the same were withdrawn by Respondent No. 9 and his family members as stated hereinabove****....."*

On perusal of the stand taken by respondent no. 1 and respondent no. 2 the same are contradictory to each other. Respondent no. 1 – company admits that an amount of Rs. 20 lakhs was transferred into the account of M/s. Santosh Starch Products as it was a day-to-day transaction for the company. Whereas respondent no. 2 while filing an affidavit before the Hon'ble High Court had stated that he and his branch had purchased the shares from their own resources and not out of the funds of company and no amount from company fund had been transferred to M/s. Santosh Starch Products.

When the matter was pending for consideration before the Hon'ble Supreme Court and realizing the discrepancies between the said two affidavits, respondent no. 2 – Bipin V. Mehta took shelter by claiming that his father – Vadilal L. Mehta alongwith petitioner no. 1 had devised a plan to advance Rs. 20 lakhs to M/s. Santosh Starch Products and thereafter the said amount was transferred into his and his family accounts and which were then withdrawn by him and his family members and deposited into the account of M/s C. V. Mehta Pvt. Ltd.

The stand of the company as well as the stand taken by respondent no. 2 stands corroborated by the transaction wherein an amount of Rs. 20 lakhs were transferred from the account of respondent no. 1 – company to M/s Santosh Starch Products then into the accounts of respondent's no. 2 and 3 and into the account of M/s. C. V. Mehta Pvt. Ltd..

Respondent no. 2 - Bipin V. Mehta had addressed three (3) communications to M/s C. V. Mehta Pvt. Ltd.. Vide three letters (page no. 538, 540 and 542) respondent no. 2 had categorically stated that the said amount is to be treated as a loan from him and he would not claim it back so long as the management is not passed over to him as decided between him and respondent no. 12 – Suhas V. Mehta. Thus, it was portrayed that there was compliance of clause no. 3 of MOM whereas vide communication dated 13.11.1982, respondent no. 12 informed respondent no. 2 that the shares of M/s C. V. Mehta Pvt. Ltd. as well as its management shall remain with him until and unless the balance amount of Rs. 19,24,154.88/- is not paid by respondent no. 2 – Bipin V. Mehta. This amount was paid by respondent no. 2 after collecting the same from M/s Tirupati Traders.

At this juncture, it would be pertinent to refer to the MOM dated 13.11.1982 wherein, respondent no. 2 had expressed that he was facing difficulties. While executing the said MOM it was agreed that an amount of Rs. 20 lakhs being the first tranche would be brought in by respondent no. 2 and thereafter the shares of Sayaji Mills Ltd. would be transferred into his name. If respondent no. 2 was facing difficulties then how is it that he had secured Rs. 20 lakhs within a span of less than 24 hours of signing of the MOM. The fact that respondent no. 2 had procured the amount of Rs. 20 lakhs from M/s. Santosh Starch stands corroborated by the transaction carried out by M/s Santosh Starch by depositing Rs. 20 lakhs into the accounts of respondent's no. 2 and 3 which M/s

Santosh Starch Products had received from respondent no. 1 – company.

The respondent's no. 1 to 3 has also relied upon page no. 559 in support of their contention that the amount had been transferred on instructions of the Chairman (i.e. Vadilal L. Mehta). No reliance can be placed upon the same as the same is produced by respondent no. 1 when respondent no. 2 was in control. The authenticity of such document is questionable. At this juncture it would be necessary to reiterate that in 1975 on the basis of two letters, allegations had been levelled against Vadilal L. Mehta who was the Chairman and that incorrect stock statement were filed with the Banks on his instructions. After cross examination it transpired that Bipin V. Mehta who was in exclusive charge of Sayaji Mills Ltd. No.2 and Shri Gajarawala were responsible for filing incorrect stock reports with the Banks and that Shri Bavdekar had appended his signature at the instance of the Managing Director and the General Manager. A similar pattern is sought to be found in the present instance too. Hence, no reliance can be placed upon the document placed at page no. 559.

8. An allegation is levelled by respondents no. 1 to 3 that Vadilal L. Mehta and Suhas V. Mehta had orchestrated the whole thing by which an amount of Rs. 20 lakhs was transferred into the account of M/s Santosh Starch Products and then to Bipin V. Mehta and his branches and then the same was deposited into M/s C. V. Mehta Pvt. Ltd.. The respondents no. 1 to 3 fail to appreciate the fact that if such was the case, then there was no need to transfer the amount of Rs. 20 lakhs into the account of M/s. Santosh Starch Products and then ultimately to M/s C. V. Mehta Pvt. Ltd.. The same could have very well been withdrawn/transferred directly by respondent no. 12 – Bipin V. Mehta from respondent no. 1 – company to respondent no. 12 and his branches prior to execution of MOU or MOM, as the case may be. There was no need for the roundabout transfer of the said Rs. 40 lakhs. The fact that this amount was to come from Bipinbhai's personal kitty also

goes to show that this was the consideration towards the transfer of shares and management.

9. To sum up, it is submitted that in order to get control of Sayaji Mills Ltd and M/s. C. V. Mehta Pvt. Ltd. in view of the terms and conditions of the MOU and MOM, it was necessary for Bipin V. Mehta and members of his family to bring in Rs. 20 lakhs into M/s. C. V. Mehta Pvt. Ltd. ***immediately*** so that the amount could be utilised by M/s. C. V. Mehta Pvt. Ltd. for re-paying part of the deposits of Suhas V. Mehta and his branches. It is also clear that unless and until this amount of Rs. 20 lakhs was paid into M/s. C. V. Mehta Pvt. Ltd., the shares of Sayaji Mills Limited were not to be transferred to Bipin V. Mehta. Thus through intermediation or getting M/s. C. V. Mehta Pvt. Ltd. as an intermediary, the funds of Sayaji Mills were utilised for advancing the amount to M/s. Santosh Starch Products who in turn advanced the 20 lakhs to Bipin V. Mehta and members of his family and they in turn brought this amount by way of deposits into M/s. C. V. Mehta Pvt. Ltd.. The funds of Sayaji Mills were thus utilised in an indirect manner by Bipin v. Mehta and members of his family to acquire shares of Sayaji Mills Limited under the overall arrangement recorded in MOU and MOM. It is clear that the transfer of shares of Sayaji Mlls to Bipin V. Mehta was to take place ***only if*** the amount of Rs. 20 lakhs was brought into M/s. C. V. Mehta Pvt. Ltd. by Bipin V. Mehta. Thus, the amount of Rs. 20 lakhs which originally was given by respondent no. 1 - Sayaji Mills Ltd. to M/s. Santosh Starch Products and which was utilised by Bipin V. Mehta to enable them to purchase the shares of Sayaji Mlls Ltd.. Without these amounts aggregating to Rs. 20 lakhs, being paid into M/s. C. V. Mehta Pvt. Ltd., Bipin V. Mehta could not have purchased shares of Sayaji Mills Ltd. and therefore, there is clear breach of provision of Sec. 77(2) of Companies Act, 1956. Bringing in the amount of Rs. 20 lakhs into M/s. C. V. Mehta Pvt. Ltd. was a condition precedent to transfer of shares of Sayaji Mills Ltd. and therefore, the condition precedent was one of the items of consideration apart from the actual price of the shares that Bipin V. Mehta had to

pay to Suhas V. Mehta and members of his family to acquire the shares of Sayaji Mills and thereby acquire control of Sayaji Mills Limited. This consideration of Rs. 20 lakhs could not have come from the account of respondent no. 1 – company.

10. Article 20(i) of Memorandum of Association (page no. 87) restricts the usage of company funds for purchase or lent on shares of the company. In the present instance, respondent no. 2 in a novel method ensured that an amount of Rs. 15 lakhs is transferred into the account of M/s Santosh Starch Products on 13.11.1982, upon receipt of the said amount an amount of Rs. 20 lakhs were transferred on 13.11.1982 into the accounts of respondent's no. 2 and 3. Thus, company funds had been utilized by respondent's no. 2 and 3. Assuming for a moment that the company funds had not been utilised at all, then where was the need to return the amount of Rs. 20 lakhs back to respondent no. 1 - Company by Santosh Starch on 30.03.1984. Moreover, no raw materials nor any finished goods/products were returned to M/s. Santosh Starch Products. The fact that the amount had been returned to the company was the sole reason which had prompted the Hon'ble High Court of Gujarat to quash and set aside the criminal complaint filed by Mr. Ashim Roy. Thus, usage of company funds stands proved beyond reasonable doubt.

11. In so far as legal submissions are concerned, I adopt the same as put forth by Mr. Shalin N. Mehta, Senior Advocate who had appeared for the petitioners.
12. The MOM must be enforced in letter and spirit. That is what our father wanted and as sons we owe it to our families.
13. The MOM cannot be undone by fraud. If there is fraud, then all transactions must be reversed.
14. If this Hon'ble Tribunal finds that there is violation of Art 20 of MOA, then I am willing to payback Rs. 40 lakhs which is infact company fund and the shares be transferred into my name by removing the name of Bipin V. Mehta and his family from the Register of Company.

3. Written Submissions on behalf of the Respondents (*other than Respondent Nos. 12 and 13*)

A. Mehta family and their business

1. Late Bipinbhai Mehta (Respondent No. 2) and Shri Suhasbhai Mehta (Respondent No. 12) are sons of late Shri VadilalLallubhai Mehta and late Smt. VimlaVadilal Mehta.
2. Niramayiben Mehta (Respondent No. 14) is the widow of the Respondent No. 2. Priyambhai Mehta (Respondent No. 3) is the son of the Respondent No. 2. Priya (Respondent No. 15) is the daughter of the Respondent No. 2.
3. Chhayaben Mehta (Respondent No. 13) is the wife of the Respondent No. 12.
4. The companies, viz, Sayaji Industries Limited (Respondent No. 1); Industrial Machineries Manufacturers Pvt. Ltd.; C. Doctor & Co. Pvt. Ltd.; Mehta Machinery Manufacturers Pvt. Ltd.; Oriental Corporation Pvt. Ltd.; and C.V. Mehta Pvt. Ltd. were managed by late Vadilal Mehta and the Respondent No. 12.
5. Late Vadilal Mehta was the Chairman and Managing Director of the Respondent No. 1 and resigned from the Respondent No. 1 only on 7.9.1983 (***Page 431 of the paperbook***).
6. The Respondent No. 12 was the Managing Director of the Respondent No. 1 and resigned as the Managing Director of the Respondent No. 1 on 18.11.1982(***Para 8, Page 403 of the paperbook***)but continued as a Director of the Respondent No. 1. The Respondent No. 12 resigned as a Director of the Respondent No. 1 only on 7.9.1983 (***Page 431 of the paperbook***).
7. The Respondent No. 2, the Respondent No. 3 and the Respondent No. 14 were residing in Mumbai since 1967 and only in 1982 that the family had shifted to Ahmedabad (***Para 13.3, Page 593-594 of the paperbook***).

8. The Respondent No. 2 was appointed as Additional Director and the Managing Director of the Respondent No. 1 only on 18.11.1982 ***(Para 13, Pg. 438-439 and Page 470 of the paperbook)***

B. <u>Petitioners and their background</u>

1. Petitioner No. 1 was employed with the Respondent No. 1 since 1965 and was an authorized signatory and power of attorney holder since 1970 along with others including his father who was the Administrative Manager and the General Managerof the Respondent No. 1 (***Para 5, Page 402 and Page 465-468 of the paperbook***).
2. Petitioner No. 1 was the Administrative Manager and Officer of the Respondent No. 1 upto the year 1982-1983(***Para 5, Page 402 of the paperbook***).
3. Petitioner No. 1 and his father, as on 31.3.1981, were drawing remuneration more than the Chairman and Managing Director of the Respondent No. 1 (***Page 411 of the paperbook***).
4. The cheque dated 25.11.1982 (the same would be elaborated subsequently in the present written submissions) issued by the Respondent No. 1 to M/s. Santosh Starch is signed by the Petitioner No. 1 (***Page 498 of the paperbook***).
5. Petitioner No. 1 was a close confidant of late Vadilal Mehta (***Para 5, Page 402 and Para 10, Page 508 of the paperbook***).
6. The will of late Vadilal Mehta was attested by the Petitioner No. 1 (***Page 469 of the paperbook***).
7. Petitioner No. 1 was the complainant's witness to the criminal complaint filed by one Ashim K. Roy under Sections 120-B and 409 of the Indian Penal Code, 1860 read with Section 77 of the Companies Act, 1956. The allegations made in the said complaint were similar to the allegations made in the present petition by the Petitioners (***Page 456-462 of the paperbook***).
8. The Petitioner No. 1 resigned from the Respondent No. 1 with effect from 7.11.1983, immediately after the resignation of late Vadilal Mehta and the Respondent No. 12 (***Page 99 of the paperbook***).

9. The present Petitioners are insignificant minority shareholders of the Respondent No. 1. A chart showing the shareholding of the Petitioners (total 9 in numbers) at the time of filing of the aforesaid Company Petition and as on 20.11.2020 (presently only 2 in numbers i.e. Petitioner No. 1 and Petitioner No. 6) is annexed hereto and marked as **Annexure 'A'**.

10. Petitioner Nos. 2 and 3 (now deleted) were the senior officers of the Respondent No. 1. Both the aforesaid Petitioners resigned soon after the resignation of late Vadilal Mehta and the Respondent No. 12from the Respondent No. 1. Petitioner No. 4 (now deleted) was the wife of the Petitioner No. 3. Petitioner No. 5 (now deleted) was the brother of the Petitioner No. 1. Petitioner No. 6 is the wife of the Petitioner No. 5. Petitioner Nos. 7 to 9 (now deleted) were the family friends of the Petitioner Nos. 1 and 5 ***(Page 432 of the paperbook)***.

Consolidated List of Dates and Events

Sr. No.	Date	Particulars
1.	Since 1965/1966	The Petitioner No. 1 was employed with the Respondent No. 1 ***(Para 5, Page 402 of the paperbook)***
2.	Since 1970	The Petitioner No. 1 was an authorized signatory and power of attorney holder of the Respondent No. 1 along with others including his father who was the Administrative Manager and the General Manager of the Respondent No.1 ***(Page 465-468 of the paperbook)***
3.	As on 31.3.1981	Petitioner No. 1 along with his father were drawing remuneration more than the Chairman and Managing Director of the Respondent No. 1 ***(Page 411 of the paperbook)***.

4.	30.1.1982	Memorandum of Understanding (**MoU**) was executed between the Respondent No. 2along with his family members and the Respondent No. 12 along with his family members as a part of family arrangement. (***Page 23-45 of the paperbook***) ***Note:*** *Under the MoU/Memorandum of Modification ('MoM'), the management of Sayaji Industries Limited (Respondent No.1) and that of C.V. Mehta Pvt. Ltd. were to be handed over to the Respondent No. 2 and his family members.* A chart in respect of the companies managed by late Vadilal Mehta and the Respondent No. 12 before the MoU and MoM and those managed after the MoU and MoM is annexed hereto and marked as **Annexure 'B'**. *It is pertinent to mention that separate consideration has been paid by the Respondent No. 2 and his family for the purchase of the shares of the Respondent No. 1 and C.V. Mehta Pvt. Ltd. from the Respondent No. 12 and his family members. The necessary details in respect of the same are collectively annexed hereto and marked as* ***Annexure 'C' (Colly)***. *As per the MoU, C.V. Mehta Pvt. Ltd. had certain liabilities which were required to be discharged by it. The amount was to be brought in by the Respondent No. 2 in C.V. Mehta Pvt. Ltd. so as to enable C.V. Mehta Pvt. Ltd. to discharge its liabilities. Bringing of the said money by the Respondent No. 2 was the condition precedent before the transfer of the control and management of the Respondent No. 1 and C.V. Mehta Pvt. Ltd. to the Respondent No. 2.* *The amount brought in by the Respondent No. 2 in C.V.*

		Mehta Pvt. Ltd. is not for purchase of shares of the Respondent No. 1. For the purchase of shares of the Respondent No. 1 from the Respondent No. 12 and his family separate consideration has been paid by the Respondent No. 2 and his family members to the Respondent No. 12 and his family members and that the same is not in dispute. The same would even otherwise be evident from Annexure 'C' (Colly) to the present written submissions. *Attention of the Hon'ble Tribunal is invited to the following clauses of the MoU:* *Recital 5* ***(Pages 24 and 25 of the paperbook)****;* *Recital 6* ***(Page 25 of the paperbook)****;* *Clause 1****(Page 25 of the paperbook)****;* *Clause 2* ***(Page 26 of the paperbook)****;* *Clause 4* ***(Page 26 of the paperbook)****;* *Clause 5* ***(Page 27 of the paperbook)****;* *Clause 6* ***(Page 27 of the paperbook)****;* *Clause 7* ***(Page 27 of the paperbook)****;* *Clause 8* ***(Page 28 of the paperbook)****;* *Clause 10* ***(Page 29 of the paperbook)****;* *Clause 12* ***(Pages 29 and 30 of the paperbook)****;* *Clause 16* ***(Page 31 of the paperbook)****;* *Clause 21* ***(Pages 33-35 of the paperbook)****;* *Annexure – II* ***(Page 44 of the paperbook)****;and* *Annexure – III* ***(Page 45 of the paperbook)****.*
5.	12.11.1982	Instructions were issued by the then Chairman, late Vadilal Mehta for issuing a cheque of Rs. 15 lacs in favour of M/s. Santosh Starch(***Page 559 of the paperbook***). During the time when such instructions were issued by late Vadilal Mehta, the Respondent Nos. 2 and 3 were neither the Directors nor in the management of the Respondent No. 1.

		It is pertinent to mention that M/s. Santosh Starch had extensive business dealings with the Respondent No. 1 from the year 1972/1975(***Para 16, at Page 444 of the paperbook***).
6.	13.11.1982	Memorandum of Modification (**'MoM'**) was executed to make certain modifications in the MoU dated 30.1.1982 at the request of the Respondent No. 2. (***Page 46-55 of the paperbook***) ***Note:*** *As per the said MoM, the amount to be brought in by the Respondent No. 2 towards the discharge of liabilities by C.V. Mehta Pvt. Ltd. was fixed at Rs. 39,24,154.88/-.* *Rs. 20 lacs was to be paid by the Respondent No. 2 and his family to C.V. Mehta Pvt. Ltd. immediately and that the said amount was to be treated as a loan to C.V. Mehta Pvt. Ltd. The transfer of the management of the Respondent No. 1 was to take place on making of the loan amount of Rs. 20 lacs.* *The remaining amount of Rs. 19,24,154.88/- was to be brought in by the Respondent No. 2 and his family as loan to C.V. Mehta Pvt. Ltd. within a period of 24 months. On payment of the aforesaid amount of Rs. 19 lacs and odd, the management of C.V. Mehta Pvt. Ltd. was proposed to be handed over to the Respondent No. 2.* *Attention of the Hon'ble Tribunal is invited to the following clauses of the MoM:* *Clause 3* ***(Pages 47- 48 of the paperbook)****;* *Clause 4* ***(Pages 49-50 of the paperbook)****;*

		Clause 6 ***(Page 51 of the paperbook)***; *Clause 8* ***(Page 52 of the paperbook)***; *Clause 10* ***(Page 53 of the paperbook)***; *and Clause 11* ***(Page 53 of the paperbook)***;
7.	13.11.1982	Pursuant to the aforesaid instructions given by late Vadilal Mehta, the Respondent No. 1 paid an amount of Rs. 15 lacs by way of advance to M/s. Santosh Starch as under: (a) Cheque dated 12/13.11.1982 for Rs. 10 lacs. (b) Cheque dated 13.11.1982 for Rs. 5 lacs. Even on the said date, the Respondent Nos. 2 and 3 were neither the Directors nor in the management of the Respondent No. 1. The affairs of the Respondent No. 1 were under the management and control of late Vadilal Mehta and the Respondent No. 12. ***(Para 7, Page 8 and Page 56 of the paperbook)***
8.	13.11.1982	M/s. Santosh Starch paid an amount aggregating to Rs. 20 lacs by 3 cheques all dated 13.11.1982 to the Respondent No. 2 and his family ***(Para 7, Page 8 and Page 56 of the paperbook)***
9.	13.11.1982	The Respondent No. 3 by his letter addressed to C.V. Mehta Pvt. Ltd. enclosed a cheque of Rs. 7 lacs and informed that the said amount is to be kept as and by way of loan from the Respondent No. 3 ***(Page 538 of the paperbook)***.
10.	13.11.1982	The Respondent No. 2 as karta of HUF by his letter addressed to C.V. Mehta Pvt. Ltd. enclosed a cheque of Rs. 7 lacs and informed that the said amount is to be kept as and by way of loan, till the time the control of

		C.V. Mehta Pvt. Ltd. is with the Respondent No. 12 and his group(***Page 540 of the paperbook***).
11.	13.11.1982	The Respondent No. 2 by his letter addressed to C.V. Mehta Pvt. Ltd. enclosed a cheque of Rs. 6 lacs and informed that the said amount is to be kept as and by way of loan from the Respondent No. 2 (***Page 542 of the paperbook***).
12.	After 13.11.1982	C.V. Mehta Pvt. Ltd. on receipt of the aforesaid amount from the Respondent No. 2 and his family, discharged its liabilities and that C.V. Mehta Pvt. Ltd. paid the said amount to the entities which were and are in control of the Respondent No. 12. The said amount was not the consideration towards shares for which separate amounts were paid to the Respondent No. 12 and his family members(***Page 471-472 of the paperbook***).
13.	17.11.1982	A meeting of the committee of share transfer of the Respondent No. 1 was held. In the said meeting, the said committee approved the transfer of shares in favour of the Respondent No. 2 and his family members. It is pertinent to note that, in the said meeting, the Respondent No. 12 was also present as a part of the committee and has signed the minutes of the meeting.The same would be evident from the signature of the Respondent No. 12 who attended the meeting of the committee (***Page 427 read with Page 413-426 of the paperbook***).
14.	Upto 18.11.1982	The Respondent No. 12 was the Managing Director of the Respondent No. 1 and resigned as the Managing Director of the Respondent No. 1 on 18.11.1982 and continued as a Director of the Respondent No. 1 till 7.9.1983 (***Para 8, Page 403 of the paperbook***).

15.	18.11.1982	The Respondent No. 2 was appointed as an Additional Director and was appointed as a Managing Director of the Respondent No. 1. However, the Respondent No. 2 had no signing authority (***Para 13, Page 438-439 and Page 470 of the paperbook***).
16.	25.11.1982	The Respondent No. 1 advanced a sum of Rs. 5 lacs to M/s. Santosh Starch. It is pertinent to mention that the said cheque of Rs. 5 lacs issued by the Respondent No. 1 was signed by the Petitioner No. 1 (***Page 498 of the paperbook***). The Petitioner No. 1 never raised any objections in respect of the said advance made to M/s. Santosh Starch or refused to sign the said cheque or raised any objections either before late Vadilal Mehta or before the Respondent No. 12 or sought any explanation from the Respondent No. 1 as to why the said amount is being paid to M/s. Santosh Starch.
17.	March/April 1983	The Respondent No. 2 was given the cheque signing authority on behalf of the Respondent No. 1 only in March/April 1983 ***(Para 23, Page 566 of the paperbook)***.
18.	August/ September 1983	Though there is no averment in Company Petition No. 35 of 1988 filed by the Petitioners in respect of Tirupati Traders, the Petitioners have made reference of the same at Annexure C to the petition***(Page 57 of the paperbook)*** to suggest that the funds of the Respondent No. 1 were being utilized towards purchase of shares of the Respondent No. 1. Even on perusal of page 57 of the paperbook, no co-relation is being reflected as sought to be alleged by the

		Petitioners.
19.	Upto 7.9.1983	Late Vadilal Mehta, who was the Chairman and Managing Director of the Respondent No. 1 resigned from the Respondent No. 1 on 7.9.1983 (***Page 431 of the paperbook***)
20.	7.9.1983	The Respondent No. 12 resigned as a Director of the Respondent No. 1 (***Page 431 of the paperbook***)
21.	7.11.1983	Immediately on resignation of late Vadilal Mehta and the Respondent No. 12 from the Respondent No. 1, the Petitioner No. 1 resigned from the Respondent No. 1 (***Page 99 of the paperbook***)
22.	30.3.1984	The aforementioned advances made by the Respondent No. 1 to M/s. Santosh Starch were repaid by M/s. Santosh Starch to the Respondent No. 1. (***Para 12, internal page 14 of the judgment of the Hon'ble Gujarat High Court dated 2.12.1994 passed in Criminal Revision Application No. 247 of 1989***) (*the said judgment was tendered before the Hon'ble Tribunal at the time of hearing of the aforesaid matter*)
23.	1984	Earlier, C. Doctor & Co. Pvt. Ltd. was the Sole Selling Agent of the Respondent No.1. Under the MoU, C. Doctor & Co. Pvt. Ltd. was continued to be managed by the Respondent No. 12. As per the terms of the MoU, the Respondent No. 2 had the option to continue or to discontinue with the said Sole Selling Agent once the Respondent No. 2 comes in control and management of the Respondent No. 1. In light of the aforesaid, the Respondent No. 1 filed an application before the Company Law Board for the appointment of L.G & Doctor Associates Pvt. Ltd. (**LG**

		Doctor) as the Sole Selling Agent in place of C. Doctor &Co. Pvt. Ltd. under the provisions of Section 294AA of the Companies Act, 1956. It appears that the companies which came to the share of the Respondent No. 12 had not performed well. The Respondent No. 12 along with late Vadilal Mehta made repeated attempts (as would be explained hereinafter) to get back into the management of the Respondent No. 1 (***Para K and L, Page 115 of the paperbook***). In this regard the Respondent No. 12 and late Vadilal Mehta chose their long time confidant, namely, the Petitioner No. 1 for their oblique motives. In order to achieve such oblique motives, the Petitioner filed his objections before the Company Law Boardobjecting to the appointment of LG Doctor as Sole Selling Agent (***Para 4(b), Page 430-432 of the paperbook***). It is pertinent to mention that the appointment of LG Doctor as Sole Selling Agent was on the same terms and conditions on which C. Doctor & Co. Pvt. Ltd. was appointed earlier by the Respondent No. 1. Petitioner never challenged or raised any grievance in respect of the appointment of C. Doctor & Co. Pvt. Ltd. by the Respondent No. 1 during the tenure of the management and control by late Vadilal Mehta and the Respondent No. 12. ***Note:*** *In January 1985, the Company Law Board accorded its approval to the appointment of LG Doctor as Sole Selling Agent. Not resting there and as a part of pre-planned strategy, the Petitioner No. 1 and others filed Civil Writ Petition No. 841 of 1985 before the Hon'ble Delhi High*

		Court challenging the order of the Company Law Board. The said Writ Petition was rejected by the Hon'ble Delhi High Court on 4.8.1987 ***(Page 430-431 of the paperbook)****. It is pertinent to highlight that the said order also mentions about the MoU and the family arrangement* ***(Para 1 and Para 32 of AIR 1988 Delhi 288*** – the said judgment was tendered before the Hon'ble Tribunal at the time of hearing of aforesaid matter*).* *Petitioner No. 1 thereafter filed LPA No. 124 of 1987 before the Hon'ble Delhi High Court against the aforesaid order dated 4.8.1987. The said LPA was dismissed on 10.12.2001.*
24.	31.10.1985	The attack on the Respondent No. 2 and his family members were continued by the Respondent No. 12 and by late Vadilal Mehta. In this regard, the Respondent Nos. 12 and 13 filed a claim of about Rs. 17.81 crores against the Respondent No. 2 and his family members before late Vadilal Mehta seeking his decision under the MoU***(Page 381-399 of the paperbook)***. ***Note:*** *The Respondent No. 2 filed an application before the City Civil Court at Ahmedabad for declaration that there is no dispute between the parties under the MoU. The City Civil Court at Ahmedabad by its order dated 14.8.1986 continued the interim injunction till final disposal of the application* ***(Page 172-380 of the paperbook)***. *Not resting there, the Respondent No. 12 filed an appeal before the Hon'ble High Court of Gujarat against the aforesaid order passed by the City Civil Court at*

		Ahmedabad ***(Page 118-119 of the paperbook)****.The said appeal was rejected by the Hon'ble Gujarat High Court on 17.2.1988. Even the Hon'ble Supreme Court dismissed the SLP on 9.9.1988.*
25.	1.11.1986	The fact that the Petitioner No. 1 was a close confidant of late Vadilal Mehta and the Respondent No. 12 is further evident from the will of late Vadilal Mehta which is attested by the Petitioner No. 1 ***(Page 469 of the paperbook)***.
26.	17.6.1987	Having failed in their earlier attempts, late Vadilal Mehta and the Respondent No. 12 once again took the service of their long term confidant, namely, the Petitioner No.1. The Petitioner No. 1 issued a notice to the Respondent Nos. 2, 3 and others by calling upon them to rectify the share register and to ensure that the status quo-ante is maintained ***(Page 59-70 of the paperbook)***. In the said notice, it is the specific case of the Petitioner No. 1 that he came to know about the specific nature of the transaction on account of the criminal complaint filed by a member of the Union of the Respondent No. 1 ***(Para 7, at Page 65 of the paperbook)***.Further, it is the specific case of the Petitioners in Company Petition No. 35 of 1988 ***(Para 21 at Page 19 of the paperbook)***that they came to know about the transaction when the criminal complaint was filed and that the Petitioners came to know "*by or about in the month of May, 1987*". Not only that the said statements are false to the knowledge of the Petitioner No. 1 as would be evident from the next date and event hereinafter, but the same clearly shows that there clearly existed a pre-planned strategy between late Vadilal Mehta, the Respondent No. 12 and the Petitioner No. 1.

27.	18.6.1987	As a part of pre-planned strategy and being hand in gloves, late Vadilal Mehta, the Respondent No. 12 and the Petitioner No. 1 got a criminal complaint (being Criminal Case No. 11 of 1987) filed before the Judicial Magistrate First Class under Sections 120-B and 409 of Indian Penal Code, 1860 read with Section 77 of the Companies Act, 1956 against the Respondent Nos. 2 and 3, through one Trade Unionist, Ashim K. Roy ***(Page 456-462 of the paperbook)***. It is pertinent to highlight that the Petitioner No. 1 was cited as the complainant's witness in the said criminal complaint. From the aforesaid narration of facts, it is evident that Ashim K. Roy, the Petitioner No. 1, late Vadilal Mehta and the Respondent No. 12 were hand in gloves and it is for the said reason that the Petitioner No. 1, who was aware of all the facts since inception, gave his helping hand by becoming the witness to the aforesaid criminal complaint.
28.	Between 14.7.1987 and 9.9.1987	The Petitioner No. 1 sent an amended notice to the Respondent Nos. 2, 3 and others ***(Page 71-72 of the paperbook)***; the Respondent Nos. 2 and 3 sent their reply to the aforesaid notices ***(Page 74-80 of the paperbook)***; and the Petitioner No. 1 gave his reply to the reply sent by the Respondent Nos. 2 and 3 ***(Page 81-86 of the paperbook)***.
29.	9.10.1987	The Petitioner No. 1 filed the aforesaid Company Petition No. 35 of 1988 (Transfer Petition No. 02 of 2018) before the Hon'ble Gujarat High Court under Section 155 of the Companies Act, 1956 alleging violation of Section 77 of the Companies Act, 1956.

		The said petition is pending before this Hon'ble Tribunal.
30.	24.2.1988	Immediately upon the rejection of the appeal by the Hon'ble Gujarat High Court by its order dated 17.2.1988 (which was filed by the Respondent No. 12 against the order dated 14.8.1986 passed by the City Civil Court), as stated earlier, the Petitioners filed a motion (Company Application No. 36 of 1988) ***(Para 14, Page 511 of the paperbook)*** in the aforesaid Company Petition for interim relief. It appears that the Petitioners after filing the Company Petition No. 35 of 1988 on 9.10.1987 for about more than 4 months took no steps to list the matter before the Hon'ble High Court of Gujarat.
31.	25.5.1988	The Petitioner No. 1 made a deposition in Criminal Case No. 11 of 1987. From the contents of the deposition, it becomes clear that the Petitioner was well aware of the family arrangement since inception ***(Page 463-464 of the paperbook)***. The English translation of the same was tendered before this Hon'ble Tribunal and the same is annexed hereto and marked as **Annexure 'D'**, for ready reference.
32.	21.7.1988	Vadilal Mehta passed away.
33.	2.12.1994	Against the criminal complaint filed by Ashim K. Roy, the Respondent Nos. 2 and 3 filed Criminal Misc. Application before the Hon'ble High Court of Gujarat for, inter alia, quashing the said criminal complaint. The said criminal complaint was quashed by the Hon'ble

High Court of Gujarat by its judgment dated 2.12.1994.

By the said judgment, the Hon'ble High Court has, inter alia, observed the following:

"12. *There is one more ground which, in my opinion, will go to show that the complaint is filed with a malicious intention and at the behest of somebody else may be a family member. It is to be noted that even as per the say of the complainant, he is a trade unionist and therefore he is an outsider and he has not at all concerned with the direct or indirect affairs of the company. It is an undisputed fact that the entire amount is repaid by Santosh Starch Company i.e. on 30 March 1984 and the present complaint is filed on 20th July 1987 for the alleged offence for the period of 13.11.1982,the day on which the petitioner no. 1 and petitioner no. 2 were not even simple directors much less managing directors as the management of the company was controlled by the father of the petitioner no. 1 as Chairman and Managing Director..."*

"...It is also an undisputed fact that one of the witnesses, Mr. R.B. Desai who has deposed against the petitioners in the inquiry u/s 202 has filed a Company Petition for the breach of section 77 of the Companies Act against the Petitioners and has not disclosed the said fact in his deposition. He is the man who has also filed the complaint before the Company Law Board for the sole selling agency of the company under the Companies Act, 1956. Considering these facts, it is a clear case of deliberate attempt on the part of the complainant and he is a man to utilize the court's machinery for an oblique purpose..."

In the said judgment it is further observed, as a matter undisputed fact, that the entire amount is repaid by

		M/s. Santosh Starch to the Respondent No. 1 on 30.3.1984.
34.	12.3.1996	In the aforesaid Company Petition No. 35 of 1988, the Respondent Nos. 2 and 3 filed Company Application No. 113 of 1995 before the Hon'ble High Court of Gujarat seeking dismissal of the said Company Petition on the ground that the Petition is barred by limitation. The Hon'ble High Court of Gujarat by its order dated 12.3.1996 dismissed Company Petition No. 35 of 1988.
35.	14.10.1997	Against the aforesaid judgment of the Hon'ble High Court of Gujarat dated 2.12.1994, Ashim K. Roy filed Special Leave Petition before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India rejected the said Special Leave Petition and upheld the judgment dated 2.12.1994 of the Hon'ble Gujarat High Court. The Hon'ble Supreme Court of India, inter alia, observed as under: *"14. A cursory reading of the complaint, in particular the extracts especially the underlined portion as given above, will clearly show that the contesting respondents (accused) will come into picture only after the liability contemplated under the modified memorandum of understanding was discharged. In other words, the accused Respondents 1 and 2 could have come into picture only after the transactions complained of had taken place and as noticed above it was the father of the first respondent, who was the Managing Director of Sayaji Industries Ltd. when the transactions in question took place. Respondents 1 and 2 could have played no part in that transaction as they were not even ordinary Directors*

		at that time in M/s Sayaji Industries Ltd. Therefore, the allegations made in the complaint even if they are taken in their entirety still they do not constitute an offence either under Sections 120-B and 409 IPC. In the circumstances, it would be manifestly unjust to allow the proceedings in the criminal complaint to be proceeded with against Respondents 1 and 2." ***[(1998) 1 SCC 133** – the said judgment was tendered before the Hon'ble Tribunal at the time of the hearing of the aforesaid matter]*
36.	10.3.2000	Against the dismissal of the Company Petition No. 35 of 1988 by the Ld. Single Judge of the Hon'ble High Court of Gujarat by its Order dated 12.3.1996, the Petitioner No.1 filed O.J. Appeal No. 9 of 1996 before the Division Bench of the Hon'ble High Court of Gujarat. The Division Bench of the Hon'ble High Court of Gujarat by its Judgment dated 10.3.2000 dismissed the appeal of the Petitioner No.1 with costs.
37.	11.7.2006	The Petitioner No.1, against the aforesaid Judgment dated 10.3.2000 passed by the Division Bench of the Hon'ble High Court of Gujarat, filed Special Leave Petition before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India by its Judgment dated 11.7.2006 directed the Hon'ble High Court to decide the Company Petition No. 35 of 1988 afresh in accordance with law. ***[(2006) 5 SCC 638 – Para 32 and 33** – the said judgment was tendered before the Hon'ble Tribunal at the time of the hearing of the aforesaid matter]*

38.	22.1.2008	The Hon'ble High Court of Gujarat passed an order to the effect that the aforesaid Company Petition will have to be now treated like a suit and hence, issues are required to be framed.
39.	27.8.2009	The Hon'ble High Court of Gujarat by the said order framed the issues in Company Petition No. 35 of 1988. A copy of the said order is annexed hereto and marked as **Annexure 'E'**.
40.	19.10.2011	The Hon'ble High Court of Gujarat by the said order joined, inter alios, Niramayiben Mehta, widow of the Respondent No. 2 and Priya, daughter of the Respondent No. 2 as Respondent Nos. 14 and 15 to the aforesaid Company Petition No. 35 of 1988. A copy of the said order is annexed hereto and marked as **Annexure 'F'**.
41.	23.3.2015	The Hon'ble High Court of Gujarat framed additional issues. A copy of the said order is annexed hereto and marked as **Annexure 'G'**.
42.	25.1.2018	The Hon'ble High Court of Gujarat transferred the proceedings of Company Petition No. 35 of 1988 before this Hon'ble Tribunal.

The present petition is a proxy litigation which is filed at the behest of late Shri VadilalLallubhai Mehta and the Respondent Nos. 12 and 13. The said petition filed by the Petitioners is an abuse of process of law and that the Petitioners are not entitled to any reliefs much less any discretionary relief from this Hon'ble Tribunal

1. At the time of hearing, a separate list of dates and events in respect of the aforesaid issue was tendered before the Hon'ble Tribunal. The

same is annexed hereto and marked as **Annexure 'H'**, for ready reference.

2. From the aforesaid, it is evident that the present petition filed by the Petitioners is nothing but a proxy litigation at the behest of late Vadilal Mehta and the Respondent No. 12. The present petition is an abuse of process of law and is liable to be rejected on this ground alone.

3. It is humbly submitted that this Hon'ble Tribunal should take note of the litigations initiated by the Petitioner No. 1 (***Page 431-432 of the paperbook***). First before the Company Law Board, thereafter by way of a Writ Petition and Letters Patent Appeal before the Hon'ble Delhi High Court. The proxy litigation by way of criminal complaint, defending the quashing petition before the Hon'ble High Court of Gujarat and subsequently before the Hon'ble Supreme Court of India. The advocate who was appearing for the Petitioners in the present Company Petition No. 35 of 1988 was also appearing as the advocate for Ashim K. Roy. The present Company Petition, which is filed since the year 1987 and thereafter taken upto the Hon'ble Supreme Court of India on the issue of limitation. Filing and defending several interim applications in the present Company Petition before the Hon'ble High Court of Gujarat. The Petitioners hold a miniscule shareholding in the Respondent No. 1. It is beyond comprehension as to the amount of the fees being paid by the Petitioner No. 1 to its advocates, including senior advocates, who were/are appearing in the matters since last 35 years. From the aforesaid, it is clear that the Petitioner No. 1 is acting on behest of the Respondent No. 12.

4. Even otherwise, there is no case made out by the Petitioners for the rectification of the register of members and that the Petitioners have not shown any cause much less sufficient cause. The Petitioners have no direct or indirect grievance for themselves and that the petition, in the form and style of public interest litigation, is not maintainable.

5. In light of the aforesaid, it is submitted that that Petitioners are not entitled to any equitable relief from this Hon'ble Tribunal. The Petitioners have not come with clean hands and that the Company Petition has been filed with oblique motives.

C. <u>The present petition is barred by limitation. Even otherwise the petition suffers from gross delay and laches and that the Petitioners are not entitled for any equitable relief from this Hon'ble Tribunal</u>

1. At the time of hearing, a separate list of dates and events in respect of the aforesaid issue was tendered before the Hon'ble Tribunal. The same is annexed hereto and marked as **<u>Annexure 'I'</u>**, for ready reference.

2. As stated earlier, the Petitioner No. 1 was employed with the Respondent No. 1 since 1965 and was an authorized signatory and a power of attorney holder since 1970. He was the Administrative Manager and Officer of the Respondent No. 1 upto the year 1982-1983. Petitioner No. 1 attested the will of late Vadilal Mehta. The cheque dated 25.11.1982 issued by the Respondent No. 1 to M/s. Santosh Starch is signed by the Petitioner No. 1. The Petitioner No. 1 filed the objections before the Company Law Board against the appointment of the Sole Selling Agent. The Petitioner No. 1 was also a witness to the criminal complaint filed by Ashim K. Roy. The Petitioner No. 1 resigned from the Respondent No. 1 only on 7.11.1983 i.e. immediately after the resignation of late Vadilal Mehta and the Respondent No. 12 from the Respondent No. 1. Thus, the Petitioner was a close confidant of late Vadilal Mehta and also of the Respondent No. 12. The Petitioner No. 1 continued to be the Administrative Manager of the Respondent No. 1 even after the change in the management. It is impossible to fathom that the Petitioner No. 1 was not aware of the family arrangement or of the transactions involved. The said fact proves beyond doubt that the Petitioner No. 1 was aware

of the family arrangement and the transactions which took place in the year 1982. In the circumstances, filing of the Company Petition No. 35 of 1988 on 9.10.1987 is clearly barred by limitation.

3. Without prejudice to the aforesaid, it is stated that the Affidavit to the Company Petition No. 35 of 1988 reads as under:

"AFFIDAVIT

I, R. B. Desai, Petitioner No. 1 hereinabove do hereby solemnly affirm and state on oath that what is stated hereinabove is true to my knowledge and submission of law are believed by me to be true."

On perusal of the aforesaid Affidavit it becomes evident that the contents of the Company Petition No. 35 of 1988 are within the knowledge of the Petitioner No. 1 which is claimed to be true. None of the contents of the aforesaid Company Petition No. 35 of 1988 are based on information or records. The aforesaid clearly shows that the Petitioners were aware of all the facts as and when they occurred. Therefore, the Petitioners were aware of the alleged transactions since 1982. In such circumstances, the Company Petition is barred by limitation and thus required to be dismissed with costs.

4. Below the Affidavit to the said Company Petition it is mentioned as under:

"Annexures are true copies of their originals of which they purport to be copies."

The aforesaid statement proves beyond doubt that the Petitioners were aware of the execution of the MoU and MoM since 1982 and that the Petitioners have the originals of all the Annexures which includes the MoU and MoM or that the Petitioner No. 1 was in a position to obtain the same from the persons on whose behalf the present petition is

filed. Thus, filing of the Company Petition on 9.10.1987 is clearly barred by limitation.

5. In the deposition made by the Petitioner No. 1, in the criminal complaint filed by Ashim K. Roy, it is the case of the Petitioner No. 1 that he was handling all business transactions of the Respondent No. 1. It is his further case that he used to manage the affairs of the Respondent No. 1 as per the direction from the Managing Director of the Respondent No. 1 and sometimes whenever the Managing Director was not present, the Petitioner No. 1 used to take the decision and manage the affairs and that there was no necessity for the Petitioner No. 1 to inform the Managing Director. It is his further case that there was no practice of advance payment in the Respondent No. 1. In the said deposition it is further mentioned that the cheque dated 25.11.1982 was signed by him and all the 3 cheques were neither towards purchase of goods nor an advance payments against goods. It is his further case that all the 3 cheques were given under the instructions of the Respondent No. 2.

It is a matter of fact that the instructions were issued by the then Chairman, late Vadilal Mehta on 12.11.1982 for issuing a cheque of Rs. 15 lacs in favour of M/s. Santosh Starch. It is also a matter of fact that on the said date the Respondent Nos. 2 and 3 were neither the Directors nor in the management of the Respondent No. 1. The cheque dated 25.11.1982 is also signed by the Petitioner No. 1 and that late Vadilal Mehta and the Respondent No. 12 were the Chairman and the Managing Director. From the deposition it is evident that the Petitioner No. 1 was aware of the transactions including the cheques. Even if such deposition is to be believed to be factually true, the Petitioner No. 1 was aware in the year 1982 that the alleged transactions according to him were incorrect/wrong/illegal. No steps had been taken by the Petitioner No. 1 from the year 1982 till 8.10.1987.In the circumstances, the present Company Petition is barred by limitation and liable to be dismissed.

6. In the Company Petition it is the case of the Petitioners that they came to know of the transactions from the criminal complaint which was filed in the month of May 1987 ***(Para 21, Page 19 of the paperbook)***. The said averment in the Company Petition is false to the knowledge of the Petitioners. The said criminal complaint was filed only on 18.6.1987 ***(Page 456-462 of the paperbook)***. This clearly proves that the Petitioners were aware of the transactions not from the criminal complaint but were aware since inception. The fact that the Petitioners have not learnt about the transactions from the criminal complaint would be further evident from Annexure C to the Company Petition ***(Page 57 of the paperbook)***. In the criminal complaint there is no mention about the details ofthe transaction with Tirupati Traders. However, the Petitioners have provided the details of the transaction with Tirupati Traders. Though the said details in respect of Tirupati Traders has no bearing to the issues involved in the present case, however, it clearly shows that the Petitioners were aware of the transactions since inception. Thus, the Company Petition is barred by limitation.

7. Without prejudice to the aforesaid, it is submitted that Respondent Nos. 14, 15 and 16 were only joined as parties to the aforesaid Company Petition No. 35 of 1988 pursuant to order dated 19.10.2011 (Annexure 'F' to the present written submissions) passed by the Hon'ble High Court of Gujarat. Assuming while denying that the Petitioners learnt about the transactions in May 1987, it is submitted that the aforesaid Company Petition No. 35 of 1988 is barred by limitation against the Respondent Nos. 14, 15 and 16. It is further submitted that joining of the Respondent Nos. 14, 15 and 16 by order dated 19.10.2011 would not relate back to the date of the filing of the aforesaid Company Petition No. 35 of 1988.

8. Judgments:

1. **The Kerala State Electricity Board, Trivandrum vs. T.P. Kunhaliumma,**
(1976) 4 SCC 634 – *[Paras 6 to 22]*;

The relevant portion of which reads as under:

*"**6.** The provision contained in Article 137 of the Limitation Act, 1963 is asfollows:*

"Description of application	*Period of limitation*	*Time from which period begins to run*
Any other application for which no period of limitation is provided elsewhere in this Division"	*Three years*	*When the right to apply accrues*

***7.** The view of the Kerala High Court is that Article 137 of the Limitation Act, 1963 has the same meaning as Article 181 of the Indian Limitation Act, 1908.*

***8.** Article 181 of the Indian Limitation Act, 1908 was as follows:*

"Description of application	*Period of limitation*	*Time from which period begins to run*
Applications for which no period of limitation is provided elsewhere in this schedule or by Section 48 of the Code of Civil Procedure"	*Three years*	*When the right to apply accrues*

9. *In the Kerala State Electricity Board case the High Court held that in view of the decision of this Court in Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli [(1969) 1 SCC 873 : (1970) 1 SCR 51] the same construction should be put upon Article 137 as had been put upon Article 181. In the Athani Municipal Council case [(1969) 1 SCC 873 : (1970) 1 SCR 51] the workmen applied to the Labour Court under Section 33C(2) of the Industrial Disputes Act for computation of benefit in respect of overtime. The Labour Court accepted the application of the workmen. The Athani Municipal Council challenged the decision of the Labour Court in a writ petition. On appeal to this Court it was contended that the jurisdiction of the Labour Court was barred by the provisions of Minimum Wages Act, 1948 and second the applications to the Labour Court were timebarred under Article 137 of the Limitation Act 1963. This Court held as follows: The alteration in the 1963 Limitation Act in Article 137, namely, the inclusion of the words "other proceedings" in the long title to the 1963 Limitation Act, the omission of the preamble and the change in the definition so as to include petition in the word "application" do not show any intention to make Article 137 applicable to proceedings before bodies other than courts such as quasi-judicial tribunals and executive bodies. The word "other" in the first column of the article giving the description of the application "any other application for which no period of limitation is provided elsewhere in this division" indicates that the interpretation of Article 181 in the 1908 Limitation Act on the basis of ejusdem generis should be applied to Article 137. The application was presented to the Labour Court, a tribunal which was not a court governed by the Civil or Criminal Procedure Codes, and, therefore, the applications are not governed by Article 137 of the Limitation Act, 1963.*

10. *In Nityananda M. Joshi v. Life Insurance Corporation of India [(1969) 2 SCC 199 : (1970) 1 SCR 396] the appellants filed*

applications against the respondent under Section 33-C(2) of the Industrial Disputes Act for computing in terms of money, the benefit of holidays and for recovering the amount. The Labour Court dismissed the applications insofar as the claim was for a period beyond three years on the ground that the applications were barred under Article 137 of the Limitation Act. In Nityananda Joshi case [(1969) 2 SCC 199 : (1970) 1 SCR 396] this Court held as follows: Article 137 contemplates applications to ordinary courts. Section 4 of the Limitation Act provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Further under Section 5 of the Limitation Act only a court is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. The Labour Court is not a court within the meaning of the Limitation Act.

11. *This Court in Nityananda Joshi case [(1969) 2 SCC 199 : (1970) 1 SCR 396] said that it was not necessary to express views on the first ground given by this Court in Athani Municipal Council case [(1969) 1 SCC 873 : (1970) 1 SCR 51] . The first ground given in the Athani Municipal Council case [(1969) 1 SCC 873 : (1970) 1 SCR 51] was that in spite of change the interpretation of Article 181 would apply to Article 137 of the Limitation Act. This Court in Nityananda Joshi case [(1969) 2 SCC 199 : (1970) 1 SCR 396] said that it would require serious consideration whether applications to courts under other provisions, apart from Civil Procedure Code, are included within Article 137 of the Limitation Act, 1963 or not. The Athani Municipal Council case [(1969) 1 SCC 873 : (1970) 1 SCR 51] is a two-judge bench decision. Nityananda Joshi case [(1969) 2 SCC 199 : (1970) 1 SCR 396] is a three-judge bench decision.*

12. *The schedule to the Limitation Act is with reference to Sections 2(j) and 3 of the Act. Section 2(j) of the Act speaks of the period of*

limitation prescribed for any suit, appeal or application by the schedule and "prescribed period" is the period of limitation computed in accordance with the provisions of this Act.

13. *Section 3 of the Act states that subject to the provisions contained in Sections 4 to 24 (inclusive) of the Act every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.*

14. *"Application" is defined in Section 2(b) of the Act to include a petition.*

15. *The schedule is divided in three divisions. The first division relates to suits. The first division consists of 10 parts and consists of 113 articles. The first 10 parts speak of 10 categories of suits. The second division speaks of appeals. The second division consists of Articles 114 to 117. The third division speaks of applications. The third division is in two parts. Part I speaks of applications in specified cases. Part II speaks of other applications.*

16. *The main contention on behalf of the appellant is that the petition before the District Judge for compensation would be an application for which no period of limitation is provided elsewhere in this division and would fall within Article 137.*

17. *This Court in ShaMulchand& Co. Ltd. (In Liquidation) v. Jawahar Mills Ltd. [AIR 1953 SC 98 : 1953 SCR 351] held that the construction put upon Article 181 of the Limitation Act, 1908 is that the long catena of decisions under Article 181 may well be said to have, as it were, added the words "under the Code" in the first column of that article.*

18. *The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that*

applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.

19. *In the present case, the applications contemplated under Section 16(3) of the Telegraph Act are applications to the District Judge within whose jurisdiction the property is situate. Applications are contemplated if any dispute arises concerning the sufficiency of the compensation to be paid under Section 10 of the Telegraph Act. Section 10 of the Telegraph Act states that the telegraph authority shall pay compensation to all persons interested for any damages sustained by them by reason of exercise of powers mentioned in Section 10 of the Telegraph Act, 1885. Reference may also be made to Section 16(1) which states that if the exercise of powers mentioned in Section 10 in respect of property referred to in clause (d) is resisted or obstructed the District Magistrate may order that the telegraph authority shall be permitted to exercise them.*

20. *The provisions in the Telegraph Act which contemplate determination by the District Judge of payment of compensation payable under Section 10 of the Act indicate that the District Judge acts judicially as a court. Where by statutes matters are referred for determination by a court of record with no further*

provision the necessary implication is that the court will determine the matters as a court. (See National Telephone Co. Ltd. v. Postmaster-General [1913 AC 546 : 82 LJKB 1197 : 29 TLR 637] . In the present case the statute makes the reference to the District Judge as the Presiding Judge of the District Court. In many statutes reference is made to the District Judge under this particular title while the intention is to refer to the court of the District Judge. The Telegraph Act in Section 16 contains intrinsic evidence that the District Judge is mentioned there as the court of the District Judge. Section 16(4) of the Telegraph Act requires payment into the court of the District Judge such amount as the telegraph authority deems sufficient if any dispute arises as to the persons entitled to receive compensation. Again, in Section 34 of the Telegraph Act reference is made to payment of court fees and issue of processes both of which suggest that the ordinary machinery of a court of civil jurisdiction is being made available for the settlement of these disputes. Section 3(17) of the General Clauses Act states that the District Judge in any Act of the Central Legislature means the judge of a principal civil court of original jurisdiction other than the High Court in the exercise of its original civil jurisdiction, unless there is anything repugnant in the context. In the Telegraph Act there is nothing in the context to suggest that the reference to the District Judge is not intended as a reference to the District Court which seems to be the meaning implied by the definition applicable thereto. The District Judge under the Telegraph Act acts as a civil court in dealing with applications under Section 16 of the Telegraph Act.

***21.** The changed definition of the words "applicant" and "application" contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle of ejusdem generis is not applicable*

with regard to Article 137 of the 1963 Limitation Act. Article 137 stands in isolation from all other articles in Part I of the third division. This Court in Nityananda Joshi case has rightly thrown doubt on the two-Judge Bench decision of this Court in Athani Municipal Council case where this Court construed Article 137 to be referable to applications under the Civil Procedure Code. Article 137 includes petitions within the word "applications". These petitions and applications can be under any special Act as in the present case.

22. *The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in Athani Municipal Council case [(1969) 1 SCC 873 : (1970) 1 SCR 51] and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act."*

2. **JagjitRaiMaini vs. Punjab Machinery Works (P) Ltd., (2001) 103 Comp Cas 979 – *[Paras 10 to 12]***

The relevant portion of which reads as under:

*"**10.** By way of preliminary objection, it was argued that the shares were allotted in the years 1972 and 1974 and the present petition was filed in September, 1981 i.e. after a delay of 8 years and the same is barred by limitation. No period of limitation has been prescribed under the Act for filing a petition for rectification of the shares Register. Counsel for the respondents relied upon The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma, A.I.R. 1977 SC 282, to contend that the limitation under these circumstances would be three years. The Apex Court in T.P.*

Kaunhaliumma's case (supra) held that the Article 137 of the Limitation Act applies to any petition or application filed under any Act. Petition in that case under consideration was under Section 16(3) of the Telegraph Act, 1885 claiming enhanced compensation and it was held that the said petition fell within the scope of Article 137 of the Limitation Act and was barred by time.

11. *Counsel for the respondents further placed strong reliance upon a judgment of Delhi High Court in Anil Gupta v. Delhi Cloth and General Mills Company Limited, (1983) 54 Comp. Cases. 301, where a learned Single Judge of Delhi High Court held that Article 137 of the Limitation Act would apply to any petition or application under any Act and the same shall not be confined to applications contemplated by or under the Code of Civil Procedure, 1908.This was a petition under section 155 of the Act for ordering rectification of the Register of Members. In that case, the petition had been filed after five years of the allotment of shares. The same was held to be barred by time and it was held as under:—*

> *"Previously there was some doubt as to whether Art. 137 applies to applications under the Special Acts. This controversy has been set at rest by the decision of the Supreme Court in the case reported as Kerala State Electricity Board v. T.P. Kunhaliumma, (supra). That was a case where a petition had been filed under Section 16(5) of the Indian Telegraph Act, 1885. A question arose whether the said petition had been filed within time. The contention of the petitioner was that Art. 137 did not apply. Taking note of the changes brought about by the Limitation Act or 1963, the Supreme Court held as follows (at P.2860):*
>
> *"The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the Two-Judge Bench of this Court in Athani*

Municipal Council's case (1969) 36 FJR 177 : A.I.R. 1969 SC 1335 and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act."

In the present case the transfers were effected on 11th August, 1973, in respect of 1,000 shares, and on 27th September, 1974, in respect 1,500 shares. An application under Section 155 of the Companies Act could be filed within three years of the said transfers. Prima facie it appears that the present petition which was filed on 23rd November, 1978, is barred by time."

12. *In the present case as well, the shares were transferred in the years 1972 and 1974. There is no averment in the petition as to when the petitioner acquired the knowledge of transfer of the shares. Under the circumstances, it would be presumedthat he had the knowledge from the date of the allotment of shares. The present petition, under the circumstances, would be barred by limitation."*

9. Contentions raised by the Petitioners:

(a) It is contended that there is no prescribed period of limitation under Section 155 of the Companies Act, 1956 and to buttress the said argument it is further contended that in view of paragraph 22 of Kerala State Electricity Board (*supra*) judgment, Article 137 applies only to Civil Court and that High Court is not a Civil Court. Therefore, there is no prescribed period of limitation and that Article 137 of the Limitation Act, 1963 would not be applicable to the facts of the present case.

The said contention is devoid of any merits. There is no provision under the Companies Act, 1956 which states that the provisions of the Limitation Act, 1963 would not be applicable to any proceedings or to certain proceedings under the Companies Act, 1956. In such circumstances the provisions of the Limitation Act, 1963 would be applicable to the proceedings under the Companies Act, 1956. Therefore, Article 137 of the Schedule to the Limitation Act, 1963 would apply to the proceedings under Section 155 of the Companies Act, 1956. In fact, the Hon'ble Delhi High Court in the case of *Anil Gupta vs. Delhi Cloth and General Mills Co. Ltd. [(1983) 54 Comp. Cas. 301]*, as relied upon in *JagjitRaiMaini (supra) (Para 11)*, reiterates that Article 137 of the Limitation Act, 1963 is applicable to petition for rectification of register under Section 155 of the Companies Act, 1956.

The contention that High Court for the purpose of Section 155 of the Companies Act, 1956 is not a Civil Court is without any merit. Under Section 10 of the Companies Act, 1956, the High Court has the jurisdiction to try and decide the issues raised under the Companies Act, 1956 unless and until the jurisdiction under the Companies Act, 1956 is conferred on the District Court. It is not even the case of the Petitioners that the proceedings initiated by them under Section 155 of the Companies Act, 1956 falls within the jurisdiction of the District Court. The High Court in respect of the proceedings under Companies Act, 1956 exercises original jurisdiction and thus the High Court is the Civil Court for the purposes of Section 155 of the Companies Act, 1956. In such circumstances, Article 137 of the Limitation Act, 1963 would apply to the proceedings under the Companies Act, 1956 initiated/pending before the High Court.

In addition to the aforesaid, it is submitted that Section 465(2)(c) of the Companies Act, 2013 provides that notwithstanding the repeal of the Companies Act, 1956, any principle or rule of law or established jurisdiction or practice or procedure shall not be affected. In catena of judgments it has been held that the Limitation Act, 1963 would be applicable even to proceedings pending before the High Court under the provisions of the Companies Act, 1956.

In light of the aforesaid, it is submitted that Article 137 of the Limitation Act, 1963 would apply to the aforesaid Company Petition No. 35 of 1988 and that the said Company Petition is hopelessly barred by limitation in light of what is stated in earlier paragraphs.

(b) It is further contended that under Article 137 of the Limitation Act, 1963, the period of limitation would start "*when the right to apply accrues*". It is further contended that the Petitioners learnt about the alleged fraud only in May 1987 when the criminal complaint was filed by Ashim K. Roy.

In the earlier paragraphs to the present written submissions, it is clearly demonstrated that the Petitioners were aware of the MoU/MoM and the transactions involved thereunder since inception and that the contention of the Petitioners that they learnt about the transaction only from the criminal complaint is false to the knowledge of the Petitioners. In the circumstances, it is submitted that the Company Petition No. 35 of 1988 is barred by limitation.

(c) Based on paragraphs 20, 23 and 27 of the judgment reported in (2006) 5 SCC 638 (*Ramesh B. Desai &Ors. Vs. BipinVadilal Mehta &Ors.*) it is contended by the Petitioners that after the said judgment of the Hon'ble Supreme Court of India, the

Respondents have not laid down any new facts or evidence and thus, in view of the judgment of the Hon'ble Supreme Court of India, the issue of limitation pales to insignificance.

The said contention is again devoid of any merits. The Hon'ble Supreme Court of India has only held that the Code of Civil Procedure confers no jurisdiction upon the court to try a suit on mix issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue. The Hon'ble Supreme Court in para 23 of the aforesaid judgment as under:

"...In our opinion the approach adopted by the High Court is clearly illegal as no finding on the point of knowledge could have been recorded until the parties had been given opportunity to lead evidence and in such circumstances dismissal of the company petition at a preliminary stage on the finding that it was barred by limitation is clearly erroneous in law."

The Hon'ble Supreme Court in para 31 had further observed as under:

"... . Since we have held above that the company petition could not be dismissed on a preliminary issue, namely, as being time barred by limitation as the petitioners had not been given opportunity to lead evidence..."

Therefore in any case the Hon'ble Court had left it to the discretion of the parties more particularly the Petitioners to lead evidence on the issue of limitation if they chose to.Further, the Hon'ble Supreme Court of India while setting aside the judgment of the single judge and the division bench of the Hon'ble Gujarat High Court has directed the Hon'ble Gujarat High Court to decide the Company Petition afresh in accordance

with law and it is further made clear that any observation made in the order of the Hon'ble Supreme Court is only for the limited purpose of deciding the appeal and the same shall not be construed as an expression of opinion on the merits of the case. In the circumstances, it is submitted that all the issues are kept open by the Hon'ble Supreme Court including the issue of limitation. The Respondents would have all the rights to contend before this Hon'ble Tribunal that the aforesaid Company Petition is barred by limitation based on the facts and evidence mentioned in the pleadings by the Respondents. If that was not so, the Hon'ble Gujarat High Court would not have framed the issue of limitation in its orders dated 27.8.2009 (Annexure 'E' to the present written submissions) and 23.3.2015(Annexure 'G' to the present written submissions). The aforesaid contention of the Petitioners is more of desperation then that of substance.

(d) It was next contended by the Petitioners that the names of the family members are wrongly included in the Register of Members. So long as their names continue in the Register of Members, it is a continuing wrong as per Section 22 of the Limitation Act, 1963 and therefore, the petition filed by the Petitioners is within the prescribed period of limitation.

The fundamental nature of the continuing wrong is that the violation of law makes the wrong doer continuously liable. The Hon'ble Supreme Court in the case of *BalakrishnaSavalramPujariWaghmare&Ors. vs. Shree DhyaneshwarMaharajSansthan&Ors., AIR 1959 SC 798* has, *inter alia*, held as under:

"31. ...That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a

continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the sad injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue..."

In view of the above it is well settled position of law that a wrong or a default which is complete but whose effect / damage may continue to be felt even after its completion is, however, not a continuing wrong. In the present case the Petitioners have claimed reliefs under section 155 for rectification of register, inter alia restoration of status quo ante. These reliefs are claimed based on alleged violation of section 77. According to the Petitioners the wrongful act of advancing monies from the Respondent No. 1 to M/s. Santosh Starch would amount to a breach of section 77. Assuming while denying that the Petitioners allegations are true, the said wrongful act or breach of the use of the Respondent No. 1's funds to acquire its own shares (breach of section 77) would be a onetime breach and the same was over on 13.11.1982. The resulting damage may continue however the wrongful act does not continue and in view of above well settled position of law the above cannot be said to be a continuing wrong.

Respondent No. 12 and his family members have not challenged either the transfer of shares in favour of the Respondent No. 2 and his family members or the rectification of register of the Respondent No. 1 under Section 155 of the Companies Act, 1956. Neither the MoU nor the MoMare under challenge in the present petition. The only challenge is that the advance of monies by the Respondent No. 1 to M/s. Santosh Starch is in breach of Section 77 of the Companies Act, 1956 and that in view of said alleged breach there should be rectification of the

register by restoring status quo-ante. It is submitted that if the advance made by the Respondent No. 1 to M/s. Santosh Starch is in breach of Section 77 of the Companies Act, 1956, as sought to be contended by the Petitioners, then in that case the injury is over on the date when such advance was made by the Respondent No. 1 to M/s. Santosh Starch. Such one time advance cannot be said to be a continuing injury. The effect of injury, assuming it to be continuing,and continuing injury are separate and distinct. Effect of injury cannot be read to be a continuing injury. In such circumstances, Section 22 of the Limitation Act, 1963 is not applicable to the facts of the present case and that the petition filed by the Petitioners is barred by limitation.

(e) The Petitioners sought to explain the affidavit of the Petitioner No. 1 (***Page 22 of the paperbook***). It was contended that the words "*true to my knowledge*" can mean "*true to his knowledge*" or "*knowledge derived from sources*". It was contended that Petitioners derived the knowledge from sources and such knowledge was derived from the criminal complaint.

The said contention is baseless. The words "*knowledge derived from sources*" would mean that the Petitioners acquired the knowledge based on "*information received from others*". In the affidavit there is no mention that the contents of the Company Petition are based on information or that the Petitioners have disclosed the name of the persons who have given the information to them. Even this Hon'ble Tribunal inquired from the Petitioners as to how the Petitioners could annex the copy of the MoU, MoM and the details of the transactions as mentioned in Annexure C to the Company Petition No. 35 of 1988. No answer has been given by the Petitioners till date. Further, no explanation is given by the Petitioners to the words below the Affidavit (***Page 22 of the paperbook)*** "*Annexures are true copies*

of their originals of which they purport to be copies". From the aforesaid, it is evident that the Petitioner No. 1 was aware of the transactions since inception and that the Petitioners have the originals or was in a position to obtain the same from the persons on whose behalf the present petition is filed.

D. <u>The amount of Rs. 39 lacs and odd brought in by the Respondent No. 2 and his family within C.V. Mehta Pvt. Ltd. was by way of loan and not as a consideration towards purchase of shares of the Respondent No. 1. There is no violation of Section 77 of the Companies Act, 1956</u>

1. At the time of hearing, a separate list of dates and events in respect of the aforesaid issue was tendered before the Hon'ble Tribunal. The same is annexed hereto and marked as **<u>Annexure 'J'</u>**, for ready reference.

2. The MoU and the MoM were executed as a part of family settlement with a view to increase love and peace in the family ***(Clause 7, Page 25 of the paperbook)***.

3. Under the family arrangement it was agreed that the management of the Respondent No. 1 and C.V. Mehta Pvt. Ltd. was to be entrusted to the Respondent No. 2 ***(Clause 1, Page 25 of the paperbook)***.

4. Other companies as mentioned in the MoU were to remain with the Respondent No. 12 as the same were even otherwise managed by the Respondent No. 12 ***(Clause 2, at Page 26 read with Clause 5, at Page 25 of the paperbook)***.

5. The shares of the Respondent No. 1 and C.V. Mehta Pvt. Ltd. held by the Respondent No. 12 were to be sold/transferred to the Respondent No. 2 and his family ***(Clause 4(a), Page 26 of the paperbook)***.

6. Similarly, the shares held by the Respondent No. 2 and his family in other companies were to be sold/transferred to the Respondent No. 12 and his family ***(Clause 4(b), Page 26 of the paperbook)***.

7. The prices at which the shares were to be sold/transferred were already agreed ***(Clause 6, Page 27 read with Page 45 of the paperbook)***.

8. It is not in dispute that the separate consideration is paid for the said purchase of shares. The same would be evident from Annexure 'C' (Colly) to the present written submissions.

9. However, the control and management of the Respondent No. 1 and C.V. Mehta Pvt. Ltd. were to be transferred to the Respondent No. 2 only upon payment of certain amounts by the Respondent No. 2 to C.V. Mehta Pvt. Ltd. who had certain liabilities which were required to be discharged by it ***(Clause 10 and 12, Page 29 and 30 of the paperbook)***.

10. In addition to the aforesaid, there were also certain other family arrangements which were entered into.

11. The Respondent No. 2 felt certain difficulties and requested for modification of the MoU.

12. In this regard, MoM dated 13.11.1982 was executed.

13. Under the MoM, the amount to be brought in by the Respondent No. 2 in C.V. Mehta Pvt. Ltd. was fixed at Rs. 39,24,154.88/- ***(Clause 3, Page 47 of the paperbook)***.

14. It was agreed that upon the amount of Rs. 20 lacs is brought in by the Respondent No. 2 in C.V. Mehta Pvt. Ltd., the management of the Respondent No. 1 would be transferred to the Respondent No. 2. The

said amount to be brought within C.V. Mehta Pvt. Ltd. was treated as loan ***(Clause 3, at Page 48 of the paperbook)***.

15. Similar was the case in respect of C.V. Mehta Pvt. Ltd. ***(Clause 4, Page 49-50 of the paperbook)***.

16. It is a matter of fact that the amounts brought in by the Respondent No. 2 and his family members in C.V. Mehta Pvt. Ltd. has been utilized by C.V. Mehta Pvt. Ltd. to discharge its liabilities***(Page 471-472 of the paperbook)***. Further, the amounts brought in by the Respondent No. 2 and his family were a loan to C.V. Mehta Pvt. Ltd. ***(Page 538, 540 and 542 of the paperbook)***. On perusal of the same it would be evident that the amount brought in by the Respondent No. 2 and his family members in C.V. Mehta Pvt. Ltd. has not been utilized towards consideration for purchase of any shares either of the Respondent No. 1 or of C.V. Mehta Pvt. Ltd.

17. It is pertinent to mention that the cheques issued by the Respondent No. 1 to M/s. Santosh Starch were at the behest of late Vadilal Mehta who was the Chairman and the Managing Director of the Respondent No. 1 ***(Page 559 of the paperbook)***. At the relevant time neither the Respondent No. 2 nor the Respondent No. 3 were Directors or in management of the Respondent No. 1. Even the cheque dated 25.11.1982 was signed by the Petitioner No. 1 who was the confidant of late Vadilal Mehta and the Respondent No. 12. Though the Respondent No. 2 was appointed as Additional Director on 18.11.1982, he had no signing authority. The said authority was given only in March/April 1983. Even on 25.11.1982, late Vadilal Mehta was the Chairman and Managing Director of the Respondent No. 1. The Respondent No. 1 had extensive business dealings with M/s. Santosh Starch since the year 1972/1975. The fact that the Respondent No. 2 was not a Director of the Respondent No. 1 during the relevant time has also been observed by the Hon'ble High Court of Gujarat, while quashing the criminal complaint filed by Ashim K. Roy,

in its order dated 2.12.1994 and by the Hon'ble Supreme Court of India by its judgment dated 14.10.1997.

18. In the circumstances, the complete bogey raised by the Petitioners that the loan amount brought in by the Respondent No. 2 and his family members in C.V. Mehta Pvt. Ltd. is towards consideration for purchase of shares of the Respondent No. 1 and C.V. Mehta Pvt. Ltd. is baseless and devoid of any merits.

19. Section 77(2) of the Companies Act, 1956 stipulates that no public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee or otherwise, any financial assistance for the purpose of or in connection with a purchase for any shares in the said public company.

20. As explained in the earlier paragraphs, the advance was made by the Respondent No. 1 to M/s. Santosh Starch. M/s. Santosh Starch gave certain loans to the Respondent No. 2 and his family members. The Respondent No. 2 and his family members gave a loan to C.V. Mehta Pvt. Ltd. C.V. Mehta Pvt. Ltd. in turn discharged its liabilities. Assuming while denying that there is any connection with the advances given by the Respondent No. 1 to the loan amount given by the Respondent No. 2 and his family members to C.V. Mehta Pvt. Ltd., it is submitted that no payment given by the Respondent No. 2 and his family members has been given as a consideration towards purchase of shares of the Respondent No. 1. The Respondent No. 2 and his family members have made a separate payment to the Respondent No. 12 and his family members for the purchase of the shares of the Respondent No. 1 and C.V. Mehta Pvt. Ltd. In the circumstances, there is no violation of Section 77 of the Companies Act, 1956, at all.

21. Assuming while denying that there is any violation of Section 77 of the Companies Act, 1956, it is submitted that the same would not render

the sale or the transaction void and that the same would only entail punishment for the Company and every Officer of the Company who is in default. In this regard, reference be made to the Judgment of the Hon'ble Calcutta High Court in the case of *Unity Company Private Limited v/s Diamond Sugar Mills and Others*, **AIR 1971 Calcutta 18 (*Para 73 and 80*)**, the relevant portion of which, reads as under:

*"**73.** The learned counsel for the purchaser defendants has submitted that in view of the pleadings in the suit, it is not open to the plaintiff company to raise any question of illegality or invalidity of the sale. The learned counsel argues that the question of illegality and invalidity of the sale sought to be raised and argued on behalf of the plaintiff company on the basis of the provisions contained in Section 108 and Section 77 of the Companies Act, is not a pure question of law. It is his argument that the illegality contended for by the learned counsel on behalf of the plaintiff involves questions of fact and there cannot be any question of any violation of the provisions contained in the said Sections, unless the necessary facts are established. It is the submission that unless the necessary facts are pleaded in the plaint, it cannot be open to the plaintiff company to raise any such contention, relying on some portion of the evidence led for other purposes. The learned counsel relies on the provision contained in O. 6, Rr. 6 and 8 of the CPC in support of his contention that in the absence of proper pleadings with regard to the legality of the transaction, the question of illegality cannot be agitated; and the learned counsel has also referred to the following observations of the Supreme Court in the case of Sri VenkataramanaDevaru v. State of Mysore, AIR 1958 SC 255 at pp. 262-263:*

> *"Mr. M.K. Nambiar invited our attention to Ex. A-2 which is a copy of an award dated 28-11-1847, wherein it is recited that the temple was originally founded for the benefit of five families of GowdaSaraswata Brahmins. He also refers us to*

Ex. A-6, the decree in the scheme suit, O.S. No. 26 of 1915, wherein it was declared that the institution belonged to that community. He contended on the basis of these documents and of other evidence in the case that whether the temple was a private or public institution was purely a matter of legal inference to be drawn from the above materials, and that, notwithstanding that the point was not taken in the pleadings, it could be allowed to be raised as a pure question of law. We are unable to agree with this contention. The object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding of a matter which was not in issued and decide the rights of the parties on the basis of that finding. We have accordingly declined to entertain this contention."

80. *In the facts of the present case I am satisfied that the purchasers acted bonafide and they are bona fide purchasers of the shares for valuable consideration. It is to be noted that there is no allegation of fraud, collusion, conspiracy or benami in the plaint. Gopikissen Agarwal who has given evidence on behalf of the purchasers has stated in details as to why and under what circumstances, the purchasers agreed to purchase and purchased the shares in question. He has stated that the purchasers had no knowledge at the time of their purchase as to who were the owners of the shares and he has also stated how the entire consideration money was paid by the purchasers and it is also his evidence that the value they paid for the shares was more than adequate or the market value. I have no hesitation in accepting the evidence of Gopikissen Agarwal whose testimony on all important matters is supported by documentary evidence*

and is also corroborated by the testimony of KedarNathDutt. I am satisfied that the documents relied on by the purchasers are all genuine documents and have not been subsequently prepared for the suit. I have already observed that Gopikissen Agarwal created a very favourable impression on me from the witness box and he appeared to be a truthful witness. I am satisfied on the evidence on record that the sum of Rs. 1,25,000/- which the defendant company paid to the firm of KashiramKanhaiyalal was paid by the defendant company and received by the said firm in repayment of the legitimate dues of the said firm. In my opinion, payment of any sum to any person in repayment of its legitimate dues with whatever intention such payment may be made, cannot be construed to mean rendering of any financial assistance within the meaning of Section 77 of the Companies Act. I, therefore, hold that in the facts of the instant case there has been no violation of the provisions contained in Section 77 of the Companies Act. Even if I had held that the sum of Rs. 1,25,000/- was paid by the defendant company by way of financial assistance in breach of the provisions contained in Section 77 of the Companies Act, I would have held that the sale was not vitiated or rendered void in consequence thereof.In my opinion giving of any financial assistance by the company for the purchase of any shares in the company in violation of the provisions contained in Section 77 of the Companies Act, does not render the sale or the transaction void and it only entails a punishment for the company and its officers, as provided in Section 77(4) of the said Act.To construe the said provisions in Section 77(2) to imply that the transaction itself, if done in breach of the said provisions with financial assistance of the company, will be rendered illegal and void, will have the effect, in my opinion, of penalising the share-holder to an unlimited extent, while the offending company and its officers in default will only be liable to a fine not exceeding Rs. 1,000/-. Such a construction may also have the very undesirable effect of putting premium on

dishonesty and encouraging dishonest dealings on the part of unscrupulous directors and officers of any company, as it may enable any unscrupulous and dishonest director or officer to defraud the company by advancing large sums of money to its nominees by way of financial assistance which the company may not be able to recover because of the illegality of the transaction and the Director or officer concerned who swindles the company in the aforesaid manner gets away by paying the fine provided in Section 77(4). The decision of the English Court in the cases of 1936 Ch. 544 and (1946) 1 All E.R. 519 on similar provisions in the English Companies Act, relied on by the learned counsel for the defendant purchasers, clearly support, to my mind, the view that the transaction itself is not rendered invalid."

22. If the story of the alleged violation of Section 77 of the Companies Act, 1956 of the Petitioners is to be believed, then in that case it is submitted that the Petitioners have purposefully not initiated any action under Section 77(4) of the Companies Act, 1956 as they were aware that late Vadilal Mehta, the Respondent No. 12, including the Petitioner No.1 would have been exposed as "*officer who is in default*". To circumvent the said process, the Petitioners took the route of Section 155 of the Companies Act, 1956 for rectification of register by indirectly seeking status quo-ante though being aware that the Respondent No. 12 and his family members have taken no steps in such direction.

23. Contentions raised by the Petitioners:

(i) It is contended by the Petitioners that the amount of Rs. 39 lacs and odd paid by the Respondent No. 2 and his family to C.V. Mehta Pvt. Ltd. was a pre-condition as a consideration for transfer of shares. Thus, it is contended by the Petitioners that there is a violation of Section 77 of the Companies Act, 1956.

As stated earlier, Rs. 39 lacs and odd was brought in by the Respondent No. 2 and his family members in C.V. Mehta Pvt. Ltd. as a loan so as to enable C.V. Mehta Pvt. Ltd. to discharge its liabilities. C.V. Mehta Pvt. Ltd. was required to make payment to certain entities which were/are in control of the Respondent No. 12. The said amount of Rs. 39 lacs and odd has been utilized by C.V. Mehta Pvt. Ltd. towards discharge of its liabilities (***Page 471-472 of the paperbook***). The said money was not paid or utilized as consideration towards purchase of shares from the Respondent No. 12 and his family members. Separate payments have been made by the Respondent No. 2 and his family members for purchase of shares. The same would be evident from Annexure 'C' (Colly) to the present written submissions. The said amount of Rs. 39 lacs and odd was not a consideration towards acquiring management or control of the Respondent No. 1. Under the MoU, the management and control of the Respondent No. 1 and that of C.V. Mehta Pvt. Ltd. was required to be handed over to the Respondent Nos. 2 and 3 only after the independent and distinct transaction of bringing Rs. 39 lacs and odd within C.V. Mehta Pvt. Ltd. Merely the fact that the control and management of the said companies was to come only after the independent and distinct transaction of payment of Rs. 39 lacs and odd by the Respondent No. 2 and his family members, would not mean that the said amount of Rs. 39 lacs and odd is the consideration for purchase of shares or transfer of shares or for management or for control. It is reiterated that Rs. 39 lacs and odd is neither towards purchase of shares or in connection with the purchase of shares. The Petitioners are neither the parties to the MoU nor the MoM. The parties to the MoU and the MoM have not challenged the MoU/MoM. It is surprising that an outsider to the MoU/MoM is seeking to explain the intention between the parties to the MoU/MoM.

(ii) The Petitioners by showing page 413 and page 417 of the paperbook contended that the Respondents have not placed any evidence to show the discharge of consideration towards shares and thus, the amount of Rs. 39 lacs and odd is towards purchase of shares.

The said contention is baseless and without any merit. As stated earlier, the Respondent No. 2 and his family members have paid a separate and distinct consideration towards purchase of shares. The same would be evident from Annexure 'C' (Colly) to the present written submissions. It is pertinent to highlight that the Respondent Nos. 12 and 13 have raised no such objections as sought to be raised by the Petitioners.

E. <u>The issues raised in the present petition are not peripheral to rectification and thus, Company Petition filed by the Petitioners is not required to be entertained</u>

1. It is submitted that the issues involved in the present Company Petition are not peripheral to rectification. The same would be evident, *inter alia*, from the following:

(a) Whether the Respondent No. 2, at the relevant time, was in de-facto management? (***Para 4, Page 4 of the paperbook; Para 11, Page 13 of the paperbook)***.

(b) Whether Respondent No. 2 devised any scheme? (***Para 8, Page 11 of the paperbook)***.

(c) Whether the Respondent No. 1 had no knowledge of the advances made to M/s. Santosh Starch? (***Para 8, Page 11 of the paperbook)***.

(d) Whether the Chairman and the Directors, at the relevant time, were acting on the dictates of the Respondent Nos. 2 and 3? ***(Para 19, Page 17 of the paperbook)***.

(e) Whether Respondent Nos. 2 and 3 have committed any fraud? ***(Para 20 at Page 19 of the paperbook)***.

In the circumstances, it is submitted that this Hon'ble Tribunal be pleased to not entertain the present Company Petition No. 35 of 1988.

2. It is further submitted that pursuant to the provisions of Section 465(2)(c) of the Companies Act, 2013, the principle or rule of law or established jurisdiction are not affected pursuant to the repeal of the Companies Act, 1956 and that the judicial precedents rendered before the repeal would equally apply even after the enactment of the Companies Act, 2013.

3. **Judgments:**

- **Ammonia Supplies Corporation (P) Ltd. vs. Modern Plastic Containers Pvt. Ltd.**
  (1998) 7 SCC 105 – *[Paras 25 to 32]*;

  The relevant portion of which reads as under:

  *"**25.** Now we proceed to examine the power of the court to rectify the Register of Members of a company under Section 155. The question raised for the appellant is that the court under this Act cannot direct an applicant to seek his remedy by way of suit but the court under the Act having exclusive jurisdiction should decide itself. In support, strong reliance is placed on the deletion of the proviso to Section 38 of the 1913 Act. Section 38 of the old Act is quoted hereunder:*

  "38. Power of the court to rectify Register.—(1) If—

(a) the name of any person is fraudulently or without sufficient cause entered in or omitted from their Register of Members of a company; or

(b) default is made or unnecessary delay takes place in entering in the Register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the Register.

(2) The court may either refuse the application, or may order rectification of the Register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section, the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the Register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the Register:

Provided that the court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908 (5 of 1908), on the grounds mentioned in Section 100 of that Code."

26. *The proviso gave discretion to the court to direct an issue of law to be tried, if raised. By this deletion, submission is that the Company Court now itself has to decide any question relating to the rectification of the Register including the law and not to send*

one to the civil court. There could be no doubt any question raised within the peripheral field of rectification, it is the court under Section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso.Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it.Thus in other words, the court under it has discretion to find whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification. The word "rectification" itself connotes some error which has crept in requiring correction. Error would only mean everything as required under the law has been done yet by some mistake the name is either omitted or wrongly recorded in the Register of the company. In T.P. Mukherjee's Law Lexicon, Fifth Revised Edition:

> *"The expression rectification of the Register used in Section 155 is significant and purposeful. 'Rectification' implies the correctness of an error or removal of defects or imperfections. It implies prior existence of error, mistake or defect ... the Register kept by the company has to be shown to be wrong or defective."*

According to Stroud's Judicial Dictionary:

> *"Rectify.—Altering the Register of a company so as to make it conformable with a lawful transfer."*

In Venkataramaiya's Law Lexicon, 2nd Edn.:

> *"The act to be done under the powers of that section is the 'rectification' of the Register, a term which itself implies that the Register, either in what is, or what is not upon it, is wrong; but the Register cannot be wrong unless there has been a failure on the part of the company to comply with the directions in the Act as to the kind of Register to be kept: for if the Act has been complied with, the Register must be right and not wrong."*

27. *In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the Register of the company has to be stated to have been complied with by the applicant — at least that part as required by the Act — and assertion of what has not been complied with under the Act and the Rules by the person or authority of the respondent-Company before the applicant claims for the rectification of such Register. The court has to examine on the facts of each case whether an application is for rectification or something else. So field or peripheral jurisdiction of the court under it would be what comes under rectification, not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the court as referred under Section 155 read with Section 2(11) and Section 10, it is the Company Court alone which has exclusive jurisdiction. Similarly, under Section 446, the "court" refers to the Company Judge which has exclusive jurisdiction to decide matters what is covered under it by itself. But this does not mean by interpreting such "court" having exclusive jurisdiction to include within it what is not covered under it, merely because it is cloaked under the nomenclature rectification does not mean the court cannot see the substance after removing the cloak.*

28. *Question for scrutiny before us is the peripheral field within which the court could exercise its jurisdiction for rectification. As*

aforesaid, the very word "rectification" connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words is the failure on the part of the company to comply with the directions under the Act. To show this error the burden is on the applicant, and to this extent any matter or dispute between persons raised in such court it may generally decide any matter which is necessary or expedient to decide in connection with the rectification.

29. *Both under the 1913 Act and the 1960 Act, a procedure is prescribed for admitting a person as a member by purchase or transfer of shares of that company. With reference to the 1913 Act under Section 29, a certificate of shares or stock shall be prima facie evidence of the title of the number of the shares or stock therein. Section 30 defines "member" to be one who agrees to become a member of a company and whose name is entered in its Register. Section 31 is to keep a Register of its members. Section 34 deals with transfer of shares and application for the registration of the transfer of shares is to be made either by the transferor or the transferee. Where such application is made by the transferor for registration of his share, a registered notice is to be sent to the transferee. Section 34(3) restricts to register a transfer share until the instrument of transfer duly stamped and executed by the transferor and transferee has been delivered to the company. Thus before the name of any transferee is registered this procedure has to be shown to have been followed, which is an obligation of any such applicant under the Act. This shows that an application is to be made either by the transferor or transferee for registering the name of the transferee as members or shareholders of the company by placing before the company duly stamped and signed document both by the transferor and transferee. Similar is the position under Section 155 of the Indian Companies Act, 1960 that before power is*

exercised for rectification essential ingredients are to exist. Section 108 gives a mandate to a company not to register transfer of shares unless proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee has been delivered to the company along with certificates relating to the shares.

30. *All the above indicates the limitation and the peripheral jurisdiction with which the court has to act. In spite of its exclusiveness, it cannot take within its lap outside this scope of rectification. This is indicated even by Section 155 itself:*

> *"155. Power of court to rectify Register of Members.—(1) If—*
>
> *(a) the name of any person—*
>
> *(i) is without sufficient cause, entered in the Register of Members of a company, or*
>
> *(ii) after having been entered in the Register, is, without sufficient cause, omitted therefrom; or*
>
> *(b) default is made, or unnecessary delay takes place, in entering on the Register the fact of any person having become, or ceased to be, a member;"*
>
> *the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the Register.*

31. *Sub-section (1)(a) of Section 155 refers to a case where the name of any person is without sufficient cause entered or omitted in the Register of Members of a company. The word "sufficient cause" is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done. Reading of this sub-clause spells out the limitation under which the court has to exercise its jurisdiction. It cannot be*

doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court under Section 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right the civil court would have jurisdiction. There is nothing under the Companies Act expressly barring the jurisdiction of the civil court, but the jurisdiction of the "court" as defined under the Act exercising its powers under various sections where it has been invested with exclusive jurisdiction, the jurisdiction of the civil court is impliedly barred. We have already held above the jurisdiction of the "court" under Section 155, to the extent it has is exclusive, the jurisdiction of the civil court is impliedly barred. For what is not covered as aforesaid the civil court would have jurisdiction. Similarly we find even under Section 446(1), its words itself indicate the jurisdiction of the civil court is not excluded. This sub-section states, "... no suit or legal proceedings shall be commenced ... or proceeded with ... except by leave of the court". The words "except by leave of the court" itself indicate on leave being given the civil court would have jurisdiction to adjudicate one's right. Of course discretion to exercise such power is with the "court". Similarly under Section 446(2), "court" is vested with powers to entertain or dispose of any suit or proceedings by or against the company. Once this discretion is exercised to have it decided by it, it by virtue of the language therein excludes the jurisdiction of the civil court. So we conclude that the principle of law as decided by the High Court that the jurisdiction of the court under Section 155 is summary in nature cannot be faulted. Reverting to the second

limb of submission by learned counsel for the appellant that the Court should not have directed for seeking permission to file a suit only because a party for dispute's sake states that the dispute raised is a complicated question of facts including fraud to be adjudicated. The Court should have examined itself to see whether even prima facie what is said is a complicated question or not. Even dispute of fraud, if by a bare perusal of the document or what is apparent on the face of it on comparison of any disputed signature with that of the admitted signature the Court is able to conclude no fraud, then it should proceed to decide the matter and not reject it only because fraud is stated. Further on the other hand learned counsel for the respondent totally denies any share having been purchased by the appellant-Company or any amount paid to it. No transfer of any such share was ever approved by the Board of Directors. It is urged that the money even if advanced to Shri V.K. Bhargava by the appellant-Company, if at all, was a private transaction between the two with which the respondent-Company has no concern. So we find there is total denial by the respondent.

32. *We have gone through the judgment of the High Court. It has rightly held the law pertaining to the jurisdiction of the "court" under Section 155 and even referred to some of the documents of the appellant but concluded that since they are disputed and said to be forged hence it directed for seeking leave if advised for suit. We feel it would have been appropriate if the Court would have seen for itself whether these documents are disputed and if any document is alleged to be forged, whether it is said to be so only to exclude the jurisdiction of the Court or it is genuinely so. Similarly we feel appropriate that while deciding this the Court should take into consideration the submissions for the respondents, whether it would come within the scope of rectification or not in the light of what we have said above."*

- **National Insurance Co. Ltd. vs. Glaxo India Ltd.**

(1999) 2 Mh. L.J. 883 – *[at pages 887-888]*;and

The relevant portion of which reads as under:

*"**5.** The scope of section 155 of Civil Procedure Code came up for consideration before the Apex Court in the case of Ammonia Supplies Corporation Private Ltd. v. Modern Plastic Containers Pvt. Ltd., (1998) 7 SCC 105 : AIR 1998 SC 3153, which matter arose from a judgment of the Delhi High Court, which relied on the Full Bench judgment in the case of Ammonia Supplies Corporation Pvt. Ltd. (supra). The Apex Court was answering the following question:—*

> *"Whether in the proceedings under section 155 of the Companies Act the Court has exclusive jurisdiction in respect of the matters raised therein or have only summary jurisdiction?"*

It may be noted that insofar as the facts of that case were concerned, the appellant company before the Apex Court had made investment in shares of Modern Plastic Containers Pvt. Ltd. to the extent of 50% shares. Shri D.P. Bhargava, son of M.L. Bhargava married the sister-in-law of one V.K. Bhargava, one of the Managing Directors of the respondent company. On account of this relationship the appellant company invested in the aforesaid shares of the respondent company. The dispute pertains to this investment. According to the respondent company there was no such investment made by the appellant company nor any share was transferred by the respondent company in favour of the appellant company. On the other hand the bone of contention of the appellant company was that in spite of the payment of the aforesaid amount of the shares it was not invested in such shares. The appellant company had become 50% shareholder of the respondent company about which there was an acknowledgment of the respondent company. Reliance was placed on the balance sheet of the appellant company, as also the

audited statement of accounts and the Income-tax assessment orders. On 18th January, 1983 Shri V.K. Bhargava died in a car accident and according to the appellant is the reason for the dispute between the appellant company and the respondent company being raised by the brothers of deceased Shri V.K. Bhargava. A petition came to be filed amongst others under section 155 of the Companies Act. The petition was, however, confined to relief under section 155 of the Companies Act. The only issue before the Apex Court was the jurisdiction of the Court under section 155 while dealing with the application. It was contended that the sole beneficiary was Shri M.L. Bhargava. There are certain other facts which need not be stated. The Apex Court, thereafter referred to para 7 of its earlier judgment in the case of Public Passenger Service Ltd. (supra). It was sought to be contended before the Apex Court that the said judgment was per incuriam. In the alternative it was contended that the attention of both the Full Bench of the Delhi High Court and of the Apex Court in Public Passenger Private Limited was not drawn to the definition of 'Court' as defined under section 2(11) and section 10 of the Companies Act. It was argued that if that had been considered a different interpretation would have followed. If that definition is read into section 155 the Court would only be a Company Judge and not Civil Judge. In para 14 in so far as its own judgment in Public Passenger Service Limited (supra) the Apex Court observed that the argument that the judgment was per incuriam had to be rejected as the issue was directly in issue and was considered with respect to the interpretation of section 155 and hence it could not be said by any stretch of imagination that the decision was per incuriam. In para 13 the Apex Court culled the ratio in Public Passenger Service Ltd. and held that by reasons of its complexity or otherwise if the matter can more conveniently be decided in a suit, the Court may refuse relief under section 155 and relegate the parties to a suit. Thereafter considering the

various provisions and case law cited, the Apex Court in para 26 observed as follows:—

> *"There could be no doubt any question raised within the peripheral field of rectification, it is the Court under section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the Court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before Civil Court first for the adjudication of such facts, it cannot be said such right of the Court to have been taken away merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it. Thus in other words, the Court under it has discretion to find whether the dispute raised are really for rectification or is of such a nature, unless decided first it would not come within the purview of rectification."*

Thereafter in para 27 the Apex Court observed as under:—

> *"The Court has to examine on the facts of each case, whether an application is for rectification or something else."*

Thereafter it proceeded to observe as under:—

> *"So far exercising of power for rectification within its field there could be no doubt the Court as referred under section 155 read with section 2(11) and section 10, it is the Company Court alone which has exclusive jurisdiction."*

The following observations are also material from para 31:—

"So, whenever a question is raised Court has to adjudicate on the facts and circumstances of each case. If it truly is rectification all matter raised in that connection should be decided by the Court under section 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by Civil Court."

Thereafter the Apex Court observed as under:—

"We have already held above the jurisdiction of the 'court' under section 155, to the extent it has exclusive, the jurisdiction of Civil Court is impliedly barred. For what is not covered as aforesaid the Civil Court would have jurisdiction."

It is, therefore, now clear from the judgment of the Apex Court in A.S. Corporation (P) Ltd. (supra), the Apex Court has held that insofar as the matters of rectification are concerned, it is the company court alone which would have jurisdiction. If issues which have to be answered are not peripheral to rectification but issues regarding title, etc. then such other issues will have to be decided by the Civil Court. The Apex Court has now recognized that it is the Company Court which would be the Court of exclusive jurisdiction insofar as rectification is concerned. However, if issues arise, whether the applicant is the owner of the shares; whether there is fraud or forgery in holding the shares or the very title to the shares, then such issues will be beyond the jurisdiction of the Company Court and will have to be decided by the Civil Court. To that extent, the judgment of the Full Bench of the Delhi High Court where it held that there is a jurisdiction in the Company Court to relegate the parties to a suit has been departed from. The earlier judgment of the Apex Court in the case of Public Passenger Service Ltd.will have to be read in the context of the observations of the Apex Court in the case of A.S. Corporation (P) Ltd. (supra)

6. *Applying that ratio can it be said that the order of the Company Law Board is liable to be set aside on the ground that there are complicated questions of fact which the Company Law Board cannot go into. The learned Counsel for the appellant would be right that the order of the Company Law Board would be contrary to the ratio of the Apex Court in A.S. Corporation (P) Ltd. However, insofar as the final order is concerned I find it will be difficult for this Court to interfere with the said order for the following reasons.*

The respondent company at the threshold had informed the appellants that they had not received 6050 shares. In other words there is a dispute as to the very transaction itself which is not merely a matter for rectification. Secondly, there are disputes whether the persons who are holding the shares are holding the shares on account of forged documents. In other words it is not merely the case of the appellant being the owner of the shares and the company for wrong reasons refusing to rectify the Register without cause. When there are disputes as to whether the appellants are the owners of the shares not be a case exclusively pertaining to rectification which could be decided by the Company Law Board. In that light of the matter though the reasons given by the Company Law Board cannot be sustained, its ultimate conclusion cannot be set aside.

7. *That leaves us with the other point as raised, that the Company Law Board has not given the reasons and for that purpose the order has to be set aside for giving fresh decision. The matter is in Appeal. It is now well settled that the Appellate Court can exercise the same powers as the trial Court. After the Court has come to the conclusion that the issues raised cannot be decided by the Company Law Board it will be futile to send the matter back to the Company Law Board to merely undergo the same exercise in a different manner and reject the company petition. The appellants have pointed out in the appeal memo that the suit was withdrawn*

based on certain observations made by the Company Law Board. That cannot be an answer for the Company Law Board to assume jurisdiction."

Jai Mahal Hotels Pvt. Ltd. vs. Devraj Singh &Ors.

(2016) 1 SCC 423 – *[Paras 16 to 18]*

The relevant portion of which reads as under:

*"**16.** In Ammonia [(1998) 7 SCC 105] , the scope of jurisdiction of the Company Court to deal with an issue of rectification in the Register of Members maintained by the Company was considered. Following Public Passenger Service Ltd. v. M.A. Khadar [AIR 1966 SC 489], it was held that jurisdiction under Section 155 was summary in nature. If for reasons of complexity or otherwise, the matter could be more conveniently decided in a suit, the Court may relegate the parties to such remedy. Subject to the said limitation, jurisdiction to deal with such matter is exclusively with the Company Court. It was observed: (Ammonia case [(1998) 7 SCC 105] , SCC p. 122, para 31)*

*"31. ... It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has toadjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court under Section 155 [**Ed.**: Corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988.] and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right the civil court would have jurisdiction."*

17. *Thus, there is a thin line in appreciating the scope of jurisdiction of the Company Court/Company Law Board. The jurisdiction is exclusive if the matter truly relates to rectification but if the issue is alien to rectification, such matter may not be within the exclusive jurisdiction of the Company Court/Company Law Board.*

18. *In Standard Chartered Bank [(2006) 6 SCC 94] , scope of Section 111(7) was considered. It was observed that jurisdiction being summary in nature, a seriously disputed question of title could be left to be decided by the civil court. It was observed: (SCC p. 115, para 29)*

"29. ... The nature of proceedings under Section 111 is slightly different from a title suit, although, sub-section (7) of Section 111 gives to the Tribunal the jurisdiction to decide any question relating to the title of any person who is a party to the application, to have his name entered in or omitted from the register and also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. It has been held in Ammonia Supplies Corpn. (P) Ltd. v. Modern Plastic Containers (P) Ltd. [(1998) 7 SCC 105] that the jurisdiction exercised by the Company Court under Section 155 of the Companies Act, 1956 (corresponding to Section 111 of the present Act, before its amendment by Act 31 of 1988) was somewhat summary in nature and that if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title."

F. <u>The relief under Section 155 of the Companies Act, 1956 is equitable in character and that the powers conferred thereunder are discretionary</u>

1. Judgments:

- **T.V. Somasundaram Pillai vs. The official liquidator, High Court, Madras**
  (1967) 80 LW 367 – *[at pages 368-369]*;

  The relevant portion of which reads as under:

  "...The expression "rectification" of a company's register is a purposeful expression. It has a special signification of its own. The word implies that there is a prior error, mistake or defect which is apparent on the face of the record of the register, which, after rectification, is made good and corrected by removing such a mistake or error. As was pointed out in Pulbrook v. Richmond Consolidated Mining Co.'

  "The effect of rectification is exactly the same as if the name struck off had never been put in. That is the meaning of 'rectification'".

  <u>Unless the applicant establishes a just cause or an equity in him to strike off his name in the register, the company court would not exercise its discretion to rectify the register.</u>As was pointed out in Bellerby v. Rowland and Marwoods steamship Co. Ltd.

  "<u>In considering an application for rectification, the Court has always had regard to the lapse of time, and to any factsand circumstances indicating acquiescence in the existing state of things by whose on whose behalf the application is made to disturb it</u>".

  The power to correct a register of court has to be exercised with caution. <u>It has to be remembered that in such a summary</u>

adjudication, a roving enquiry is not contemplated. The applicant is seeking in the main to rest his contention on certain proceedings in court, and particularly the judgment of this court in C.C.C.A. 95 of 1952. That was a case in which there were certain disputes between the applicant and a director of the South Arcot Oil and Refineries Ltd. The case of the applicant was that the director of the above company borrowed certain moneys from the applicant and as security thereto, the said director gave out that he would secure shares nominally in the name of the applicant in the South Arcot Oil and Refineries Ltd., and also in the Cuddalore Construction Co. Ltd., which is now in liquidation and whose register is sought to be amended in the first petition. It is clear from the judgment of GovindaMenon and Ramaswami JJ. that the applicant knew at all material times, ever since he started the suit in 1950, that his name was in the register of members in the Cuddalore Construction Co. Ltd., now in liquidation. In fact, the applicant is reported to have signed certain transfer forms for transfer of the shares by the applicant in favour of the director above named. The learned Judges, after considering the probabilities of the case, came to the conclusion that the applicant's version that he lent money as a debt pure and simple was more reliable and probable. But this observation of the learned Judges in the said judgment cannot relieve the statutory responsibility which at all times vested with the applicant's version that he lent money as a debt pure and simple was more reliable and probable. But this observation of the learned Judges in the said judgment cannot relieve the statutory responsibility which at all times vested with the applicant to correct the register of members in the company under consideration with alacrity and promptitude. It might be that the applicant might have taken the precaution of claiming damages against the director for having improperly included his name in the register of members and ought to have also taken the precaution of claiming the damages that might reasonably and

naturally flow from the fact that the name of the applicant indisputably appeared in the register of members. This has not been done. The applicant cannot take advantage of his own latches and avoid a claim in legi and which is undoubtedly not a claim in contractu. Once a balance order is passed by court against a contributory on the fact that his name appeared in the register of members, and that his liability as a contributory has become indubitable, then a remedy to rectify the register on the ground that his name was incorrectly remaining in the register of members is not available to such a person. A claim to rectify the register cannot be asked for ex debitojustitiae. It must be based on certain accepted principle, particular care being taken to find whether the applicant who is seeking such a discretionary and equitable relief is guilty or not guilty of laches.

This doctrine of laches has a very great significance as a member in any event should repudiate the contract in unequivocal terms and without undue delay, as otherwise such delay would be fatal to his application for rectification. If the name of a person appears in the register of members, he cannot at his whims and fancies ask for recision of such a contract to take shares as it would be lost because of inaction or lack of prompt action on his part. This rests on the wholesome and salient principle that such a person has allowed the company to obtain credit on the strength of it and in case the company goes into liquidation the rights of creditors are deemed to have been crystallised on such a date. A member therefore cannot stand by and acquiesce in his name remaining in the register of members and wake up at a late stage and particularly after the winding up of the company and ask for rectification. Lord Romilly M.R. in Walker's case, In re. Anglo Danubian Steam Navigation and Colliery Co., observed:

"...Where there has been no fault on either side, the register remains as it was-where the fault is on both sides the register also remains as it was".

Therefore, the onus is heavily on the shareholder to set right the mistake, if any, in the register without any delay. The above decision has been quoted with approval by a Division Bench of the Bombay High Court in Mohamed Akbar v. Official Liquidator. A Division Bench of this Court also in LakshminarasReddi v. Official Receiver, Sree Films Ltd., observed that where a person allows his name to remain on the register, without having it removed promptly he will be liable on the doctrine of holding over..."

- **MukundlalManchanda vs. Prakash Roadlines Ltd. (1996) 7 SCL 42 - *[Paras 16 to 20]*;**

The relevant portion of which reads as under:

***"16**. A plain reading of the provisions reproduced above shows that the same vests the Court with the power to direct rectification, the exercise of which power is discretionary with the Court as is apparent from the word 'may' used in the section.The Court can in an appropriate -case decline to exercise its power under section 155 if it finds that the petitioner before it has disentitled himself of the said relief for any reason like suppression of material facts, acquiescence delay and laches, etc.Relief envisaged by section 155 is equitable in nature, and all such considerations as are' relevant to the grant or refusal of any such relief - would be attracted to proceedings under the said provision : In Benarsi Das Sara/ v. DabniaDaciriCement Ltd. AIR 1959 Punj. 232 while dealing with the scope of section 155 it was held that the grant or refusal of relief under section 155 was in the discretion of the Court, and that relief under section 155 could not be granted ex debitojustitiate. The Court observed thus:*

***25**. I do not think that according to the scheme of the Act, section 155 was intended to provide relief where a remedy specifically provided under section 395 had not been availed of or relief. If sought could not be given because of non-compliance with the provision. Relief under section 155 is not in the nature of an additional or alternative remedy. It is true that the jurisdiction conferred on the Court under section 155 is very wide. It is almost unlimited but there is a discretion in the court to grant or refuse the reliefs sought in the circumstances of each case and the applicant is not entitled to an order ex debitojustitiae." (p. 236) [Emphasis supplied]*

***17.** In T.V. Somasundaram Pillai v. Official Liquidator [1967] 37 .Comp. Cas. 440, the Madras High Court, while dealing with a petition under section 155, held that the onus lies heavy on a shareholder of the company to set right the mistake in the register without any delay. The Court in this regard observed thus:*

"This doctrine of laches has a very great significance as a member in any event should repudiate the contract in unequivocal terms and without undue delay as otherwise such delay would be fatal to his application for rectification. If the name of a person appears in the register of members, he cannot at his whims and fancies ask for rescission of such a contract to take shares as it would be lost because of inaction or lack of prompt action on his part...

Therefore, the onus is heavily on the shareholder to set right the mistake, if any, in the register without any delay. The above decision has been quoted with approval by a Division Bench of the Bombay High Court in Mahomed Akbar Abdulla Fazalbhoyv. Official Liquidator [1950120 Comp. Cas, 26. A Division Bench of this Court also in Lakshmi NarasaReddi v. Official Receiver, Sree Films Ltd [1951] 21 Comp. Cas. 201 observed that where a

person allows his name to remain on the register without having it removed promptly he will be liable on the doctrine of holding over". (p. 444)

18.*In Bellesby v Rowland &Marwood's Steamship Co. Ltd. [1901]2 Ch. 265, it was held that:*

"In considering an application for rectification, the Court has always had regard to the lapse of time, and to any facts and circumstances indicating acquiescence in the existing state of things by those on whose behalf the appreciation is made to disturb it."

19. *A Division. Bench of this Court in Muniyamma v. Arathi Line Enterprises (P.)Ltd. KR-1992 Kar. 1262 while examining the scope of proceedings under section 155 held that even though the said proceedings were summary in nature, yet, the Court could in appropriate case, examine and grant relief even when the same might involve complicated questions of law and fact. It was further held that the jurisdiction being discretionary it was open to the Court to examine the propriety of the petitioner and their conduct, while deciding whether or not to grant relief under section 155. The Court speaking through K.A. Swami, J. (as his Lordship then was) observed thus:*

"Thus the conspectus of these decisions leads us to a conclusion that even though the proceeding under section 155 of the Companies Act is a summary proceeding, as it is a relief provided under the statute, in proper and appropriate case, it is open to the Court to grant relief even though it may involve complicated question of law and facts . Whether in a particular - case relief should be granted or not, because the jurisdiction is discretionary as the word used is 'may' in section 155 of the Act, would depend upon the facts and circumstances of the case but the exercise of jurisdiction cannot be ref used on the grounds that it involves complicated questions of law and facts.

Of course, the propriety of the petitioners and their conduct having a bearing on the subject-matter of the petition would be relevant to the decision as to whether the discretion should or should not be exercised."

20. *There is a cleavage in judicial opinion as to whether relief under section 155 can be granted even when complicated questions of law and fact are involved in a given case. While High Courts of Punjab & Haryana, Allahabad, Calcutta, Delhi have taken the view that jurisdiction wider section 155 being summary in character, complicated question cannot be determined in proceedings for the same, the High Court of Gujarat and Kerala, have taken a contrary view. This Court in Muniyanma 's case (supra) has, upon a construction of the two rival views, held that the involvement of complicated questions cannot be made basis for refusal to exercise jurisdiction under section 155, The true legal position in our opinion is that while the very fact that complicated questions of fact and law are involved cannot by itself be a ground for refusal of relief under section 155, yet, the exercise of powers under section 155 being equitable and discretionary, it would constitute one of the relevant factors for deciding whether the power should or should not be exercised; in a given case. Summarising, therefore, it can be said that:*

(a) The jurisdiction under section 155 is summary in character;

(b) The exercise of the power under section 155 is discretionary for the Court;

(c) The power cannot be exercised ex dehitojustitiae;

(d) The relief under section 155 is equitable in character, and consideration like delay and laches, acquiescence, etc., would be relevant while granting or refusing the same;

(e) The fact that complicated questions of fact and law refusing oral evidence are involved is a relevant if not decisive factor for

deter-mining whether or not to exercise the powers vested under section 155. Coming then to the facts of the instant case, certain important events and facts which are established on record, may be summarised thus:

(i) The share transfer forms in question specially mentioned that the transfer is being made for valuable consideration; and the consideration changing hands were clearly and specifically mentioned in the relevant column of the prescribed form;

(ii) In the Board meeting held on 31-3-1990, the petitioners/appellants herein were both present and participating as special invitees;

(iii) The resolution approving the transfers in question was passed unanimously without any dissent, protest or murmur from the appellants or any of them; even when details about the transfers were disclosed in the meeting by the Chairman, on the asking of Shri Ashok Kumar. Manchanda, another special invitee attending the meeting;

(iv) An extraordinary general meeting of the board was held on 4-4-1990, in which the transferees of the shares in question exercised their voting rights on the basis of the disputed share, without any protest From any quarter including the appellants herein;

(v) In the board of directors meeting held on 14-4-1990 the proceedings and the minutes of the previous meeting dated 31-3-1990 were confirmed when the appellants were present and participating as members of the board of directors;

(vi) In the annual general meeting held on 17-9-1990 the transferee of the disputed shares, again participated without any objection from the appellants."

- **Bellerby vs. Rowland &Marwood's Steamship Company Limited**
  (1901) 2 Ch. 265 - *[at pages 273-274]*;and

  The relevant portion of which reads as under:

  "...It does not follow that because the surrenders of shares were bad the plaintiffs are now entitled to succeed in their claim to be restored to the register in respect of them. The power of rectifying the register in respect of them. The power of rectifying the register given by the 35th section of the Act of 1862 is discretionary in this sense – that the court properly can only exercise it if satisfied of the justice of the case, and on many applications the Court has declined to exercise this power on the ground that it would be fair to do so, or, to put it more technically, that the applicant has not established any equity to disturb the existing state of things.And, in considering this, the Court has always had regard to lapse of time, and to any facts and circumstances indicating acquiescence in the existing state of things by those on whose behalf the application is made to disturb it. The applications have been generally made by official liquidators seeking to establish liability for calls; but obviously the like considerations must apply to applications by those who seek to be restored to the privileges of shareholders. Of the authorities on such applications, Sichell's Case (3) is a good example; but I will not refer to it in detail further than to add that it is particularly valuable for a considered judgment of Lord Cairns. There is, I think one, even more pointed and cognet authority to be found in Lord Macnaghten's comments on the case of In re Dronfield Silkstone Coal Co. (4) in the House of Lords. That case was necessarily discussed in Trevor v. Whitwirth (2), and the grounds of the decision of the Court of Appeal were not regarded with favour. But Lord Macnaghten took occasion to point out that, while disapproving of the grounds, he thought the decision itself was sound. His reasons are given on p.440 of 12 App. Cas., and, in

short, he held that the liquidator had no equity to place Mr. Ward's name on the register when it had been off it for seven years, during which the company had been prosperous, and the shareholders who remained had received dividends largely increased by Ward's retirement. Lord Macnaghten cites Lord Cairns' decision in Sichell's Case (1), and fully approves it. Here the surrender took place in 1893, and more than seven years afterwards the surrenderors ask the Court to restore them to their original position. Nothing has occurred in the meantime except that the company which was embarrassed has turned out to be prosperous, and the plaintiffs, if placed on the register, will become entitled to share the fruits of prosperity which were renounced when apparently not within reach. It is conceivable that some persons purchased shares in the company, and perhaps at a premium, with the knowledge that the capital had been reduced by the surrenders, and with the anticipation that their proportion of profits would be larger than it would have been if those surrenders had not been made; but apart from this or any like consideration, it lies on the applicants to satisfy the Court that justice requires their application to be granted – that there is an equity in their favour to disturb the existing state of things. I am told that the shareholders as a body desire the application to be granted, and deem it only fair that those who acted generously in past should be treated generously now; but, dealing with the case judicially, I cannot hold that the plaintiffs have brought themselves within the requirements of the statute by which my conclusions must be guided..."

- **Re: Piccadilly Radio PLC**
  (1989) 5 BCC 692 - *[at pages 704-705]*

The relevant portion of which reads as under:

"...But there was a broader and more fundamental ground for refusing the applicants claim for relief, and I prefer to rest my

decision upon it. They were seeking an order under sec, 359 of the Companies Act, 1985 for the rectification of the company's share register by deleting the name of Albion and substituting the name of Virgin. That remedy is discretionary. It is not automatic. The court must consider the circumstances in which and the purpose for which' the relief is sought.

The present case was unusual, far the applicants were not seeking restoration of their own names to the register. They had no interest in the shares and claimed none. They sought the restoration Virgin's name, yet Virgin itself did not.It was embarrassed by the application. It made no complaint of what had happened. The applicants alleged breaches of art. 34(A), which is designed to protect the company from the risk of losing its licence; but the company did not support the application, the IBA was aware of the facts and made no complaint; and the directors had ample powers to remedy the situation should the IBA require it. Mr. Stubbs was unable to suggest that the licence was in danger.

But of course the applicants were not aggrieved by the fact that the Shares had been transferred -without the consent of the IBA, but by the fact that they had been transferred to a company which was unwilling to support the Miss World offer. They were searching for a means to disenfranchise the expected opposition to their offer, and they seized on a breach of art. 34(A) which did not endanger the licence because of a failure to obtain the IBA's consent, of which the IBA itself did not complain. A less meritorious claim was difficult to imagine. Their purpose in making it was foreign to the statutory remedy which they invoked. In my judgment, it would not be proper exercise of judicial discretion to grant the statutory remedy of rectification in such circumstances."

2. It is also required to be noted here that the Petitioners at paragraph 15 of the Company Petition (***Page 14 of the paperbook***) have stated as under:

"15. The petitioners further say that the Board of Directors at relevant time were in the full knowledge of the illegality of these transactions, in as much as they were affected to promote private, oblique, collateral purposes and not for the commercial or bonafide interest of the company."

Therefore the Petitioners themselves have averred that the Respondent No. 12 and Late Shri Vadilal Mehta (father) who were the directors at the relevant time were in full knowledge of the alleged illegality and were a party to the same. It may be further noted that neither Respondent No. 2 orthe Respondent No. 3 were even simple directors on the relevant date of transaction i.e. 13.11.1982. Yet the relief claimed by the Petitioners in the Petition seeks to restore status quo ante in favour of Respondent No. 12 and his family members. In light of what is stated in the earlier paragraphs, it is submitted that the Petitioners are not entitled to any equitable relief from this Hon'ble Tribunal.

3. It is submitted that the transfer of shares under the family arrangement took place in the year 1982. About 38 years have passed. It is further submitted that such a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has already been acted upon. Such settlements have to be viewed a little differently from ordinary contracts. In the circumstances, it is humbly submitted that this Hon'ble Tribunal be pleased to not disturb the status quo as prevalent as on date.

Reference be made to the following judgments:

- **K.K. Modi vs. K.N. Modi&Ors.**
  (1998) 3 SCC 573 - *[Para 52];* and

  The relevant portion of which reads as under:

  *"**52.** Group A also contends that there is no merit in the challenge to the decision of the Chairman of IFCI which has been made binding under the Memorandum of Understanding. The entire Memorandum of Understanding including clause 9 has to be looked upon as a family settlement between various members of the Modi family. Under the Memorandum of Understanding, all pending disputes in respect of the rights of various members of the Modi family forming part of either Group A or Group B have been finally settled and adjusted. Where it has become necessary to split any of the existing companies, this has also been provided for in the Memorandum of Understanding. It is a complete settlement, providing how assets are to be valued, how they are to be divided, how a scheme for dividing some of the specified companies has to be prepared and who has to do this work. In order to obviate any dispute, the parties have agreed that the entire working out of this agreement will be subject to such directions as the Chairman, IFCI may give pertaining to the implementation of the Memorandum of Understanding. He is also empowered to give clarifications and decide any differences relating to the implementation of the Memorandum of Understanding. Such a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be*

lightly disturbed. The respondents may make appropriate submissions in this connection before the High Court. We are sure that they will be considered as and when the High Court is required to do so whether in interlocutory proceedings or at the final hearing."

- **Hari Shankar Singhania&Ors. vs. Gaur HariSinghania&Ors. (2006) 4 SCC 658 - *[Paras 42 to 53]***

The relevant portion of which reads as under:

Family arrangement/family settlement

*"**42.** Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well-being of a family.'*

***43 [Ed.: Para 43 corrected vide Official Corrigendum No. F.3/Ed.B.J./37/2006 dated 11-5-2006.]** . The concept of "family arrangement or settlement" and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation, etc. should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into to allay disputes existing or apprehended and even any dispute or difference apart, if it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in Ram Charan Das v. Girjanandini Devi [(1965) 3 SCR 841 : AIR 1966 SC 323] .*

44. *In LalaKhunniLal v. KunwarGobind Krishna Narain [(1911) 38 IA 87 : ILR (1911) 33 All 356 (PC)] the Privy Council examined that it is the duty of the courts to uphold and give full effect to a family arrangement.*

45. *In SahuMadho Das v. PanditMukand Ram [(1955) 2 SCR 22 : AIR 1955 SC 481] (Vivian Bose, Jagannadhadas and B.P. Sinha, JJ.) placing reliance on Clifton v. Cockburn [(1834) 3 My & K 76 : (1824-34) All ER Rep 181 : 40 ER 30] and Williams v. Williams [(1867) LR 2 Ch App 294] this Court held that a family arrangement can, as a matter of law, be implied from a long course of dealings between the parties. It was held that: (SCR p. 43)*

> *"[S]o strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement...."*

46. *The real question in this case as framed by the Court was whether the appellant-plaintiff assented to the family arrangement. The Court examined that "the family arrangement was one composite whole in which the several dispositions formed parts of the same transaction".*

47. *In Ram Charan Das v. Girjanandini Devi [(1965) 3 SCR 841 : AIR 1966 SC 323] this Court observed as follows: (SCR pp. 850 G-851 B)*

> *"Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. ... The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in*

establishing or ensuring amity and goodwill amongst persons bearing relationship with one another."

48. *In MaturiPullaiah v. MaturiNarasimham [AIR 1966 SC 1836] this Court held that: (AIR p. 1841, para 17)*

"[T]hough conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it."

49. *Further, in Krishna Beharilal v. Gulabchand [(1971) 1 SCC 837] this Court reiterated the approach of the courts to lean strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all. This approach was again re-emphasised in S. Shanmugam Pillai v. K. Shanmugam Pillai [(1973) 2 SCC 312] where it was declared that this Court will be reluctant to disturb a family arrangement.*

50. *In Kale v. Dy. Director of Consolidation [(1976) 3 SCC 119] (V.R. Krishna Iyer, R.S. Sarkaria and S. MurtazaFazal Ali, JJ.) this Court examined the effect and value of family arrangements entered into between the parties with a view to resolving disputes for all. This Court observed that: (SCC pp. 125-26, para 9*

"By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve

their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. ... The object of the arrangement is to protect the family from long drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. ... The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement.... The law in England on this point is almost the same." (emphasis supplied)

51. *The valuable treatise Kerr on Fraud at p. 364 explains the position of law:*

"The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties originating in

mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend."

Halsbury's Laws of England, Vol. 17, 3rd Edn.at pp. 215-16.

52. *In K.K. Modi v. K.N. Modi [(1998) 3 SCC 573] (SujataManohar and D.P. Wadhwa, JJ.) it was held that the true intent and purport of the arbitration agreement must be examined (para 21). Further, the Court examined that: (SCC pp. 594-95, para 52)*

"[A] family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the memorandum of understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed."(emphasis supplied)

53.*Therefore, in our opinion, technical considerations should give way to peace and harmony in the enforcement of family arrangements or settlements."*

4. It is further submitted that neither the MoU nor the MoM is under challenge before this Hon'ble Tribunal. No application has been preferred by the parties to the said MoU and MoM for rectification of the register of the Respondent No. 1. Some of the shares held by the family HUF and by the Estate in the Respondent No. 1 have been gifted to the Respondent No. 2 and his family members. Neither C.V. Mehta Pvt. Ltd. is a party to the present Company Petition nor any application has been preferred for rectification of the register of C.V. Mehta Pvt. Ltd. The shares held by C.V. Mehta Pvt. Ltd. in the Respondent No. 1 is continued to be held by C.V. Mehta Pvt. Ltd. In

such circumstances, no relief, much less the relief with regard to status quo-ante be granted by this Hon'ble Tribunal, much less to an outsider to the family arrangement. In light of the aforesaid, the Company Petition No. 35 of 1988 (Transfer Petition No. 2 of 2018) is liable to be dismissed with exemplary cost.

6. We have carefully considered the submissions made by all parties and material on record. Certain parties have expired during the intervening period; hence, the name of the parties on either side have mentioned only who are alive. We are of the view that in this petition we are called upon to examine in substance, the validity of family arrangement which was executed and implemented through Memorandum of Understanding dated 30.01.1982 and Memorandum of Modification dated 13.11.1982.

7. This petition needs to be considered both on the grounds of jurisdiction as well as on merits as the petitioner is neither having any direct or indirect interests for himself nor any proprietary rights of such petitioners has been adversely affected in any manner. Generally, issue of jurisdiction is decided first, however, we would prefer to decide the issue on merit first so that this litigation can be put to an end for all the times to come as it has dragged for more than 30

years and has been examined only on technical grounds.In this regard, issues framed by Hon'ble Gujarat High Court are a great help. Accordingly, we frame following issues for our consideration:

(i) Whether impugned consideration can be said to have been paid for the purpose of purchase of shares or in connection with the purchase of shares of M/s. Sayaji Industries Ltd in terms of provisions of Section 77 of Companies Act, 1956?

(ii) Whether TOTAL consideration can be said to have been provided by M/s. Sayaji Industries Ltd. to enable Respondent No. 2 and 3 to purchase such shares?

(iii) Whether liability of the Respondent No.2 can be fixed for executing the transaction in this manner and consequently, penalty could be imposed on him under Section 77(4) of Companies Act, 1956?

(iv) In the present case whether Petitioners have got any locus-standi to file petition under Section 155 of the Companies Act, 1956?

(v) Whether decision of the company in entering the nameof Respondent No. 2 and 3 in register of member is is without sufficient cause?

(vi) Assuming that petition is otherwise maintainable, whether petition is barred by limitation?

(vii) Whether doctrine of latches and delay is applicable?

(viii) Whether equitable jurisdiction can be applied in the facts and circumstances of the case?

(ix) Whether this petition falls within the scope of rectification of Register of Members as envisaged under Section 155 of Companies Act, 1956?

(x) Whether the alleged act can be categorised as fraud on the statute?

(xi) Whether present petition is an instance of sponsored litigation on behalf of Respondent No. 12? If so, whether suitable costs need to be imposed on Petitioner No. 1 i.e. Ramesh B Desai ?

8. Now, we shall deliberate on the question no. 6(i) which is reproduced again hereunder:

Whether impugned consideration can be said to have been paid for the purpose of purchase of shares or in connection with the purchase of shares of M/s. Sayaji Industries Ltd in terms of provisions of Section 77 of Companies Act, 1956?

To find the answer of the above questions, we need to look into the relevant terms and conditions of Memorandum of Understanding (MoU) dated 30.01.1982 and also of Memorandum of Modification dated 13.11.1982. It is noted that the familywas headed by one Shri Vadilal Lallubhai Mehta who had two sons. There were four daughters as well who were married. The family held both movable and immovable property separately and independently and it has been clarified in Clause 3 of MoU that such MoU was confined only to and between his two sons namely Shri Bipinbhai Vadilal Mehta and Shri Suhasbhai Vadilal Mehta. It is also provided that property and shares held by Trust and HUF were also the subject matter of this MoU. There were six companies in the group which have been mentioned in Clause 5 of MoU. Out of these six companies only one company i.e. M/s Sayaji Mills Ltd. was a public listed company and other companies were Private Limited Companies. **It is also mentioned that all these companies were managed by Shri Vadilal Lallubhai Mehta and Shri Suhasbhai Vadilal Mehta at the time of execution of MoU. Clause 6 of preamble of this MoU is of significance; hence, reproduced as under:**

6. *The main object of this understanding is to entrust the management of some of the Companies to Bipinbhai Vadilal Mehta and of others to Suhasbhai Vadilal Mehta* ***by mutual transfer of sharesand other procedures and by transfer of some properties from one to the other.***

From the perusal of the above clause, it is noted that the main object was to entrust the management of some companies to Bipinbhai Vadilal Mehta and other companies to Shri Suhasbhai Vadilal Mehta. The modus operandi for this purpose was: (i) mutual transfer of shares; (ii) other procedures and (iii) transfer of some properties from one to another. Thus, this clause makes it amply clear that consideration for transfer of such management was through three modes and not confined only to transfer of shares.

Now, we shall consider the details of understanding as per various cluses of MoU.

Clause 1 and 2 provide that management of Sayaji Mills Ltd and C.V. Mehta Pvt. Ltd will be entrusted to Bipinbhai Vadilal Mehta and the management of (i) Industrial Machinery Manufacturers Pvt. Ltd. (ii) C. Doctor & Co. Pvt. Ltd (iii) Mehta MachineryManufacturer Pvt. Ltd. and (iv) Oriental Corporation Pvt. Ltd. shall remain with Suhasbhai Vadilal Mehta.

Clause 3 provides that shareholding pattern of the aforesaid companies by various member/branches of the family and same is reflected in Aneure II to this MOU.

Cluse 4(a), (b) and (c) provide as to how and by whom shares of the company so devided between mutually transferred fromorto amongst two branches of the family.

Clause 5 provides that shares to be transferred as specified in Clause 4 were to be sold or **gifted** as may be mutually agreed to or as may be decided by Shri Vadilal Lallubhai Mehta on fulfilment of all obligations by Shri Bipinbhai Vadilal Mehta under Clause 9,10,12,13,14,15,16 and 23 of this MoU.

It has been noted earlier that as per Clause 4(a), (b) and (c) shares were to be sold or transferred. As in clause it is specifically mentioned that shares to be transferred as aforesaid shall be sold or **gifted** as may be mutually agreed to or as may be decided by Shri Vadilal Lallubhai Mehta on fulfilment of the obligations of Shri Bipinbhai Vadilal Mehta under clauses 9,12,13,14,15,16 and 23 of this agreement. It again indicates that both these events are independent in a sense that the consideration for sale or valuation of shares

in case of**gift** of shares is one part of the transaction which is to be done at the price as mentioned in Annexure-III of the said MOU and fulfilment of obligations as mentioned in aforesaid clauses. As my be noted that such obligations are of different nature and have no co-relation with the sale consideration/transfer consideration for the shares between two branches of the families on mutually passed as per the terms of MOU. The use of word **"gift"** also indicates that the transfer of shares other than by sale is without consideration because **"gift"** is always without consideration and if that be so then the subject funds cannot be said to be a consideration. Further, such **"gift"** is an option in the overall scheme of family arrangement and shares were actually been sold/transferred on the basis of valuation of these company arrived at mutually.

Clause 6 provides that the prices at which shares were to be sold or otherwise transferred had been determined and specified in Annexure-III attached thereto. Thus, shareseither to be sold or giftedin the manner as may be decided by Shri Vadilal Lallubhai Mehta, the price consideration for sales or transfer of shares in other manner

has also been decided.This also means that the transfer other than by way of sale was also having value attached thereto. The reconstitution of Board of respective companies was to happen when late Shri Vadilal Lallubhai Mehta was satisfied that the entire understanding recorded in the said MoU had been fully implemented.

Clause 7 provides that Bipinbhai Vadilal Mehta or his wife or his sons are not directors in any of the companies to remain with Suhasbhai Vadilal Mehta. It also provides that Vadilal Lallubhai Mehta and Suhasbhai Vadilal Mehta were directors in M/s Sayaji Mills Ltd. and other persons are directors in C.V. Mehta Pvt. Ltd. From this clause, the fact that Bipinbhai Vadilal Mehta or any member of his branch was not a director in any of the companies at that point of time. They were to be incorporated in the management only after the entire understanding had been fully implemented to the satisfaction of Vadilal Mehta. Thus, any claim that Shri Bipinbhai Vadilal Mehta was not having de facto control gets totally rebutted by their own admission particularly when there is not material to suggest otherwise.

In Clause 8, it is also provided that Shri Vadilal Lallubhai Mehta will continue as Chairman and Managing Director (in short **"CMD"**) of M/s Sayaji Mills Limited and Shri Suhasbhai Vadilal Metha will continue as Managing Director (in short **"MD"**) of M/s Sayaji Mills Limited till this understanding was fully implemented and their liability as guarantors was released. **Clause 8 also provides** that the constitution of Board of Director was not be altered, save and except that Shri Bipinbhai Vadilal Mehta and his son Shri Priyambhai Bipinbhai Mehta could be appointed as Director until Shri Vadilal Lallubhai Mehta and Shri Suhasbhai Vadilal Mehta were discharged from all their guarantees.

Clause 9 provides that Shri Bipinbhai Vadilal Mehtawill resign as trustee of some of the Suhasbhai Vadilal Mehta Trusts.

Clause 10, 11, 12 and 13 are reproduced hereunder:

10. C.V. Mehta Pr. Ltd. which is being allotted to Bipinbhai Vadilal Mehta has certain amounts to pay to the members of the family of Vadilal Lallubhai Mehta, Suhasbhai Vadilal Mehta, Suhasbhai Vadilal Trusts, Vadilal Lallubhai H.U.F. Vimlaben Vadilal Trust, Bhuriben Lallubhai Estate and the daughters and grand-children of

Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta. C.V. Mehta a Pr. Ltd., has also to pay substantial amount to C. Doctor & Co. Pr. Ltd. All such payments shall be made immediately and according to the entires in the books of account made upto date.

11. Similarly, C.V. Mehta Pr. Ltd., has to recover considerable amounts from Mehta Machinery Manufacturers Pr. Ltd., Oriental Corporation Pr. Ltd. and from others. All such payments shall be made immediately and according to the entries made in the books of account made upto date.

12. The outstanding dues and liabilities of C.V. Mehta Pr. Ltd. shall be adjusted as may be directed by Vadilal Lallubhai Mehta and in any event it shall remain the responsibility of Bipinbhai Vadilal Mehta to see that all the liabilities of C.V. Mehta Pr. Ltd. as mentioned above are fully paid and discharged immediately.

13. Bipinbhai Vadilal Mehta owns agricultural land at Vasana, Ahmedabad, bearing Survey No. 184, admeasuring about 19,481 sq. yds. He has made it a part of Bipinbhai Vadilal H.U.F. All the said land shall be transferred by Bipinbai Vadilal Mehta to Suhasbhai Vadilal Mehta or as he may desire.

9. From the perusal of **Clause 10**, it is noted that the C.V. Mehta Pvt. Ltd had to pay amounts to the members of family of Shri Vadilal Lallubhai Mehta as well as Shri Suhasbhai Vadilal Mehta. Further, C.V. Mehta Pvt. Ltdwas also to pay substantial amount to C. Doctor & Co. Pvt. Ltd

which remained with Shri Suhasbhai Vadilal Mehta. Said payments were to be made immediately.

Similarly, as per **Clause 11**C.V. Mehta Pvt. Ltd, which was entrusted to Bipinbhai Vadilal Mehta had to recover amounts from companies remaining with Mr. Suhasbhai Vadilal Mehta and from others. Such payments were also made immediately.

Clause 12provides that the outstanding dues and liability of C.V. Mehta Pvt. Ltd could be adjusted inter se as per the decision of Shri Vadilal Lallubhai Mehta and also mentioned that it was ultimate responsibility of Shri Bipinbhai Vadilal Mehtathat all the responsibilities of C.V. Mehta Pvt. Ltd. were fully paid and discharged immediately.

Clause 13 refers to transfer of agricultural lands situatedat Vasana and owned by Bipinbhai Vadilal Mehta to Shri Suhasbhai Vadilal Mehta.

Clauses 14, 15 and 16 are not reproduced as these relate to procedural formalities connected the transfer of said land to Suhasbhai Vadilal Mehta.

As per Clause 16 Bipinbhai Vadilal Mehta was also to pay Shri Suhasbhai Vadilal Mehta by way of **gift** such amount

as may be decided by Shri Vadilal Lallubhai Mehta and such payment is also an integral part of this understanding. It is also mentioned that the decision of Shri Vadilal Lallubhai Mehta in this respect was final.

Clause 17 and 18 provide that certain movable properties/ assets held by each son and their family will remain with them. Clause 18 provides same thing for other immovable property.

Clause 19 providesfor the dissolution of Vadilal Mehta H.U.F. and distribution of shares of companies to the respective son by whom such companies were to be managed hence-forth.

Clause 20 providesfordistribution of tax refunds/payment of tax liability of Vadilal Lallubhai Mehta H.U.F.

Clause 21 provides that C. Doctor & Co. Pvt. Ltd. is having agencies of two products of M/s Sayaji Mills Limited. In case, sole selling agents were terminated by Shri Bipinbhai Vadilal Mehta after taking over M/s Sayaji Mills Limited then office space/godown belonging to C. Doctor & Co. Pvt. Ltd. and used for these two agencieshad to be vacated. Certain employees could/would be retained by M/s Sayaji

Mills Limited. The other properties belonging to C. Doctor & Co. Pvt. Ltd.,being used by M/s Sayaji Mills Limited or its staff had also to be vacated.

Clause 22 provides that two properties belonging to M/s Sayaji Mills Limited will be given to Shri Bipinbhai Vadilal Mehta upon transfer of its control and management.

Clause 23 providesthat one flat owned by C. Doctor & Co. Pvt. Ltd. in Mumbai which is presently given to Shri Bipinbhai Vadilal Mehta on rent would had to be handed over to Shri Suhasbhai Vadilal Mehta upon implementation of MOU.

Clause 24, 25, 26, 27 and 28 contain provisions regardingto other properties as well as adjustment of staffs working for group companies.

Clause 29 deals with right of first refusal of other party for a period of ten years in case transfer of shares of companies is involved.

In Clause 31 Shri Bipinbhai Vadilal Mehta has been made responsible for release of personal guarantees given by Shri Vadilal Lallubhai Mehta and Shri Suhasbhai Vadilal Mehta

in respect of loans and advances given to M/s Sayaji Mills Limited.

Clause 32 provides for extinguishment of liabilities of Shri Vadilal Lallubhai Mehta and Shri Suhasbhai Vadilal Mehta and their family members for any act of omission or commission in their capacity as Director of C.V. Mehta Pvt. Ltd. In case of any liability being imposed, Mr. Bipinbhai shall indemnify them.**Clause 33 contains** same provisions as regard to M/s Sayaji Mills Limited.

Clause 34 providesthat charges/costs which may be incurred in implementing MOU will be born and paid for equally by Shri Bipnbhai Vadilal Mehta and Suhasbhai Vadilal Mehta.

Clause 35 supersedes all previous understandings/discussions whether entered orally or in writing?

Clause 36 provides that parties to this Memorandum of Understanding agreed to faithfully abide by and carry out the same under the guidance of Shri Vadilal Lallubhai Mehta. Further it is provided that his decision of everymatter relating to this understanding or the

interpretation or the implementation orin relation to any matter omitted to be mentioned in this MOU but connected with or arising out of the matter mentioned herein shall be final and binding upon all the parties. It is further provided that Shri Vadilal Lallubhai Mehta can decide this issue in a summary manner and without reason assigningtherefor. Annexure-I contains list of Trusts and H.U.Fs being part of this MOU. Annexure-II contains cross shareholdings in both companies of parties to such MOU. Annexure-III provides prices at which shares are to be sold or otherwise transferred. ThisAnnexureis reproduced asunder:

ANNEXURE-III

PRICES AT WHICH THE SHARES ARE TO BE SOLD OR OTHERWISE TRANSFERRED

Name of the Company	*Status*	*Price per Share.*
1. *Sayaji Mills Ltd.*	*Public Ltd.*	*Rs. 176/-*
2. *Industrial Machinery Mfrs. Pr. Ltd.*	*Private Ltd.*	*Rs. 1,285/-*
3. *C. Doctor & Co Pr. Ltd*	*Private Ltd.*	*Rs. 1/-*
4. *Oriental Corporation Pr. Ltd.*	*Private Ltd.*	*Rs. 482/-*
5. *Mehta Mechinery Mfrs. Pr. Ltd.*	*Private Ltd.*	*Rs. 9/-*
6. *C. V. Mehta Pr. Ltd.*	*Private Ltd.*	*Rs. 1/-*

B.V. Mehta
N.B. Mehta *Chhayaben* *Suhasbhi*

Priyam B. Mehta

10. It is, however, noted that Shri Bipinbhai Vadilal Mehta felt certain difficulties in the execution and compliance of the said MOU, hence, he requested for certain modifications to be made therein. Shri Suhasbhai Vadilal Mehta agreed and accepted to make certain modifications. Consequently, Memorandum of Modification (MOM) was executed by them on 13.11.1982. It is provided that only certain clauses of MOU were altered/modified and rest of the clauses of MOU remained unchanged. **Clause 3 of Memorandum of Modification is reproduced hereunder:**

1. ***Clause-3***. *It has been agreed and the parties hereto confirm that the amount to be brought in by Shri BipinbhaiVadilal Mehta towards the amounts payable by C.V. Mehta Pvt. Ltd. to the members of the family of Shri VadilalLallubhai Mehta and of Shri SuhasbhaiVadilal Mehta, SuhasbhaiVadilal Trusts, Vadilal Lallubhai HUF, VimlabenVadilal Trusts, BhuribenLallubhai Estate and the daughters and grand children of Shri VadilalLallubhai Mehta and Smt. VimlabenVadilal Mehta and to C. Doctor & Co. Pvt. Ltd. has been fixed by the parties at Rs. 39,24,154-88 (Rupees Thirty nine lacs twenty four thousand one hundered fifty four & paisa eighty eight only) Shri BipinbhaiVadilal Mehta has agreed to pay and bring in immediately (and in any event latest on the day next after the*

day on which the share Transfer forms in respect of Sayaji Mills Ltd. are handed over by Shri SuhasbhaiVadilal Mehta and members of his family as mentioned hereinafter) in C.V. Mehta Pvt. Ltd. a sum of Rs. 20,00,000.00(Rupess twenty lacs only) towards the amount required to be paid by C.V. Mehta Pvt. Ltd. The said amount shall be treated as loan and Shri BipinbhaiVadilal Mehta is not to claim or demand any repayment of the said loan from C.V. Mehta Pvt. Ltd. as long as the management thereof does not pass into the hands of Shri BipinbhaiVadilal Mehta as provided herein.

It is further agreed and understood that transfer of the management of Sayaji Mills Ltd., and the appointment of Shri BipinbhaiVadilal Mehta and Shri PriyambhaiBipinbhai Mehta on the Board of Directors thereof are only to be made after Shri BipinbhaiVadilal Mehta has paid and brought in C. V. Mehta Pvt. Ltd. the aforesaid sum of Rs. 20,00,000.00 (Rupees Twenty lacs only) and it is further agreed that this amount is to be brought and paid by Shri BipinbhaiVadilal Mehta latest on the day next after the transfer forms in respect of the shares of Sayaji Mills Ltd. held by Shri SuhasbhaiVadilal Mehta and members of his family are handed over to Shri VadilalLallubhai Mehta on behalf of Shri BipinbhaiVadilal Mehta and the members of his family. It is also further agreed that the actual effect is to be given to such share transfer of Sayaji Mills Ltd., by the Board of Directors of Sayaji Mills Ltd. only after the payment of the aforesaid amount of Rs.20,00,000.00 (Rupees Twenty lacs only) by Shri BipinbhaiVadilal Mehta to C. V. Mehta Pvt. Ltd. and it is also clarified that these changes are made at the instance and request of Shri BipinbhaiVadilal Mehta and are agreed to by Shri SuhasbhaiVadilal Mehta, in order to accommodate Shri BipinbhaiVadilal Mehta.

11. From the perusal of above, it is apparent that this clause quantifies the amount to be brought in by Shri Bipinbhai Vadilal Mehta towards the amount payable by C. V. Mehta Pvt. Ltd. to the members of the family of Shri Vadilal Lallubhai Mehta and Shri Suhasbhai Vadial Mehta their trusts and other family members. The amount has been quantified at Rs. 39,24,154-88. **It is particularly to be noted that Shri Bipinbhai Vadilal Mehta agreed to pay and bring in immediately a sum of Rs. 20,00,000-00 and in any eventlatest on the day next after the day on which the share Transfer forms in respect of Sayaji Mills Ltd. are handed over by Shri Suhasbhai Vadilal Mehta and members of his family**. Thus, payment of a sum of rupees is not a condition precedent for handing over share transfer forms of Sayaji Mills Limited.Thus, on this basis itself, it can be said that this is not a consideration for transfer of shares of Sayaji Mills Limited leave apart other facts. An obligation has also been cast upon on the Directors of Shri Sayaji Mills Ltd. to register the such share transfer only after payment of Rs. 20,00,000-00. This clause again shows that the reference to register the transfer after receipt of said sum is not on consideration for transfer of

shares but it has been so provided to ensure that effective implementation and fulfilment of all conditions of MOU as well as MOM happens. Thus, such reference cannot, in any manner, construe that the said amount has been paid as a consideration for purchase of shares of Sayaji Mills Ltd or in connection therewith. Thus, this sum is essentially related to transfer of management and appointment of Shri Bipinbhi Vadilal Mehta and his son as Directors of the said company. Further, the said amount is to be treated as a loan in the hands of C.V. Mehta Pvt. Ltd. till the management thereof did not pass to the hands of Shri Bipinbhai Vadilal Mehta. It is further noted that Bipinbhai Vadilal Mehta could not claim or demand any repayment of the said loan as well till such transfer of management. We may also point out that such payment has gone to C.V. Mehta Pvt. Ltd. to repay its liabilities to the Shri Suhasbhai Vadilal Group and Shri Vadilal Mehta family and it is inextricably linked with the transfer of management and control of C.V. Mehta Pvt. Ltd. to Bipinbhai Vadilal Mehta and, therefore, apparently it is not connected with the transfer of shares by Shri Suhasbhai Vadilal group in Sayaji Mills Ltd. to Bipinbhai group. It may not be out of space

here to mention that transfer of management and control and transfer of shares are two different aspects for the reason that shareholders may be a purely shareholder having and enjoying only proprietoryrights as a shareholder and may not have any claim or role in the management of the company or running its affairs. Hence, for this reason also, transfer of shares cannot be equated with transfer of management and control. It also to be noted, as stated earlier that the transfer of management of Sayaji Mills Ltd is also related to bringing the subject amount by Shri Bipinbhai Vadilal Mehta, thus, considering this fact also, the relationship of this sum is established with the transfer of management and control of both these companies and not transfer of shares. Further, the other fact which is to be noted is that it is a case of a family arrangement whereby not only business undertakings/ companies are being distributed amongst two groups of family members but several other movable and immovable properties have also been distributed. It is also to be noted that the sale price for sale of shares or otherwise transfer has also been fixed separately. It is also to be noted that the same price has been paid by either party to implement the MOU r.w MOM.

Thus, for all these reasons, we hold that the impugned sum is not connected in any manner either directly or indirectly for the purchase of shares or in connection therewith of Sayaji Mills Ltd.

2. Clause 4of MOM is reproduced here-under:

Clause 4- *It is agreed that Shri BipinbhaiVadilal Mehta shall similarly bring in a further sum of Rs. 19,24,154.88 (Rupees Nineteen lacs twenty four thousand one hundred fifty four & paisa eighty eight only) as a loan within a period of 24 months at the latest.*

The management of C. V. Mehta Pvt. Ltd. which was proposed to be handed over to Shri BipinbhaiVadilal Mehta under the said Memorandum of Understanding shall not be so transferred to Shri BipinbhaiVadilal Mehtaso long as Shri BipinbhaiVadilalMehta has not brought in Rs. 19,24,154.88(Rupees Nineteen lacs twenty four thousand one hundred fifty four & paisa eighty eight only) being the balance of the amount required to be brought in by Shri BipinbhaiVadilal Mehta towards the amounts payable by C.V. Mehta Pvt. Ltd. to the members of the family of Shri VadilalLallubhai Mehta and of Shri SuhasbhaiVadilal Mehta, SuhasbhaiVadilal Trusts, VadilalLallubhai HUF, VimlabenVadilal Trusts, BhuribenLallubha Estate and the daughters and grand children of Shri VadilalLallubhaiMehta and Smt. VimlabenVadilal Mehta and to C. Doctor & Co. Pvt. Ltd. and further amount towards and equivalent to the amount of interest paid or payable thereon from time to time at the banks current lending rate after 13th November, 1982 onwards.

It is agreed that Shri Bipinbhai Vadilal Mehta shall bring in every quarter an amount of Rs. 44992.00 (Rupees forty four thousand nine hundred ninety two only) towards the amount of interest

paid or payable on the aforesaid amount of Rs. 1924154.88 (Rupees Nineteen lacs twenty four thousand one hundred fifty four & paisa eighty eight only). In default of such payment by Shri Bipinbhai Vadilal Mehta to C.V. Mehta Pvt Ltd. the same C.V. Mehta Pvt. Ltd. shall not be required to pay Shri Bipinbhai Vadilal Mehta interest on the loan of Rs. 20,00,000-00 (Rupees Twenty Lacs Only) to be brought in by him as mentioned in para 3 hereinabove. It has been further agreed that Shri Bipinbhai Vadilal Mehta has to arrange for such amount within 24 months of the latest from the date of this Memorandum and if Shri Bipin Bhai Vadilal Mehta fails, neglect or omits for any reason whatsoever, to bring in such amount within the such period of 24 months, Shri Bipinbhai Vadilal shall not be entitled to claim, demand and ask for the transfer of the management of C.V. Mehta Pvt. Ltd. to him or to any of the members of his family.

It is also agreed that it will be open to Shri Bipinbhai Vadilal Mehta to bring in the amount mentioned hereinabove earlier than twenty four months and at that time ask for the transfer of management in accordance with the other provisions in this Memorandum of Modification and the Memorandum of Understanding dated 30-1-1982.

Thus, Clause 4 providesfor bringing further balance amount of Rs. 19,24,154-88 within a period of 24 months at the latest. It also provides that management of C.V. Mehta Pvt. Ltd shall not be transferred until then to Shri Bipinbhai Vadilal Mehta. It also provides that specific sum of Rs. 44,992-00 shall be brought in by Shri Bipinbhai Vadilal Mehta as interest on quarterly basis on this outstanding sum. It also provides that in case such interest is not

paid,M/s C.V. Mehta Pvt. Ltd shall also not pay interest on loan of Rs.20,00,000-00 provided by Shri Bipinbhai Vadilal Mehta. The most crucial provision is that in case Shri Bipinbhai Vadilal Mehta fails to bring in such amount (Rs. 19,24,154-88) within 24 months he becomes disentitled or eligible to claim, demand and ask for the transfer of management of C.V. Mehta Pvt. Ltd to him or any member of his family meaning thereby that this sum is a consideration for transfer of management of C.V. Mehta Pvt. Ltd to him of his persons and by no stretch of imagination it can be related to purchase/transfer of Sayaji Mills Ltd or in connection therewith.

3. Clause 5of MOM is reproduced here-under:

> ***Clause-5.*** *It is further agreed that the shares of C.V. Mehta Pvt. Ltd. which were agreed to be transferred by Shri Suhasbhai Vadilal Mehta and the members of his branch, his Trusts etc to Shri Bipinbhai Vadilal Mehta by sale or otherwise under the said Memorandum of Understanding are not to be so transferred immediately and shall continue to be held by Shri Suhasbhai Vadilal Mehta and the members of his branch and the companies going to his branch or Trusts. The shares of to C.V. Mehta Pvt Ltd held by Vadilal Lallubhai HUF shall not on partition go to the branch of Shri Bipinbhai Vadilal Mehta but, shall go to the branch of Shri Suhasbhai Vadilal Mehta.*

Clause 5 provides that shares of C.V. Mehta Pvt. Ltd. belonging to Suhasbhai Vadilal Mehta and members of this Branch, Trusts etc which were otherwise to be transferred immediately will not be transferred immediately. It is further provided that shares of C.V. Mehta Pvt. Ltd. held by Shri Vadilal Lallubhai Mehta H.U.F. which were to go to the Bipinbhai Vadilal Mehta as per MOUon partition, now, those will go to the branch of Shri Suhasbhai Mehta.

4. Clause-6 of MOM is reproduced here-under:

> **Clause-6.** *The management of C.V. Mehta Pvt. Ltd. shall be with Shri Suhasbhai Vadilal Mehta and its Directors shall not be asked by Shri Bipinbhai Vadilal Mehta to resign as Directors of the said Company till Shri Bipinbhai Vadilal Mehta fulfils his obligations to pay and bring in C.V. Mehta Pvt. Ltd. further sum of Rs. 19,24,154-88 (Rupees Nineteen lacs twenty four thousand and one hundred fifty four paise eighty eight only) and interest as mentioned hereinabove within the period of 24 months and the other conditions and obligations mentioned herein and in the said Memorandum of Understanding, to be fulfilled by Shri Bipinbhai Vadilal Mehta, have been fully implemented and fulfilled by him to the satisfaction of Shri Vadilal Lallubhai Mehta.*

Clause 6 provides that Suhasbhai Vadilal Mehta and its other Directors of C.V. Mehta Pvt. Ltd. shall continue as such until such sum is brought in by Shri Bipinbhai Vadilal Mehta and other conditions/obligations of MOM and MOU

are fully implemented and fulfilled by Shri Bipinbhai Vadilal Mehta to the satisfaction of Shri Vadilal Lallubhai Mehta.

5. Clause 7 of MOM is reproduced here-under:

> ***Clause-7.*** *Clause 11 of the said Memorandum of Understanding is not to be immediately implemented so long as the management of C.V. Mehta Pvt. Ltd. remains with Shri Suhasbhai Vadilal Mehta.*

Clause-7 provides that Clause 11 of MOU whereby companies belonging to the Shri Suhasbhai Vadilal Mehta Branch were required to pay the amount due by them to C.V.Mehta Pvt. Ltd will not be required to do so until the management of C.V. Mehta Pvt. Ltd remains with Shri Suhasbhai Vadilal Mehta.

6. Clause 8 of MOM is reproduced here-under:

> ***Clause-8.*** *The shares of Sayaji Mills Ltd belonging to C.V. Mehta Pvt. Ltd. will not be transferred by C.V. Mehta Pvt. Ltd. to Shri Bipinbhai Vadilal Mehta or to the members of his branch or to his nominees but, shall continue to be held by the said C.V. Mehta Pvt. Ltd. C.V. Mehta Pvt. Ltd. shall, however, exercise the voting rights in respect of such shares held by it in favour of Shri Bipinbhai Vadilal Mehta for a period of 24 months. If, within the period of 24 months Shri Bipinbhai Vadilal Mehta has not paid and brought in the aforesaid further amount of Rs. 19,24,154-88 (Rupees Nineteen Lacs twenty four thousand and one hundred fifty four & paise eighty eight only), along with interest, C.V. Mehta Pvt. Ltd. shall be at liberty to sell the shares of Sayaji Mills*

Ltd. owned and hold by it to anyone, as it likes and decides and it will not be required to exercise the voting rights in respect of such shares of Sayaji Mills Ltd. in favour of Shri Bipinbhai Vadilal Mehta after the expiry of the said period of 24 months.

Clause 8 provides that till shares of Sayaji Mills Ltd held by C.V. Mehta Pvt. Ltd. will not be transferred to Shri Bipinbhai Vadilal Mehta group, voting rights in respect of such shares held by them would be exercised in favour of Shri Bipinbhai Vadilal Mehta for a period of 24 months whereby Shri Bipinbhai Vadilal Mehta was to bring in aforesaid amount of Rs. 19,24,154-88. It also provides that in case after expiry of such period C.V. Mehta Pvt. Ltd could sale the shares of Sayaji Mills Ltd to any third person without any consent of Shri Bipinbiai Vadilal Mehta. Thus, these modalities again show that said consideration is inextricably linked with the C.V. Mehta Pvt. Ltd and not at all connected with either transfer of management or shares of Sayaji Mills Ltd by Suhasbhai and his group. Any reference of shares of Sayaji Mills Ltd is only to ensure that obligations by Shri Bipinbhai Vadilal Mehta towards C.V. Mehta Pvt.Ltd. are fulfilled within the time frame as agreed upon between the parties thereto.

7. Clause 9 of MOM is reproduced here-under:

Clause- 9.*It is reiterated for the sake of clarification that Clause 32 of the said Memorandum of Understanding shall be implemented and complied with at the time of transfer of management of C.V. Mehta Pvt. Ltd. from the hands of Shri Suhasbhai Vadilal Mehta to Shri Bipinbhai Vadilal Mehta and the members of his branch on fulfilment of the terms and conditions mentioned herein and in the said Memorandum of Understanding.*

Clause 9 provides fordeferment of implementation of clause 32 of MOU which has been already discussed meaning thereby that liability of Shri Suhasbhai Vadilal Mehta branch will remain till terms and conditions of MOM and said MOU are fulfilled by Shri Bipinbhai Vadilal Mehta. Clause 32 of MOU is reproduced as under:

8 Clause 10 of MOM is reproduced here-under:

Clause- *10. It is agreed that Shri Suhasbhai Vadilal Mehta shall be entitled to utilise the amount brought in by Shri Bipinbhai Vadilal Mehta forthwith for the payment of the dues payable by C.V. Mehta Pvt. Ltd. to the members of the family of Shri Vadilal Lallubhai and others mentioned in para 3 hereinabove and/or to C. Doctor & Co. Pvt. Ltd. and other companies or associates of Shri Suhasbhai Vadilal Mehta and that Shri Bipinbhai Vadilal Mehta has agreed that the management of C.V. Mehta Pvt. Ltd. will not be claimed or demanded by him before such payments are made by C.V. Mehta Pvt. Ltd. under the management of Shri Suhasbhai Vadilal Mehta.*

Clause 10 refers to Clause 3 of MOM. In Clause 3, as noted earlier, total amount payable by Shri C.V. Mehta Pvt. Ltd. to Shri Suhasbhai Vadilal Mehta branch has been quantified at Rs. 39,24,155-88 and in terms of provisions of Clause 10 Shri Bipinbhai Vadilal Mehta has agreed that management of C.V. Mehta Pvt. Ltd. will not be claimed or demanded by him before such payments are made by C.V. Mehta Pvt. Ltd under the management of Shri Suhasbhai Vadilal Mehta and his group.**Thus, there remains no doubt that the total amount claimed by the petitioner to have been utilised for purchase of shares of Sayaji Mills Ltd or in connection therewith,** in fact, is consideration and it is connected exclusively and directly with the transfer of management of C.V. Mehta Pvt. Ltd by Shri Suhasbhai Vadilal Mehta group to Shri Bipinbhai Vadilal Mehta group.

9. Clause 11 of MOM is reproduced hereunder:

> ***Clause-11.*** *Shri Bipinbhai Vadilal Mehta has agreed that so long he has not brought in the additional amount of Rs. 1924154-88 lacs (Rupees Nineteen lacs twenty four thousand one hundred fifty four & paise eighty eight only) plus interest thereon agreed to be brought in by him in Messrs. C.V. Mehta Pvt. Ltd. as mentioned in clause 4 hereto, Shri Suhasbhai Vadilal Mehta shall continue to be in possession of old Bipin Nivas No. 1 let out to him and if he does not bring in the said amount in M/s.*

C.V. Mehta Pvt. Ltd. within a period of 24 months, Shri Suhasbhai Vadilal Mehta shall not be required to hand over the vacant possession thereof to Shri Bipinbhai Vadilal Mehta Trust No. 1.

It is further agreed by Shri Suhasbhai Vadilal Mehta that on Shri Bipinbhai Vadilal Mehta bringing in C.V. Mehta Pvt. Ltd. a sum of Rs. 9,63,000/- (Rupees Nine lacs sixty three thousand only) out of the aforesaid amount of Rs. 19,24,154-88 (Rupees nineteen lacs twenty four thousand one hundred fifty four and paise eighty eight only) he shall hand over the vacant possession of Bipin Nivas No. 1 to the Trustees of Bipinbhai Vadilal Mehta Trust No. 1.

Clause 11 provides forsome property to remain in the possession of Shri Suhasbhai Vadilal Mehta until sum referred in clause 4 hereinbefore is brought by Shri Bipinbhai Vadilal Mehta.It also provides that on payment of sum of Rs. 19,24,155-88, Shri Suhasbhai Vadilal Mehta shall hand over the vacant possession of said property to the Trustees of Shri Bipinbhai Vadilal Mehta Trust.

10. Clause 12 of MOM is reproduced hereunder:

Clause-12*.Shri Bipinbhai Vadilal Mehta and the members of his branch shall give a guarantee to M/s. C. Doctor & Co. Pvt. Ltd. to the extent of Rs. 19,24,154-88 (Rupees Nineteen lacs twenty four thousand one hundred fifty four and paise eighty eight only) plus interest in respect of its outstanding from M/s. C. V. Mehta Pvt. Ltd. as C. Doctor & Co. Pvt. Ltd. will agree to the postponement of the payment of its dues by M/s. C.V. Mehta Pvt.*

Ltd. only on the guarantee of Shri Bipinbhai Vadilal Mehta and the members of his branch.

Clause 12 provides that Shri Bipinbhai Vadilal Mehta and members of his branch shall also give guarantee for the postponement of payment of dues by C.V. Mehta Pvt. Ltd to Shri Suhasbhai Vadilal Mehta group.

11. Clause 13 of MOM is reproduced here-under:

Clause-13. *Shri Bipinbhai Vadilal Mehta has agreed that he is responsible to the extent of one half of the loans and advances given by M/s. C. V. Mehta Pvt. Ltd. to sisters and concerns in which they and relatives are interested, i.e. the loans and advances to:*

1.	*Shri Anupam K. Shah*	*Rs. 09,62,297-72*
2.	*Shri Arvindbhai K. Shah*	*Rs. 06,73,245-00*
3.	*M/s. Saburdas & Co.*	*Rs. 01,62,411-49*
4.	*M/s. Aarvy Power Tools Pvt. Ltd*	*Rs. 07,64,985-69*
5.	*M/s. Crown Containers*	*Rs. 04,95,638-02*
		Rs. 30,58,577-72

It has, therefore, been agreed by him that in case he does not bring in the additional amount of Rs. 19,24,154-88 (Rupees Nineteen lacs twenty four thousand one hundred fifty four & paise eighty eight only) plus interest within the period of 24 months as mentioned herein above the amount of Rs. 20,00,000/- (Rupees Twenty lacs only) brought in by him immediately after the execution of this memorandum of modification shall not be claimed back by him at all and the amount standing to this credit shall be adjusted against the advances to the aforesaid persons by M/s. C. V. Mehta Pvt. Ltd.

Clause 13 provides thatthat in case the sum of Rs.19,24,154-88 is not brought by Shri Bipinbhai Vadilal Mehta and sum of Rs. 20,00,000-00 given on the execution of this MOM shall not be claimed back by Bipinbhai Vadialal Mehta at all and the amount standing to this credit shall be adjusted against the advances given by C.V. Mehta Pvt. Ltd. to his sisters or to the concern in which they are or their relatives are intested. This clause makes it clear that the sum of Rs. 20,00,000-00 given earlier is to be adjusted against the recovery of loans and advances given by C.V. Mehta Pvt. Ltd to his sisters or to the concerns in which they or their relatives are interested. It again conclusively proves that the sum is not in any way related to transfer of shares of Shri Sayaji Mills Ltd or does not have any connection therewith.

12. **Thus, considering the above clauses as a whole, it is established beyond doubt that thesum of Rs. 39,24,154-88 paid by Shri Bipinbhai Vadilal Mehta to C.V. Mehta Pvt. Ltd is connected with the transfer of management of C.V. Mehta Pvt. Ltd and is neither consideration nor in anyway connected with the transfer of shares of**

Sayaji Mills Ltd by Shri Suhasbhai Vadilal Mehta and his branch to Shri Bipinbhai Vadilal Mehta. To further support this view,we reproducethe letter written by Shri Suhasbhai Vadilal Mehta on13.11.1982 itself to Shri Bipinbhai Vadilal Mehta as under:

ANNEEXURE (at page no. 547of original paper book).

SUHASBHAI VADILAL

13, LALLUBHAI PARK
ST. XAVIER'S CORNER
NAVRANGUPRA
AHMEDABAD-9
Dt. 13.11.1982

Shri Bipinbhai Vadilal Mehta
Bipin Nivas,
Ellisbridge,
Ahmedabad 380006.

My dear Bipinbhai,

In view of your difficulty to pay up immediately the amount payable by C.V. Mehta Pvt. Ltd. to C. Doctor & Co. Pvt. Ltd, the members of my family and other, you have brought in only a part of the amount are have agreed and under taken to bring further necessary amount within a period of 24 months as provided in the memorandum of modification dated 13.11.1982 executed between us.

It has been provided in the said Memorandum of Modification that the shares of C.V. Mehta P. Ltd. shall continue to be vested in me and/or members of my family and that the shares of C.V. Mehta P. Ltd. held by Vadilal Lallubhai Mehta HUF shall, on partition, be given to my share. It is also provided that management of C.V. Mehta P. Ltd. shall remain with me. You have agreed to pay the balance of Rs. 19,24,154-88 with interest

as mentioned in para 4 of Memorandum of Modification dated 13.11.1982 within a period of twenty four months and on such payment being made and not till then, you can claim that the management of C.V. Mehta P. Ltd should be transferred to you. At the time of such transfer, of management of C.V. Mehta P. Ltd., I and other members of my family shall transfer to you and/or members of your family, shares of C.V. Mehta P. Ltd. held by us at a price of Rs. 1/- per share.

It is understood that the transfer of management is only on fulfilment of the terms and conditions of Memorandum of Understanding and the Memorandum of Modification and that you have to comply all the conditions and requirements before demanding the shares and the management of C.V. Mehta P. Ltd.

Yours faithfully,
Sd/ Suhasbhai V Mehta

13. From the perusal of the above letter even a layman can draw same conclusion i.e., total impugned amount is related to transfer of management of C.V. Mehta Pvt. Ltd only. In the said letter, it has also been stated that shares of C.V. Mehta Pvt. Ltd are to be transferredat price of Rs. 1/- per share. It is also noted that Annexure-III of MOU showing the value of each share of the each company being part of that MOU has been determined. It is also not in dispute that said consideration has been transferred separately. This

factfurther strengthens the view taken by us. Thus, this petition can be disposed of at this stage only by holding that there is no merit in the claims made by petitioners. Still, we consider it appropriate to deal with legal aspects in view of issues framed by Hon'ble Gujarat High Court and importance thereby for public at large.

14. Now, we need to consider the scope and purpose of Section 77 of Companies Act, 1956 assuming that the same is applicable to the present case. For this purpose, we reproduce Section 77 as it existed at relevant point of time as under:

> **Section 77- Restrictions on purchase by company or loans by company for purchase, of its own or its holding company's shares.**
>
> *(1) No company limited by shares, and no company limited by guarantee and having a share capital, shall have power to buy its own shares, unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 100 to 104 or of section 402.*
>
> *(2) No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company:*

Provided that nothing in this sub- section shall be taken to prohibit-

(a) the lending of money by a banking company in the ordinary course of its business; or

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried office or employment in the company; or

(c) the making by a company of loans, within the limit laid down in sub- section (3), to persons (other than directors 1[***]or managers) bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(3) No loan made to any person in pursuance of clause (c) of the foregoing proviso shall exceed in amount his salary or wages at that time for a period of six months.

(4) If a company acts in contravention of sub- sections (1) to (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to 2[ten thousand rupees.

(5) Nothing in this section shall affect the right of a company to redeem any shares issued under section 80 or under any corresponding provision in any previous companies law.

15. As observed, Section 77(1) of Companies Act, 1956 is applicable to a situation where Reduction of Capital as per the relevant provisions of the Companies Act, 1956 is involved; hence, not applicable to the situation on hand.

16. Section 77(2) is applicable to a public company or a private company which is a subsidiary of public company. This means that it is not applicable to an exclusive private limited company. This position indicates that Legislature wants to apply the provisions of Section 77 relating to restrictions on giving the loans or any financial assistance in other forms only to companies where larger public interest is involved apparently. Thus, object appears that public company or its subsidiary should not beallowed to manipulate the price of shares or create, design and implement ownership structure/pattern of such companies in a manner beneficial to a particular class of persons or owners or promoters. The other important words are "for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares of the company or in its holding company".Financing for the purchase of shares and subscription to shares are the events which result into triggering of this clause. Thus,

itindicates an intention that this clause will come into play when the company is offering its shares i.e., in case of purchase, it could be issue of shares onright basis or issueof forfeited shares etc. by the company.In case of subscription, it could be initial public offer or preferential offer/ private placement of shares etc.The reference to subscription is also important because there are provisions of minimum subscription compliance to which is a must to make a valid issue of shares. This view is further supported by the exceptions given in the proviso to this sub-section as for certain situations/cases theseprovisions are not to be applicable. These exceptions also indicate that intent and purpose of provisions of Section 77(2) of Companies Act, 1956 is to curbmanipulative and fraudulant practices in rigging share prices or otherwise gaining control of the company in an illegal manner. Another important aspect, in our view, is that provisions of Section 77(2) of Companies Act, 1956 are applicable **for the purposeof orin connection withpurchase**. The words "purpose of or in connection with" are prefix to the word "purchase". These words also indicate that provisions of this Section i.e., Section 77(2) are to be applied only when event of purchase

or subscription of shares is involved exclusively i.e., it is the only event and not collateral or incidental event or purpose or requirement to implement to any scheme of arrangement or settlement between two groups or promoters. In the present case, as evident from the discussion made hereinbefore transfer of shares is a part of family arrangement involving division of companies and movable and immovable assets amongst two branches of a particular family and transfer of shares is not the sole or primary purpose. Thus, in our considered opinion, the provisions of Section 77(2) are not attracted at all in the present case.

17. As stated earlier that consideration for purchase of shares has been paid separately in terms of provisions of Clause 4 and 5 of MOU. It is also noted that some shares have also been gifted in terms of provisions of Clause 5 of MOU. The details of sale consideration and shares gifted have been provided by Respondent No. 2 and which are at Annexure-C at page 48 of their written submission are reproduced as under:

ANNEXURE-C

Statement of shares of Sayaji Industries Limited held on the date of MOU (from paid up capital comprising of 60,000 equity shares of Rs. 100/- each aggregating to Rs. 60,00,000/-

Name of Family	No. of Shares	% of Total	Consideration per share in Rs.	Total Amount Rs.	Cheque No. and Date
Vadilal Lallubhai Mehta HUF	2900		Gift on partition of Vadilal Lallubhai HUF		
Vimlaben Vadilal Trust	1430		176/- per share	251680.00	Chq. No. 889759 of Punjab National Bank dtd. 13.11.82
Total (A)	**4330**	**7.217**			
Suhasbhai Vadilal Mehta (Respondent No.12)	1633		176/- per share	287408.00	Chq. No. 185666 of Punjab National Bank dtd. 13.11.82
Suhasbhai Vadilal Mehta (Respondent No.12)	1074		176/- per share	189024.00	Chq. No. 185645 of Punjab National Bank dtd. 13.11.82
Suhasbhai Vadilal Mehta (Respondent No.12)	4852		176/- per share	853952.00	Chq. No. 185678 of Punjab National Bank dtd. 13.11.82
Suhasbhai Vadilal Trust	227		176/- per share	39952.00	Chq. No. 889852 of Punjab National Bank dtd. 13.11.82
Suhasbhai Vadilal Trust No.1	840		176/- per share	147840.00	Chq. No. 889758 of Punjab National Bank dtd. 13.11.82
Total (B)	**8626**	**14.377**			
Total Transferred from SVM to BVM as per Annexure II of MOU (A +B)	**12956**	**21.593**			
Shares trf. From SVM to BVM Not forming part of Annexure II of MOU					
Shares held in Bhuriben Lallubhai Estate	106	0.177	Gift from Bhuriben Lallubhai Will		**Gift as pre Will of Bhuriben Lallubhai**
Shares held in Industrial Machinery Manufacturers Pvt. Ltd.	658	1.097	176/- per share	115808.00	Chq. No. 185652 of Punjab National Bank dtd. 13.11.82
Shares held in C Doctor & Co. Private Ltd.	1	0.002	176/- per share	176.00	Chq. No. 185653 of Punjab National Bank dtd. 13.11.82
Total (C)	**765**	**1.275**		**1885840.00**	
Total shares trasferred from SVM Group to BVM Group (A+B+C)	**13721**	**22.868**			
Shares held by Bipinbhai Vadilal Mehta Branch					
Bipinbhai Vadilal Mehta (Respondent No.2)	2754	4.590			
Bipinbhai Vadilal Mehta Family Trust	870	1.450			
Priyambhai Bipinbhai Mehta (Respondent No.3)	414	0.690			
Priyaben amalbhai Kothari	378	0.630			
Total (D)	**4416**	**7.360**			
Shares held by C V Mehta Private Limited	**9185**	**15.308**			
Grand Total (A+B+C+D+E)	**27322**	**45.537**			

Total shares received by BVM as gift	
On partition of VLM HUF	2900
From Bhuriben Lallubhai Estate as per will of Bhuriben Lallubhai	106
	3006
Total shares received by BVM on payment of consideration of Rs.176/- per share to SVM	10715
Total consideration paid	1885840

18. It is noted that a sum of Rs. 18,85,840.00 has been paid to Shri Suhasbhai Mehta Branch in respect of shares transferred by them at the rate of Rs. 176/- per share. This fact has remained uncontroverted during the course of hearing it was tried to be arguedbut thereafter in the written submissions filed on behalf of Petitioner or Respondent Nos. 12 and 13 nothing has been said on this aspect of the matter. Thus, this position not only supports the claims made on behalf of Respondent Nos. 2and 3 but it also leads to an unambiguous conclusion that the petitioner has filed this petition even after having knowledge of the MOU and MOM as claimed by the Petitioner in the affidavit in the petition only with a view to harass the Respondent Nos. 1, 2 and 3.

19. Whether TOTAL consideration can be said to have been provided by M/s. Sayaji Industries Ltd. to enable Respondent No. 2 and 3 to purchase such shares?

Though, this aspect has lost its relevance in view of the conclusion already arrived at but it needs to be discussed for the simple reason that it will again show the intent and motive of the petitioner for filing of this petition. From the

written submissions and arguments made during the course of hearing of this petition the focus has remained only on the transactions of advance of money to Santosh Starch Products with whom transactions worth of Rs. 20,00,000.00 have been made in three tranches and one of the transactions is through petitioner itself. As regard to other transactions with other parties, no written submissions have been made. The total money involved is Rs. 39,24,154.88. As far as other parties are concerned, it is noted that Sayaji Industries Ltd. has given Rs. 8,00,000.00 to M/s. Tirupati Traders on 23.08.1983 and 09.09.1983 in two tranches whereas money from this party has been received by Shri Bipinbhai Vadilal Mehta on 09.08.1983 and 27.08.1983. Said party has given a sum of Rs. 6,00,000.00 directly to L.G & Doctor Associates Pvt. Ltd on 09.08.1983 which is prior to the date of Rs. 6 lacs given by Sayaji Industries Ltd on 23.08.1983; hence, no nexus between the two. Similarly, a sum of Rs. 2 lac has been given by M/s. Tirupati Traders directly to C.V. Mehta Pvt. Ltd on 27.08.1983 which is also prior to sum of Rs. 2 lac given by Sayaji Mills Ltd to M/s. Tirupati Traders on 09.09.1983. We further note that the party to whom this money has been

given, has not been given back to Shri Bipinbhai Vadilal Mehta and his branch members as no details or material to that effect has been brought on record by Petitioner or Respondent No. 12 and this fact clearly weakens the claim of the petitioner. As far as other parties who have given loan to Shri Bipinbhai Vadilal Mehta and his branch, no evidence has been brought on record to show that any money was given by the Respondent No. 1Sayaji Industries Ltd. to such parties at all. Thus, there is no evidence which justifies the claim made by the petitioner as far as this lack of transitionis considered. Now, coming to the transactions with the Santosh Starch Products as far as transaction of Rs. 5,00,000.00 is concerned, the same is after the date of money given by M/s Santosh Starch Products to Shri Bipinbhai Vadilal Mehta branch; hence, this part of the transaction also does not have any relevance so far as applicability of Section 77 of Companies Act, 1956 is concerned. Thus, out of total amount of Rs. 39,25,154-00 payable by C.V. Mehta &Pvt. Ltd. to Suhasbhai Mehta and his branch only a sum of Rs. 15, 00,000.00remains which can be at the most said to have got the nexus. This again shows that the claims have been made by Petitioner just to

create cause of action without any substance and support of any cogent material/evidence and without appreciation of facts correctly. We have already stated that even this consideration is not for the purpose of purchase of shares but for transfer of management of C.V. Mehta & Pvt. Ltd. The shares of M/s Sayaji Industries Ltd. belonging to Suhasbhai branch have to be delivered latest by one day after payment of Rs. 20,00,000-00by itself proves the that the same is not a consideration for transfer of shares but only step to secure the smooth and timely implementation of the family arrangement. It is also, at the cost of repetition, may not be out of place to mention that even an obligation cast on the Board of Directors to approve the transfer of shares to Shri Bipinbhai Vadilal Mehta group after the payment of Rs. 20,00,000.00 ismerely formality at the most.Further, such family arrangement cannot bind the Board of Directors of a public limited company nor it can override the provisions of Companies Act, 1956, if all the formalities as regard to transfer of shares along with relevant documentary evidences/material are submitted for the transfer.Thus, such mechanism is only a precautionary tactic to enforce the full and timely implementation of family

arrangement. In this context, it is also relevant that this amount of Rs. 20 lacs can be forfeited/adjusted against certain amounts recoverable by C.V. Mehta Pvt. Ltd and not to be refunded in case the balance amount of **Rs. 19,24,154-88** is not brought in by Shri Bipinbhai Vadilal Mehta as per terms and conditions of MOU r.w. MOM,then, how the said loan of Rs. 20 lacs can be treated for purchase of or transfer of shares of Sayaji Industries Ltd.

20. We are further of the view andwe have already held that the impugned sum is not a consideration for the purpose of purchase of shares of M/s Sayaji Industries Ltd. when the various transactions are involved as a part of family arrangement and in that situation even if some technical flaw happens for a part transaction, the whole transaction cannot be declared null and void. Accordingly, this plea of the petitioner is also rejected.

21. Whether liability of the Respondent No.2 can be fixed for executing the transaction in this manner and consequently, penalty could be imposed on him under Section 77(4) of Companies Act, 1956?

This question is only of an academic relevance as by the discussions in regard to earlier questions, it has been

established that there is no violation of provisions of Section 77 of the Companies Act, 1956. Having said so, the question still needs to be answered assuming that impugned amount is a consideration for the purpose of purchase of shares or in connection therewith. Even in that circumstance, Respondent No. 2 cannot be held liable for an action under Section 77 (4) of the Companies Act, 1956 as he was neither a Managing Director nor a Director or holding any other office or even otherwise associated with the affairs/operations of the Respondent No.1 Company in any capacity at the relevant time. It is particular to be noted that the Respondent No.1 Company is a listed public company; hence, it is to be governed not only by the provisions of Companies Act, 1956 r.w. Regulations made thereunder but it is also subject to rules and regulations/compliances as per the norms and provisions of listing agreements. Having noted this fact and legal position, it is not in dispute that Shri Bipinbhai Vadilal Mehta was not having cheques signing authority even on behalf of the Respondent No. 1 Company in November, 1982. It is also to be noted that Respondent No. 2 was appointed as an Additional Director on 18.11.1982 up to which date Respondent No.12 i.e.

Suhasbhai Vadilal Mehta was the Managing Director of the Respondent No. 1 Company and he continued as the Director of the Respondent No.1 Company till 07.09.1983 though he resigned from the position of Managing Director as on 18.11.1982 as per the term of the family arrangement. Shri **Vdilal Lallubhai Mehta** remained Chairman and Managing Director of Respondent No.1 Company and he resigned only on 07.09.1983. Thus, Shri Vadilal Lallubhai Mehta and Shri Suhasbhai Vadilal Mehta were in the management of the Respondent No. 1 Company till 18.11.1982. Further, Petitioner No. 1 in his normal deposition as witness in Criminal complaint dated 25.03.1988, has admitted that he was handling all business transactions of the Company. It has also been admitted that power of attorney had been given to six persons to manage the affairs of the company on its behalf and he was one of them. Importantly, it has been asserted that he used to manage as per the directions of Managing Director and in their absence, he used to take decision and manage the affairs on his own and there was no necessity even to inform them as regard to the decision taken by him. Thus, such statement given by him before Court of law which is duly

supported by the fact that he was signatory to the Bank operations and also the power of attorney holder as regard to affairs of the public listed company, any contrary statement given to that factual situation without being supported by any cogent material would not have any evidential value. Thus, claim by him that Bipinbhai Mehta was in de facto Management is of that nature and category as not even a single iota of evidence has been brought on record to support this claim and that too in case of a public listed company where such methodology/practice cannot be possible legally as well as for all practical purposes. Interestingly, after making these averments in the said deposition as he has stated that these three cheques were given under the instructions of Bipinbhai VadilalMehta which fact is also unsupported by any material on record. However, this fact establishes that he was aware of all transactions even where he was not a signatory of cheque. On the contrary, the Respondent No. 2 has brought on record a letter which is placed at page 559 of the petition that Rs. 15,00,000.00 in three tranches were issued in favour of M/s Santosh Traders Products on 12.11.1982 at the instructions of the then Chairman Shri. Vadilal

Lallubhai Mehta.Another factor which needs to be taken into consideration to prove that Bipinbhai Vadilal Mehta could not be given de facto control that as per Clause 8 of MOU Vadilal Lallubhai Mehta and Suhasbhai Vadilal Mehta would resign from Chairmanship, Directorship and Managing Directorship respectively only when Shri Vadilal Lallubhai Mehta was satisfied that MOU had been fully implemented and they had been released from all their guarantees including Bank guarantees. It is also provided that Suhasbhai Vadilal Mehta would resign as Managing Director on the appointment or just prior to the appointment of Bipinbhai VadilalMehta as the Managing Director by the Board of Director of the Respondent No.1 Company and Shri Vadilal Lallubhai Mehta was even then to continue as Managing Director. It is also noted that Clause 31 also cast an obligation on Bipinbhai Vadilal Mehta to procure release all such guarantees when he is put in control in management of the Respondent No. 1 Company. Thus, these provisions clearly show that Bipinbhai Vadilal Mehta had neither any legal control nor any say in the management of the affairs of Respondent No.1 Company till the above obligations were discharged.

Further, this understanding, we also find that Respondent Nos. 12 and 13 in their replies have claimed that Bipinbhai Vadilal Mehta had been asked to resign from the Managing Directorship of the Respondent No.1 Company, Unit-2 after 12.11.1975 for the reason that certain wrong stock statements had been submitted to the Bank. Even, the veracity of instructions given by Shri Vadilal Lallubhai Mehta to issue impugned cheques to M/s Santosh Starch Products has been doubted on this basis.Once the integrity of the person is doubted to this extent then allegation of giving him control of a listed public company in a de-facto manner unsupported by anyevidence, is only afterthought; hence, not of any help to the cause of the petitioners and Respondent No.12,13.Rather such pleas make their claims self contrary as well as an attempt to frame the Respondent No. 2 for a transaction which appears to have been devisedand executed by the Respondent Nos. 12 under the guidance of Vadilal Lallubhai Mehta as Respondent No. 2 was having financial difficulties and management and the company whose management and control was to be transferred were not doing well as evident from the price fixed for the sale of shares of this company and the other

companies going to the **Suhasbhi Vadilal Mehta** i.e. as against Rs. 176/- per share for the share of Sayaji Mills Ltd.,the price per share of Industrial MachineryPvt. Ltd. has been fixed at Rs.1285 and of Oriental Corporation Pvt.Ltd has been fixed at Rs.482. **Terms and conditions of MOM have also been designed so as to favour Suhasbhai Mehta branch as evident there-from.**

22. Thus, consideration of the above facts and legal position as enumerated in Section 77(4) of the Companies Act,1956 Bipinbhai Vadilal Mehta cannot be held guilty or liable for penalty thereunder. On the contrary, we are of the view that Respondent No.12 as well as Petitioner could have been made liable if impugned sum was found to have been paid by Respondent No.1 Company in the purchase of such shares in spite of the fact that no equitable relief by rectification of Register of Members would have been granted for various other reasons.

23. In the present case whether Petitioners have got any locus-standi to file petition under Section 155 of the Companies Act, 1956?

In the present case, application has been filed by members who are having miniscule shareholding in the Respondent no.1 company. It is an undisputed fact that they are not going to be beneficiary in any manner even if this petition is allowed. It is also an admitted fact that neither any right of such persons as member of the company has been adversely affected nor there a case of oppression and mismanagement which is prejudicial to the interest of any member or members or to the interests of the company as a whole. It has also been noted that transfer of shares have happened between two groups of one family holding majority shares as a consequence of implementation of MoU / MoM between them. This question though of academic nature, in ~~our~~ view of our decision / conclusion already arrived at, still this needs to be dealt with considering its general importance to prevent abuse / misuse of such provision. In this background, now, we still look at the scheme of the Act, 1956 relating to transfer of shares.At the relevant time, Section 108 of the Companies Act, 1956 governed the procedure for registration of transfer of shares or debentures. It is noted that for registration of transfer, it was mandatory that proper instrument of transfer duly

stamped and executed as per the provision of this section had to be delivered along with share certificate and in case such share certificate was not there, then letter of allotment was sufficient. The applications are to be made in writing. In case of non-production of share certificate, the Board of company could register such transfer after taking an indemnity bond. There are other formalities and guidelines in various other sub-section / clauses of this Section which are not of any relevance, hence, not discussed. The only salient feature which is to be considered is that except compliance to such procedural formalities, there is no requirement in said section as regard of production of certificate or declaration or undertaking in any manner as regard to the fact that there is no violation of Section 77 of the Companies Act, 1956. It is also to be noted that on receipt of specified form duly filled in and complying to the provision of Section 108 of Companies Act, 1956, the Board of Directors are required to register the transfer or in case, company refuses to register transfer which shall, within two months from the date on which instrument of transfer was required, notice of the refusal of the transfer. Thereafter, transferor or transferee asper provision of Section 111 of the

Companies Act, 1956 could appeal to the Tribunal against such refusal.In case of transmission of shares, the person, who gave intimation of the transmission by operation of law, is also eligible to file the appeal. Thus, only persons who are affected or going to be affected from such refusal or authorized representative of such person can file an appeal and no other person is eligible to do so. Now, going back to section 108(4) of the Companies Act, 1956, it provides that delivery of certificate of all securities has to be made within specified period unless prohibited by provision of law or order of a Court / Tribunal or Authority. This again deals only with regard to issue of delivery of certificates. It may not be out of place that even in Section 77 of the Companies Act, 1956, there is no obligation either on the company or any officer thereof transferor or transferee to give an undertaking or declaration that every instrument of transfer is in compliance to the provision of Section 77 of the Companies Act, 1956. Thus, it is evident that Section 108 r.w Section 111 of the Companies Act, 1956 and section 77 of the Companies Act, 1956 do not have inter-linkage nor create any disability to register transfer in case provision of Section 77(1) and 77(2) of the Companies Act, 1956 are

violated. Accordingly, we are of the considered view that both these sections operate in different field and for different purposes. Section 108 r.w Section 111 of the Companies Act, 1956 is procedural sections relating to registeration or transfer / transmission of shares. The Board of Directors can also refuse to register transfer of shares / transmission of shares in certain situations such as if the board perceives threat of hostile take-over but no situation has been prescribed as a ground for refusal of transfer bin non-compliance/ violation of Section 77 of the Companies Act, 1956.

We may also take note of the provision of Section 111(5) of the Companies Act, 1956, whereby the Tribunal on an appeal may direct the company to register the transfer or transmission of shares. It may also direct for rectification of the register and company to pay damages, if any, to **ANY PARTY AGGREIVED.**

After having a brief idea of registration of transfer and transmission of shares by the companies and before deciding the impugned question, it is considered necessary to have little overview of the provisions relating to register of

members and its significance. Section 150 of the Companies Act, 1956 deals with register of members and provides that every company shall keep a register of its members and particulars / details of each member. It is also noted that section 150(1)(b) of the Companies Act, 1956 also provides that amount paid or agree or considered to be paid on those shares is also to be mentioned. In the present case, it is not the case of petitioner that in such register, impugned amount had been mentioned as consideration. In such register of members, the date of a person becoming as a member as well as ceasing to be a member is to be mentioned.As per Section 150(1) of the Companies Act, 1956, index of member is also required to maintain so that entries relating to that member in the register of members can be readily found. Section 164 of the Act, 1956 provides register of members shall be prima-facie evidence of any matters directed or authorized to be inserted therein by this Act. Significance of such register to a member is important mostly from the perspective of rights of members in the governance of the affairs of the company and theirperspective rights which they obtained as shareholder but such rights can be enforced only when their names,

appearin the register of members.It is a settled principle that shareholders and members are distinct and different from each other though the person may be the same andunless, name of shareholderenters into register of members, he may not be entitled to various rights such as bonus shares, dividend, right, issue or even to file a petition under Section 235 in a collective manner for investigation into the affairs of the company or under Section 397-398 for seeking relief in case of oppression and mismanagement or to participate in general meeting of the Company. The definition of member as contained in Section 2(55) of the Companies Act, 2013 is more comprehensive but in substance it is expanatiory of the legal position relating to the term "member" as prevailing for all times.Thus, Register of Members is a valuable record.

Now, having discussed, in brief, scheme of the Companies Act, 1956 relating to transfer and transmission of shares as well as maintenance of register of members and purpose of register of members, we come to the provision of Section 155 of the Companies Act, 1956 interpretation of which is

the contract issue. The said provisions are reproduced hereunder:

"155. Power of Court to rectify register of member.-(1) If-

(a) the name of any person-

(i) is without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register, is, without sufficient cause, omitted therefrom;

or

(b) default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become, or ceased to be, a member; the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of register;

(2.) The Court may either reject the application or order rectification of the register; and in the latter case, may direct to company to pay the damages, if any, sustained by any party aggrieved.

In either case, the Court in its discretion may make such order as to costs as it thinks fit.

(3.) On an application under this section, the Court-

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(4.) From any order passed by the Court on the application, or on any issue raised therein and tried separately, an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (5 of 1908)-

(a) if the order be passed by District Court, to the High Court;

(b) if the order be passed by a single Judge of a High Court consisting three or more judges, to a Bench of that High Court.

(5.) The provisions of sub-sections (1) to (4) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members."

24. From the perusal of sub-section (1) following salient features are noted: (i) this relates to powers of the Court to rectify the register of members in certain situation. (ii) this power is discretionary as well as of equitable nature (iii) the cause of action / situation arises on account of mistakes happening in the register of members without sufficient cause whether aspect we will discuss later on. (iv) in entering the name of person in such register or after entering the name of the register omitting therefrom or default is made or (v) unnecessary delay takes place in making entry of a person becoming a member or ceasing to be a member in the said register.As per Section (2), the Court may reject the application or order rectification of register. If the Court orders rectification of register, then in that extent the Court made direct the company to pay damages sustained by **any party aggrieved.** Three category of persons i.e.,(1) person aggrieved (2) any member of the company and (3) the

company itself can apply for rectification of registration of members.As far as company is concerned, it would be a necessary party in case application is filed by other two categories of persons. The company, being responsible to maintain Register of Members is legally oblised to maintain it correctly, hence, it can suo motu may apply to Court for rectification of Register of Members to get the issue resolved in a permanent manner although it may also correct Regiser of Member or an application made by a person, whether member or not to the company for correcting the error. Provisions of Section 155 will come into play only therafter. The Respondent in such a situation would be either transferor or transferee or both only and other unrelated other party would not be there neither as a necessary party nor a proper party. Thus, aspect makes a third party, who is neither a transferor or transferee or a beneficiary or legal or authorize represeantative, to go out the picture at the very outset.

Vthaspect of Section 155(1)needs elaborate consideration as it is the claim of the Petitioner that since all Petitioners being member of the company though not aggrieved per-se for and on their own cause may file application for

rectification of register as there is no requirement as to holding of minimum number of shares or that such applicant member should be aggrieved person itself. For this proposition, they have relied on the language of section itself. On the face of it, such argument appears to be very attractive but can it be so in real sense that a person having no direct or indirect interest in any cause of action may raise issue of this nature whereas in all other provisions of Companies Act, 1956 such as 397-398 unless some direct or indirect interest is involved and such member(s) without having requisite minimum number no action thereunder can be taken.For the sake of ready reference, Rule 88 of Companies (Court) Rule, 1959 is reproduced hereunder:

88. Petition under section 397 or 398

(1) Where a petition is presented under section 397 or 398 on behalf of any members of a company entitled to apply under section 399(1), by any one or more of them, the letter of consent signed by the rest of the members so entitled authorizing the petitioner or petitioners to present the petition on their behalf, shall be annexed to the petition, and the names and addresses of all the members on whose behalf the petition is presented shall be set out in a Schedule to the petition, and where the company has a share capital, the petition shall state whether the petitioners have paid all calls and other sums due on their respective shares. Where the petition is presented by any member or members authorized by the Central Government under section 399(4), the order of

the Central Government authorizing such member or members to present the petition shall be similarly annexed to the petition. A petition under section 397 shall be in Form No. 43, and a petition under section 398 shall be in Form No. 44.

(2) A petition under section 397 or 398 shall not be withdrawn without leave of the Court, and where the petition has been presented by a member or members authorized by the Central Government under sub-section (4) of section 399, notice of the application for leave to withdraw shall be given to the Central Government.

Apart from requirement of minimum number of members to file the petition under Section 397 or 398, Rule 88 of Companies (Court) Rules 1959 prescribe that when an application is filed by a member on behalf of any members the letter of consent signed by rests of the members so entitled authorizing the petitioner or petitioners to present petition on their behalf shall be annexed to the petition and the names of all members including members on whose behalf the petition is filed shall be set out in a schedule to the petition. Thus, the provision of Rule 88 (which is incorporated as such by way of Rule 81 in NCLT Rules, 2016) makes it clear that wherever an application is to be filed on behalf of some other person/member consent of such person/member required by the person to file such petition. This position of law further support our view that an

application under Section 155 of Companies Act, 1956 can be filed only a person aggrieved or member aggrieved.

Further, evén Section 111 of Companies Act, 1956 provide that only aggrieved parties can file an appeal against refusal of registration of transfer or transmission of shares which is closely interlinked with of Section 155 of Companies Act, 1956 in a sense, the cause of action of wrong entries or wrong deletion or non-registration leading to error roccuring in register of members would arise as consequence of action in Section 111 of the Companies Act, 1956. As noted while considering the role and responsibility of company that in case of any application filed by the company only a transferor or transferee can be other party who may be an aggrieved paty either as a person or member contention of the petition gets deleted for these reason also. In our view, for this reason alone, minimum of number of members to file application is not provided. In other words, it is not required at all as any member not being aggrieved does not have any locus at any stage. We are further of the view that becase of this reason only no requirement or mnimum number of members has been provided to file an applcaiton, hence, the claim of petitioner that no such requirement exists in fact support our

view that a member not, being aggrieved cannot file application under Seciton 155 of the Companies Act, 1956. Further, if we take clue from the provision of Section 155(2) of the Companies Act, 1956itself, damages for any loss / other adverse consequences faced by any party aggrieved can be awarded the damages in case claim of such party is accepted by the Court / NCLT and by ordering rectification of register of members as prayed by such parties. Thus, just if both the sections are 155(1) and 155(2) are read together itself then the claim made by the Petitioner becomes liable to be rejected.

In this regard, we are further of the view that as per the Petitioner's after-words **"any member of the company",** the word"aggrieved" is being tried to be incorporated and read therein. If we agree with this plea, then there is also other side to the plea of the Petitioners i.e. they are trying to reconstruct these words i.e *"any member of the company"* **as "any member of the companyon behalf of a person aggrieved"** which is also not here. Therefore, for this reason also, their plea is not acceptable. This aspect further leads to situation where necessity of understanding as to who can be

a person aggrieved and what is co-relation of such aggrieved person with the membership of the company would have to look into. There could be three situations where even member of the company would become a person aggrieved which is as under:

(i) Name of person is omitted after entering name the same person as member in the register of the members as in this situation such member would not remain a member as per the provision of law and, hence, after such omission, this person would fall in the category of person aggrieved.

(ii) There can be a situation whether name of some other person is entered in register of members by default. The name of the person who should be a member infact would bea person aggrieved in this satiation and whose name is incorrectly entered into the register of member would be a member aggrieved and also a person aggrieved.

(iii) There could be a situation where delay is made in registration of transfer or transmission of shares then in that situation, applicant would be a person

aggrieved but for its own cause. In case of a person claiming membership is not made entitled to apply and condition of membership is made pre-requisite then such person can never file application before Court or Tribunal. Hence, to make the provision workable such person has been made eligible to apply as person aggrieved. Thus, grievance of person is inbuilt and that should be connected to its own cause. The situation in case of transmission of shares may be little different as in that case, the person in whose name, shares are to be transferred may be dead or otherwise incompetent to do so and his authorized representative/nominee may apply but in that situation also doctrine of self interest will be applicable as cause of action and purpose are correlated, inter-twined and inter-woven and not unconnected.

25. It is an admitted position that transfer of shares or transmission of shares arise out of direct arrangement between the parties or by operation of law governing their private rights. Thus, the provision does not deal with the situation of enforcement of public law or statutory

publicrights arising out of different public laws, hence, this provision cannot be treated as operating in rem and these operate in personam. It is an accepted judicial/legal approach that locus-standi to sue arises out of different three situation (i) injury in fact (ii) causation and (iii) redressability. There is a clear cut prohibition in all contract laws or laws governing private rights as regard to third party standing. Even in case of public interest litigation, Court see that what is interest/motive of the applicant. The Petitioners have also claimed that it should be treated as public interest litigation in their pleadings which itself show that Petitioners know themselves that they have no locus to file this application as they have no grievance of their own rights be prejudicial in any manner. The Companies Act, 1956 specifically deals with private rights of parties in general. In case of cumulative acts or cause of action even as per the provision of CPC or under Section 245 of the Companies Act, 2013, some common cause or interest of all the applicants needs to exist essentially. Even, as per Section 31(3) of the Supreme Court Act, 1981, no application for judicial review shall be made unless applicant has a sufficient interest in the matter to which

application relates. The Courts have also evolved the principle of locus-standi to see that whether the applicant appears to be a mere busy-body or mischief maker. In the present case, as evident from various facts discussed hereinbefore that the Petitioner falls in the category of busybody or mischief maker only as none of his rights as member of shareholder of the company haveever been affected. It is also noteworthy that the transferor has not come before the Court or the Tribunal at any stagefor seeking such relief. We are further of the view that even term "person aggrieved" cannot be anybody, hence, what to say about a member who is not aggrieved for himself as evident here. In common parlance a "person aggrieved" is a person whose interests are prejudicially affected by a decision or action i.e., he has been deprived of something which was otherwise legally due to him or has been burdened with some obligation wrongfully which he would have not been otherwise required to discharge. The Hon'ble Supreme Court in the case of *Jasbhai Motibhai Desai vs Roshan Kumar, Haji Bashir Ahmed & Ors.*while deciding the validity of an action of Government Authority in regard to granting of a license of a Cinema and certain objections

being taken by some persons, discussed the concept of locus standi and the meaning of an "aggrieved person". In that case appellant was holding a license to run a Cinema and Respondents were given licenses on the basis of some certificate for building on cinema theatre. The appellant, in this situation, had challenged the action of the Government under Article 226 of the Constitution of India. In our case, as compared to that appellant, the petitioners have got not even that much of possible adverse impact on their rights of members in any manner. The Hon'ble Supreme Court dismissed the claim on this ground alone. The relevant observations of Hon'ble Supreme Court in that case are as under:

> *HELD: (1) The founding fathers of the Constitution have designedly couched Article 226 in comprehensive Phraseology to enable the High Court to reach injustice, wherever it is found. In a sense, the scope and nature of the power conferred by the Article is wider than that exercised by the writ courts in England.*
>
> *Dwarka Nath v. Income Tax Officer, Kanpur [1965] 3 SCR 563, referred to.*
>
> *(2) The adoption of the nomenclature of English writs with the prefix "nature of" superadded, indicates that the general principles grown over the years in the English courts, can shorn of unnecessary technical procedural restrictions, and adapted to the special conditions of this vast country, in so far as they do*

met conflict with any provision of the Constitution, or the law declared by this court be usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well recognised rules of practice. [64 D-F]

(3) According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction the petitioner should be an "aggrieved person", and in a case of defect of jurisdiction, such a petitioner shall be entitled to a writ of certiorari as a matter of course,, but if he does not fulfil that character and is a "stranger" the court will, in its discretion, deny him this extraordinary remedy, save in exceptional circumstances. [64 F-G]

(4) The expression "aggrieved person" denotes an elastic and to an extent an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent` of the statute of which contravention is alleged the specific circumstances of the case, the nature and extent of the prejudice or injury suffered by him. English courts have sometimes put a restricted and sometimes a wide construction on the expression, "aggrieved person". [64 H. 65 Al

(5) In order to have the 'locus standi' to invoke the extraordinary jurisdiction under Art. 226 an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though in the case of some of the writs like habeas corpus or quo warranto, this rule is relaxed or modified. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no propriety or even a fiduciary interest in the subject matter. That apart in exceptional cases even a stranger or a person who was not a party to the proceedings before the

authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule. [10 A, C-D]

(6) In the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) person aggrieved. (ii) stranger. (iii) busybody or meddlesome interloper Persons in the last category are easily distinguishable from those coming under the first two categories inasmuch as they interfere in things which do not concern them, masquerading as crusaders for justice in the name of pro bono publico, though they have no interest of the public or even of their own to protect The distinction between the first and second categories though real, is not always well demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty and a grey outer circle of lessening certainty in a sliding centrifugal scale with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved'. In the grey outer-circle the bounds which separate the first category 60 from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outerzone may not be "persons aggrieved". [71 A-C, D-E]

(7) To distinguish such applicants from "strangers" among them, some broad tests may be deduced from case law, the efficacy of which varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: (1) Whether the applicant is a person whose legal right has been infringed ? (2) Has he suffered a legal wrong or injury, in the sense that his interest recognised by law has been prejudicially and directly affected by the act or omission of the authority complained of ? (3) Is he a person who has suffered a legal grievance, a person against whom a decision has been

pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something ? (4) Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? (5) Was he entitled to object and be heard by the authority before it took the impugned action ? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? (6) Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a special welfare measure designed to lay down ethical or professional standards of conduct for the community? (7) or is it a statute dealing with private rights of particular individuals ? [71 E-H, 72 A]

(10) In the instant case, none of the appellant's rights orinterests recognised by the general law has been infringed as a result of the grant of 'No Objection certificate'. He has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a, legal wrong. He has suffered no legal grievance. He has no legal peg for a justicable claim to hang on. Therefore, he is not a "person aggrieved" within the meaning of s. 8A or 8B of the Bombay Cinema Rules, 1954 and has no locus standi to challenge the grant of the 'No objection certificate'. [73 C, F-G] D Rice & Flour Mills case [1970] 3 S.C.R. 846 applied. (11) Assuming that the appellant is a stranger, and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in business which is so essential to

raise commercial morality. it will tend to perpetuate the appellant's monopoly of cinema business in the town. and above all, it will seriously injure the fundamental rights of respondents 1 and 2 which they have under Article 19(1)(g) of the Constitution to carry on trade or business subject to "reasonable restrictions imposed by law". [74 C-D]

(12) It is true that in the ultimate analysis, the jurisdiction under Art. 226 is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction must be insisted upon. ***The broad guidelines indicated coupled with other well established, self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc., can go a long way to help the Courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money. While a Procrustean approach should be avoided, as a rule, the court should not interfere at the instance of a "stranger" unless there are exceptional circumstance involving a grave miscarriage of justice having an adverse impact on public interests.***

26. The above findings are aptly appllicable to the facts of the present case as the petitioner has got no direct or indirect interest at all and do not fall even in the category of person aggrieved. Further, assuming it to be a case of public interest litigation as pleaded by the petitioners themselves even then on the ground of him being a stranger he has got no locus to file such petition. We are further of the view that

for this reason even petitioners being member cannot be considered as eligible to file the petition as member. Further, as we have already seen that in that event rewriting of the provisions of law occurs. Having said so, we cannot forget the celebrated principle of interpretation that an interpretation which makes a provision workable having regard to the purpose and intent of the statute as well as of a specific provision then such interpretation needs to be made as against the interpretation which may lead to a situation of unwanted and avoidable litigation apart from making the provision unworkable.This principle of interpretation of known as relevance of text and context of purposive construction. In this regard, we cannot do better than reproducing the observations of Hon'ble Supreme Court in eh case of *Arcelormittal India Private vs Satish Kumar Gupta* in para 29 as under:

> *29. "It is in this background that the section has to be construed. In Ms. Eera Through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) & Anr., (2017) 15 SCC 133, this Court, after referring to the golden rule of literal construction, and its older counterpart the object rule in Heydons case, referred to the theory of creative interpretation as follows:-*
>
> *122. Instances of creative interpretation are when the Court looks at both the literal language as well as the purpose or object*

of the statute in order to better determine what the words used by the draftsman of legislation mean. In D.R. Venkatachalam v. Transport Commr. [D.R. Venkatachalam v. Transport Commr., (1977) 2 SCC 273], an early instance of this is found in the concurring judgment of Beg, J. The learned Judge put it rather well when he said: (SCC p. 287, para 28)

28. It is, however, becoming increasingly fashionable to start with some theory of what is basic to a provision or a chapter or in a statute or even to our Constitution in order to interpret and determine the meaning of a particular provision or rule made to subserve an assumed basic requirement. I think that this novel method of construction puts, if I may say so, the cart before the horse. It is apt to seriously mislead us unless the tendency to use such a mode of construction is checked or corrected by this Court. What is basic for a section or a chapter in a statute is provided: firstly, by the words used in the statute itself; secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole; thirdly, by the Preamble which could supply the key to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose. The last mentioned method consists of an application of the mischief rule laid down in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] long ago.'

Xxx xxx xxx

127. It is thus clear on a reading of English, US, Australian and our own Supreme Court judgments that the Lakshman Rekha has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English

case of Heydon [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637], where the Court must have recourse to the purpose, object, text and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637], which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid-1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637]."

27. Thus, considering the above legal position, we hold that any member of the company cannot file an application for rectification of registration under Section 155 of Companies Act, 1956 merely because he is a member though he may not have any cause of action of its own for doing so. From this discussion, it is also evident that no disability would be attached to any person aggrieved or member of the company if word "aggrieved" is considered impliedly inbuilt therein as if a person who is not member but aggrieved can file an application as person aggrieved under Section 155 of Companies Act, 1956 without any hindrance or obstacle. Similarly, any member being aggrieved can file application under this section. Thus, this interpretation would serve the purpose of this section in all possible ways rather such

interpretation results into savings of public money and judicial time which would arise on the ground of frivolous litigation/obligation by strangers. For example, if claim of petitioner accepted then any person can drag any company and create nuisance. In this view of the matter,we hold that the petition filed by the Petitioners is liable to be dismissed on this ground as well.

28. Whether decision of the company in entering the nameof Respondent No. 2 and 3 in register of member is is without sufficient cause?

This question has also become of academic importance. However, this issue is also of general importance, hence, we think it proper to deal with this aspect as well. The word "sufficient cause" has not been defined in the Act. The word sufficient is prefix to the word "cause". It is lso true that this is discretionary provision and objective discretion is to be applied by the Court or Tribunal while considering any issue raised before them particularly when it is not necessary that each and every entry would be corrected in all circumstances. In our view, the question of consideration sufficiency of a cause would arise only when firstly there

exists some cause. The word cause means a reason for an action or condition or a ground of a legal action or something that precedes and bring about an effect or result. It can also be understood that it produces a justification or reason for resultant action. The word cause itself indicates some reason for grievance and therefore, it supports our views that an application under Section 155 of the Companies Act, 1956 can be filed only a person aggrieved whether a member or otherwise. In our view, the first impact of the use of this word is connected or in relation to the eligibility of the person who can apply. Next point is that words *"without sufficient cause"* are connected with the grounds or events which have been mentioned in said section and therefore, this would come into play only happening of these events. Therefore, it would go to the root cause of action and its impact on a party concerned. These words also relate to the law which needs to be complied by respective parties. Supposed for example, if the transfer form is neither duly stamped or the signature differs from the records of the company, then,in that event, if the company refused to register the transfer or having register the transfer finds that this error had happened then it

would be a sufficient cause under Section 155 of the Companies Act, 1956 to rectify its register of members on its own or on coming to know this mistake through an application filed by the concerned parties. Thus, another aspect which would require to be considered is that bonafides of the applicant or motive of applicant to allege that action / decision of the company is without sufficient cause. When above legal discussed position is applied to the facts of the case, it is evidently clear that motive of the Petitioner is to get the register of members rectified but it'is in real sense to get annulment of MoU and MoM that too in partial manner for the benefit of Respondent no.12 and 13 only. Having said so, it is not in dispute that company had been registered shares in the name of the Respondent No.2 and its branch by competent committee and, therefore, it implies with all formalities requiredfor registration of shares have been completed. Such committee has been formed by the Board of DirectorsShri Vadilal Mehta and Shri Suhasbhai Mehta were in the Board of Directors at the relevant point of time. Hence, the action of the Respondent No.1 Company in registering the transfer of shares was with sufficient cause. It is also to be read in the context that

there is no linkage between Section 77 and section108 of the Companies Act, 1956, hence, irrespective of the fact, whether there was compliance or non-compliance of provision of Section 77 of the Companies Act, 1956, such action of the company remains valid in law. It may also be noted that company is listed company and if Petitioner no.1 or Respondent no.12 were interested only in acquiring the shares in the company they could have done so by purchasing shares, thus, the real intent behind this petition is not so. A lot of reliance has been placed on the decision of the Hon'ble Supreme Court in the case of *Ammonia Supplies Corporation (P) Ltd.* In that case, issue was whether the Company Court had exclusive jurisdiction in respect of all the matters or had only summary jurisdiction in respect of matters raised under Section 155 of the Companies Act, 1956. The provisions of Section 77 of the Companies Act, 1956 were not at all involved in that case. It is also noted that Hon'ble Supreme Court in that case considered various decision as well as provisions of law. The relevant findings of the Hon'ble Supreme Court, for our purpose, are contained in para 25 to 31 of the said order. From the perusal of the said paragraphs, it is apparent that the

Hon'ble Supreme Court has analyzed the process / procedures involved of share transfer and provision relting to register of members. Thereafter, the Court has simultaneously analyzed provision of Section 155 of the Companies Act, 1956. The Hon'ble Supreme Court in para 31 has observed that "*without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the rules or what ought to have been done under the Act and the rules but not done*". In our humble view, these observations have to be read in the context in which these were made i.e. whether the jurisdiction of Company Court under Section 155 of the Companies Act, 1956 is of summary nature inspite of being exclusive or it could have expanded jurisdiction to decide the peripheral issue as a whole. Secondly, these paras when thererefer to the contradiction of the Act or compliance of the Act, refer only to provisions relating to transfer of shares or transmission of shares or rectification of register of members in certain situation and not to any other provisions of the Companies Act, 1956. Hence, such observations, as we have already stated are to be read only with reference to provision of Section 108, 111 or Section

155 of the Companies Act, 1956 only. In this view of the matter, we hold that reliance on these observations by the Petitioner is of devoid of any merit; therefore, it does not help the cause of the Petitioner.

29. Apart from above legal position, one cannot overlook the fact that the registration of transfer of shares have been done to give effect/implement to the family settlement/arrangement. This fact is of paramount importance as a family settlement is to be treated on a different footing as compared to any other formal commercial settlement because such family settlements/arrangements are entered into to ensure smooth succession/division so that peace and harmony between the family members remain. Such family arrangements are governed by equity principles to give effect to them and not to disturb them in a like manner or for technical reasons as the well being of the family is involved. Thus, this is not only a sufficient cause but essential cause also to give effect to such family arrangements even when such some technical or frivolous non-compliance of statutory provisions is involved so long such technical violation does not amount to fraud against the general

public or minority shareholders or creditors etc. at large. In the present case, it is not so, hence, in our considered opinion, even it is assumed that there is some minor violation of provisions of Section 77 of Companies Act, 1956 the same cannot come in any way to maintain *status quo* of family arrangement entered into and implemented by respective parties. Having sated so, we cannot also ignore the fact that the petitioners have got no locus thereof nor any harm has been made to any person involved with the affairs of the Respondent No. 1 company either immediately after change of management as a consequence of implementation of family appointment or thereafter till date. It may not be out of place to mention that our view as regard to the due weightage/importance to be given to a family settlement also finds support from the following observations of Hon'ble Supreme Court in the case of ***Hari Shankar Singhania & Ors vs. Gauri Hari Singhania & Ors 2006 (4) SCC 658*** wherein the Hon'ble Supreme Court elaborately discussed the judicial approach towards family arrangement. The relevant paragraphs of the said order are reproduced as under:

42. *Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eyes of law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the Courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well being of a family.*

43. *The concept of 'family arrangement or settlement' and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation etc should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into ally disputes existing or apprehended and even any dispute or difference apart, if it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in the case of Ram Charan v. Girija Nandini AIR 1966 SC 323*

44. *In Lala Khunni Lal v Kunwar Gobind Krishna Nairain, the Privy Council examined that it is the duty of the courts to uphold and give full effect to a family arrangement.*

45. *In Sahu Madho Das & Ors v Pandit Mukand Ram & Anr., 1955 (2) SCR 22 [Vivian Bose Jagannadhadas and BP Sinha JJ.] placing reliance on Clifton v Cockburn, (1834) 3 My &K 76 and William v William, (1866) LR 2Ch 29, this Court held that a family arrangement can, as a matter of law, be implied from a long course of dealings between the parties. It was held that*

"..so strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might

ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement.."

46. *The real question in this case as framed by the Court was whether the appellant/plaintiff assented to the family arrangement. The court examined that "the family arrangement was one composite whole in which the several dispositions formed parts of the same transaction"*

47. *In Ram Charan Das v Girjanadini Devi,(Supra), this Court observed as follows:*

"Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a familyThe consideration for such a settlement will result in establishing or ensuring amity and good will amongst persons bearing relationship with one another."

48. *In Maturi Pullaiah v Maturi Narasimham, AIR 1966 SC 1836, this court held that*

"[T]hough conflict of legal claims in praesenti or in future is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims, will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it."

49. *Further in Krishna Biharilal v Gulabchand, [1971] 1 SCC 837, this Court reiterated the approach of courts to lean strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all. This approach was again re-emphasised in S. Shanmugam Pillai vs. K. Shanmugam*

Pillai [1973] 2 SCC 312 where it was declared that this court will be reluctant to disturb a family arrangement.

50. *In Kale & Ors. V Deputy Director of Consolidation and Ors.,[1976] 3 SCC 119 [VR Krishna Iyer, RS Sarkaria & S Murtaza Fazal Ali, JJ.] this Court examined the effect and value of family arrangements entered into between the parties with a view to resolving disputes for all. This Court observed that :*

"By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made the object of the arrangement is to protect the family from long drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and therefore, of the entire country, is the prime need of the hour the courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangementThe law in England on this point is almost the same." (emphasis supplied)

51. *The valuable treatise Kerr on Fraud at p.364 explains the position of law:*

"the principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend." Halsbury's Laws of England, Vol.17, Third edition at pp.215-216.

52. *In KK Modi v KN Modi & Ors., [1998] 3 SCC 573 [Sujata Manohar & DP Wadhwa, JJ.], it was held that the true intent and purport of the arbitration agreement must be examined- [para 21] Further the court examined that*

"a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed." (emphasis supplied)

53. *Therefore, in our opinion, technical considerations should give way to peace and harmony in enforcement of family arrangements or settlements.*

Accordingly, we submit that it is an instance where the names of the Respondent No. 2 and his branch member

have entered into register of members without sufficient cause.

30. Assuming that petition is otherwise maintainable, whether petition is barred by limitation?

This issue also has become of academic nature in view of our decision that the amount so paid is not at all related to purchase of shares as it is related to obtain management and control of C.V. Mehta Pvt. Ltd and reference to transfer of shares of Sayaji Mills Ltd is only for the purpose of ensuring the timely and full implementation of MOU r.w. MOM. No fraus is involved. Therefore, provisions of Section 17(1)(a) of Companies Act, 1963 do not come into play. Accordingly, for the transactions executed in 1982 and1983 the limitation period for filing suit expired much before the filing of present petition in October, 1987. Further such transactions were one time transactions and if it is assumed that provisions of Section 77 were violated, even then provisions of Section 22 of the Limitation Act, 1963 are also not applicable for the simple reason that this is not an instance of fresh injury caused on day to day basis giving fresh rather what to say of fresh injury no injury is caused at all. It is further supported by the fact that the

Respondent No. 12 and 13 never challenged this MOUand MOM nor they demanded any rectification of Register of Members of their own. Further, it is a case of an event which was concluded through one transaction whose impact is permanent assuming that the claims of the petitioner are acceptable. Thus, we are also of the view that decision and submissions made on behalf of Respondent No. 2 as reproduced hereinbefore are valid and legally acceptable.Although, we have already decided the matters on so many other grounds, one aspect which has remained to be discussed is that whether this petition can be held as not barred by limitation assuming that claims of the petitioners are accepted. Before doing so, we need to understand the policy behind the statute of limitation. It has been thus stated in Halsbury's Laws of England Vol 24, p. 181 (para 130) "330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that lonbg dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence. "The

object of the law of limitation is to prevent disturbance or depreviation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence, or laches. Having discussed the above legal philophy, we wondered and posed a question to ourselves as to why criminal complaint was filed in 1987 and this petition was filed thereafter only? We asked the petitioner to explain the same but he remained evasive in spite of the fact that we posed a question to him that it was his legal burden to discharge this liability as it has been claimed by both Petitioner and Respondent Nos.12 and13 that they came to know the fact of such alleged fraud only in 1987. In this situation, we analyzed the facts of the case with reference to the circumstances under which such family arrangement was made. We had also asked a question to the Respondent that why the Chairman and Managing Director Vadilal Mehta in whom both the sonshad reposedconfidence favoured Suhasbhai Vadilal Mehta.The Respondent Nos. 12 and 13 suggested that style of functioning Shri Bipinbhai Vadilal Mehta was different from the approach of late Vadilal Lallubhai Mehta and Suhasbhai Vadilal Mehta; hence, he was disassociated from the

management and affairs of the company way back in 1975 itself. However, when were going through the material on record, particularly petition filed before City Court Ahmedabad which was decided in favour of Bipinbhai Vadilal Mehta ultimately as Hon'ble Supreme Court also dismissed the SLP filed by Suhasbhai Vadilal Mehta in that case, we came across a fact that differences between Bipinbhai Mehta and Vadilal Mehta arose due to intercast marriage by Bipinbhai Vadilal Mehta. It also noted that Vadilal Lallubhai was a person of high social status in addition to being a wealthy person as he was also first non-governmentdirector of LIC and was also associated with other prominent institutions. In these circumstances, inter cast marriage in those days;in our considered opinion, certainly a factor for being aggrieved and painful. It is also noted that Bipinbhai was residing in Mumbai since then till 1982 when such family such arrangement was made. Apart from this social factor, it is also noted that the Sayaji Mills Ltd was not doing well and was in financial hardship which fact is also corroborated by this deposition of the petitioner no. 1 in the criminal complaint on 25.03.1988. It is also noted that even Bipinbhai Vadilal Mehta was not of

soundfinancial conditionwhich resulted into executionof Memorandum of Modification. As stated earlier, if both agreements are read,leaningof Mr. Vadilal Mehta towards Suhasbhai Mehta and branch is apparent. From the material on record, it is noted that after change of management Respondent No. 1 Sayaji Mills Ltd started to function better and there was a substantial growth in next three years which resulted into first attempt bySuhasbhai to raise grievance by writing a letter dated October, 1985 to Shri Vadilal Lallubhai Mehta under clause 36 of MOU to provide him some compensation. This letter was first attemp to fail the already executed family arrangement and it resultedinto Civil Procedure where Suhasbhai Vadilal Mehta could not succeed. Further, C. Doctor & Company Ltd. which was a sole selling agent had been removed by Bipinbhai Vadilal Mehta after taking over the management of the Sayaji Mills Ltd and that was done in accordance with the provisions of MOU. That was also challenged by the petitioner herein in Company Law Board;however,the matter wasultimately decided by the Board as well as other judicial forums in favour of Bipinbhai Vadilal Mehta.In these proceedings, time passed and after not getting success,

present petition was filed. It has been claimed that the basis of the information of alleged violation/non-compliance of provisions of Section 77 of the Companies Act, 1956 came to the notice of the petitioner as well other petitioners only in 1987. We analyzed the facts and the importance/confidentiality attached to MOU/MOM as well as transactions with M/s Santosh Starch Products.None of the Petitionersis a witness to MOU/MOM; hence, such transactionscannot come to their notice at any stage what to say of the year 1987 unless it is provided by a party to such family arrangement or leaked by some close confident. It is also not a situation where such documents had become public documents as it pertained to transfer of shares of listed public company as such documents were not required to be submitted to the company or any other Authority for registration of Transfer of Shares in the records of the company. Thus, when this fact is analyzed along with the failure of other attempts made by Suhasbhai Vadilal Mehta either directly or through the petitioner earlier, it is apparent that this information was always with them and it is not a new information which came to their notice but was withheld and used as last resort after failing in other

attempts. It is particular to be noted that said criminal complaint had been filed by a person whowas not an employee of the Respondent No. 1 Companyat any stage nor he could have any information or approach to obtain these documents in any manner. In the criminal complaint, it has been mentioned that this information was noted by the complainant in some news paper published in 1983, however, copy of the said news item or other documentary evidences to support that when such complainantgot access to such information and source thereof has not been discussed. Interestingly, Mr. Ramesh B Desai is a witness to such criminal complaint. That completesthe channel as far as the use of MOU/MOM already existing in their possession of Respondent Nos. 12 and 13 for whom the petitioner in the petition itself has asked by way of reversal of this transaction and granting of status-quo ante. Now, there remains second part of the transaction i.e., money was given back to Bipinbhai Vadilal Mehta and his branch and how the accounting records the transaction M/s Santosh Starch Product could come to the notice of the criminal complaint and petitioners. Apart from at this aspect, before we proceed further, we would like to mention

that except petitioner no.1 no other petitioners can be said to have access or approach to said privileged information. The other persons who could have information regarding such transactions are: Vadilal Mehta, Suhasbh Mehta, Bipinbhai Mehta and Santosh Starch Product only. It is also to be noted that one of the employees of Santosh Starch Products is also a witness to the said criminal complaint. It is also noteworthy that after change of management, as evident from the material on record, M/s Santosh Starch Product stopped business transactions/supplies to Respondent No. 1 Company since1984-85. It is also to be noted that the petitioner Ramesh B. Desai had also resigned immediately after the resignation of Vadilal Mehta and Suhasbhai Mehta from the Chairmanship and Managing Directorship/Directorship of the company. It is also to be noted that Petitioner No. 1 is also one of the witness to the will made by Vadilal Mehta. Thus, the whole circuit is complete. In the absence of discharge of legal burden by the petitioners that how they came to know about such transactions only in 1987 and not before that period, the only conclusion which can be arrived at is that for this reason alone this plea is liable to be rejected as bared by

limitation, apart from other related asects already adjudicated upon by us.

31. Whether doctrine of latches and delay is applicable?

Undisputedly, transactions were entered into the year 1982. The companies and various other immovable and movable assets were divided among two branches of the same family. Both grounds moved on thereafter though one branch led by Suhasbhai Vadilal Mehta always acted in a manner which appeared to be in the direction of getting further advantage. The doctrine of latches and delay is clearly attracted as after 38 years, the reliefs sought that tooin impartial manner and indirectly cannot be granted. Even otherwise application was filed after 5 years of one time transaction and full implementation of family arrangement in 1982 and 1983; hence, considering this delay the relief sought cannot be granted on account of delay and latches particularly where financial parameters had already been transformed. In this regard as well as regarding the all motive of the petitioners, we find support from the observations of NCLT Kolkata Bench in para 32, 33 34 in the case of *Dilip Kumar Ari & Anr vs. M/s. Matrikalyan*

Nuring Home Private Limited & Ors in CP No. 179 of 2014 dated 18.08.2017 which is reproduced as under:

32. *While dealing with delay and latches it is a fundamental principle of administration of justice that the court will aid those who are vigilant and who do not sleep on their right. In other words, the court would refuse to exercise their jurisdiction in favour of the party who moves them after considerable delay and is otherwise guilty of laches.*

The principle embodied in the Equites Maxim "delay defeats equity" and for the statute of the limitation is intended to discharge unreasonable delay for presentation of the claim and enforcement of right. Claims which have been delayed unreasonably in being brought forward may be rejected. In this regard, a reliance may be placed on seven judges' judgment rendered in the case of State of M.P.v.Bhailal Bhai, AIR 1964 S.C. 106 ***where if the delay is more than the period prescribed by the Limitation Act, then it would be appropriate by the court to hold that it is unreasonable, the court ought not ordinarily to lend its aid to a party guilty of delay.***

A similar view is also taken inMTNLv.State of Maharasthra, 2013 (9) SSC 92 - Hon'ble Supreme Court observed that in equitable jurisdiction the maximum period of limitation can reasonably held to be the same as has been provided by the Limitation Act and therefore a huge delay and laches cannot be surmounted.

In State of Tamil Nadu v. Seshachalam, (2007) 10 SSC 137 this court distinguish the equality cause on the bedrock of delay and laches pertaining to grant of service benefits as the rule reads ".....***filing of representation alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to where the claim made by the applicant deserve consideration. Delay and/or laches on the part of the Government servant may deprive him of the benefit which has been given to**

others. Article 14 of the Constitution of India holds, in a situation of that nature, attracted as it is well known law leans in favour of those who are alert and vigilant.

The same view has also been taken ***in Division Bench in C.P. No. 4/ND/2016 passed by Hon'ble Chief Justice (Retd.) Mr. M.M. Kumar, Hon'ble President of NCLT and Mr. S.K. Mahapatra, Member (Technical)*** *wherein they also relied upon Bhailal Bhai casealso MTNL wherein it was observed that "In the absence of application of the provision of Limitation Act, the petitioner cannot surmount the difficulties of delay and laches. It is well settled that when a member of the company filed a petition under Section 397/398 read with Section 402(g) of the 1956 Act.....he is necessarily.... Equitable jurisdiction to the Tribunal Section 402 of the Act expressly provided that the Tribunal is empowered to pass any order which it considers as just and equitable. Similar provision has been made under Section 403 of the Act empowering the tribunal with the power to pass any interim order as it deems just and equitable. Similar provision has now been made under Section 242(2) of 2013 Act. Therefore, from that point of view also his petition is liable to be dismissed as barred by delay and laches.*

33. *In the instant case, admittedly the dispute arose some time in 2005 i.e. 9 years' back and in between the petitioner upheld his grievances before the civil court as well as also in the Hon'ble High Court and then filed the instant application under Section 397 and 398 of the Companies Act, 2013 and thereby has adopted a forum shopping. However, otherwise also the instant petition is hopelessly barred by limitation as per the provisions of Limitation Act. The delay and laches do apply which started from the date of knowledge. Admittedly, the date of knowledge is from the year 2005 as reflected in the petition. The doctrine of laches is based on equitable consideration and depends on general principle of justice and fair play. Therefore, on the point of delay*

and laches, the petition is also liable to be dismissed. In this regard, it is pertinent to mention the case of Beladore Silk Limited, (1965) - on Re 667 it has been held as under at page 672:

"A petition which is lodged not with the genuine object of obtaining relief prayed but with the object of exerting pressure in order to achieve co-lateral purpose is that, in my judgement, an abuse of process of the court and it is primarily on that ground that I would dismiss this petition."

34. *As discussed above, I find that the petition filed by the petitioner is not maintainable though attempt has been taken to rake up the issues bifurcating the civil courts on the self same cause of action. Even otherwise, the petition is not only tenable for delay and laches but it is also bereft of merit and C.P. No. 179/2014 is dismissed. C.A., if any, also stands disposed of at no cost.*

Thus, it can be concluded that it is a settled position of law that delay defeats equity especially when such delay would either result in fait accomplice rendering the developments irreversible. Thus, for this reason also, this petition is liable to be dismissed.

32. Whether equitable jurisdiction can be applied in the facts and circumstances of the case?

It is not in dispute that the transactions under dispute are a part of the family arrangement being implemented through MOU/MOM in the year 1982. It is not the only transaction

but it incidental to main purpose of devision of management and control of group companies between the two branches of families. It is necessary for effective and timely implementation of such MOU/MOM. Itis also not in dispute that late Vadilal Mehta had the final say in all matters covered by such arrangements. It is also to be noted that he was a Chairman and Managing Director has directed to give the impugned sum to M/s Santosh Starch Products. The Respondent No. 12 Suhasbhai Mehta was also Managing Director and the executor of MOU/MOM i.e. one party of such family arrangement. It is also to be noted that Petitioner No. 1 was also directly or indirectly connected with the affairs of Respondent No. 1 Company and was a close confident of both these persons. Thus, collusive involvement of Petitioner No. 1 and Respondent No. 12 cannot be logically ruled out. It is a settled principle that who seeks equity must come with clean hands and should not be a party himself to such transactions either directly or indirectly. It is also settled principle that equity can be exercised only when the person seeking equitable relief is vigilant and comes in time and in the present case by anefflux of such a long time, the doctrine of equitable relief

cannot be pressed into service. Now, this is also so for the reason that the economic conditions and financial status/valuation of the assets which were part of such family arrangement and other dynamicshave altogether changed. Thus,for these reasons, equitable relief cannot be granted.

33. **Whether this petition falls within the scope of rectification of Register of Members as envisaged under Section 155 of Companies Act, 1956?**

The aforesaid section, as stated earlier, relates to protection of proprietary rights of members and under the garb of rectification of Register of Members, a petition of this nature and magnitude whereby status quo ante MOU/MOM being sought to be granted cannot fall within the scope of jurisdiction as envisaged under Section 155 of Companies Act, 1956. Further, the Respondent No. 1 Company, in the present case, is a listed company whose shares can be acquired through Stock Exchange transaction as well if the Petitioner or Respondent No. 12 wishes to buy the shares only. It is further to be noted that except proprietary rights of them as member, nothing more can be gained by both of them even if such petition is allowed as the control and

management is governed by the provisions of Family Arrangement and which has been given to Respondent No. 2 and his Branch independently. Thus, patently, this application does not serve any purpose of the petitioner and admittedly the relief sought does not fall within the scope of this Section.

34. Whether the alleged act can be categorised as fraud on the statute?

As evident from the discussion hereinbefore, that MOU/MOM did not provide that Bipinbhai Mehta and his branch was to provide the impugned funds only from their savings or the money belonging to them and could not be arranged by way of loan or in other manner from any source. Thus, apparently this is not a case where the Respondent No. 12 was induced to act to his disadvantage by not complying with the provisions of MOU/MOM. It is also not a case that any loss has been suffered by the Respondent No. 12 or any undue advantage has been gained by Respondent No. 2 and Respondent No. 3 because, in any case, the consideration was fixed separately and various other factors were part of the MOU/MOM. In any

case, the management and control of the company whose shares are being transferred had gone to the Respondent No. 2 and his branch as a part of division of the companies belonging to the group. It is also to be noted that MOM has been executed at the request of Respondent No. 2 for the reason that Respondent No. 2 was having some financial constraints. The main object of MOM has been to provide him time to arrange the funds. It is also to be noted that he was not in the affairs of the Company at the relevant time, nor he was having any personal relationship with M/s Santosh Starch Products so that said transaction can be said to have been entered at his initiative. It is also to be noted that if Respondent No. 2 wanted to arrange the funds in such a manner, he could have done so without requesting for execution of MOM and MOU could have been implemented without the necessity of such alleged mechanism being designed. Thus, there are no elements of fraud on the basis of commercial considerations. Thus, provisions of Section 17 of Indian Contract Act, 1872 are not attracted. It is also a settled position that principle of fraud governing the commercial contracts will not be applicable to public laws or administrative laws as the

considerations and object of both are altogether different. In case of administrative laws, the fraud is generally presumed or inferred through statutorily created provisions. The actual gain or loss may not be a consideration but intent is to be considered as the main ingredient. Fraud on statute generally arises by opression of law where a particular action is approved then that would secure an unconscionable advantage. In the facts and circumstances of the case, no such unconscionable advantage or gain have obtained by Respondent No. 2 because as per Respondent No. 2 said MOU/MOM was a compelling situation for him having regard to the influence and control of his father.

As far as non-compliance of provision of Section 77 of the Companies Act, 1956 is concerned, assuming it to be so, we have already seen that there is no linkage between Section 77 and 155 r.w. Section 108 and 111 of the Companies Act, 1956. We are further of the view that having considered judicial decisions as well every violation cannot amount to make the contract or arrangement null and void in such circumstances.If this plea is accepted then provisions of Section 77(4) would become redundant in a sense that once

there is a specific separate penalty and nohint/whisper appears that the transactions entered into in violation of provisions of Section 77 of the Companies Act, 1956 would be null and void, the general principles of law cannot be applied to specific statute. If we accept this then the management and administration of the affairs of the company under various provisions of the Companies Act would become impossible, wherever penal provisions have been made. In the Companies Act, 1956, there was no provision like Section 447 of Companies Act, 2013. The punishment for fraud has been provided which is restricted to default in repayment of any debt. Thus, fraud is to be considered in this limited perspective even under the new Companies Act. In view of the above discussion, it cannot be said that any fraud has been committed by Respondent No. 2 even if it is assumed that there is a violation of provisions of Section 77 of Companies Act, 1956.

35. Whether present petition is an instance of sponsored litigation on behalf of Respondent No. 12? If so, whether suitable costs need to be imposed on Petitioner No. 1 i.e. Ramesh B Desai ?

In this regard, it is to be noted that plea by the petitioner has been made that it should be treated as public interest ligation which we have already rejected having regard to the scheme and purpose of the Companies Act, 1956. In addition to that in the absence of any maerial on record, it is worth to note that the petitioner is not crusader or champion of public cause. No materials have been brought on record or otherwise stated during the course of hearing to show that petitioner no. 1 or other petitioners had filed any petition for similar causes or for other public causes in other matters. Further, the Petitioner also filed a petition before Company Law Board against the removal of Company holding sole selling agencies of Respondent No. 1 Company by the Respondent No. 2 in terms of provisions of MOU which attempt, however, failed and the petitioner apparently had no locus nor any right of the petitioner were affected from such removal. Thus, this position leads to an inevitable conclusion that the petition has been filed with oblique motive and due to some personal prejudice and in such situation the equitable relief is denied in all cases by all courts enevitably.

In this regard, we need not to repeat the facts in detail as other circumstantial surroundings of the case make it amply clear that there is a close nexus between the Petitioner and Respondent No. 12. It is also noted that other petitioners are either relatives of the Petitioner No. 1 or neighbours/friends who appear to have acted on the motivation of Petitioner No. 1/Respondent No. 12 only. Not only in this petition but there have been several other attempts by them to undo the family arrangement and that too after enjoying the benefits of the family arrangement which apparently tiltedheavily in favour of Respondent No. 12. The Respondent No. 12 has also not produced any material to show its bona fide as regard to its financial growth or toeffectively controvert fact that he was not aware of real purpose of impugned transactions though he was Managing Director at the relevant point of time and also having access to Bank accounts as the Managing Director and it is particularly so when Petitioner No. 1 has categorically stated that Respondent No. 1 Company was not doing well and there was no policy of giving advance to suppliers. It is also to be noted that the impugned sum considering the time (1982) when the transactions were

done is of substantialvalue as compared to present day; hence, when there is neither a policy nor any apparent request by M/s. Santosh Starch Products, how, it can be said that Vadilal Lallubhai Mehta and Suhasbhai Vadilal Mehta were not aware of the real purpose of these transactions as no money can be given in such circumstances without knowing the real purpose or object particularly, at the relevant time, implementation of family arrangement was a focus/priority of both of them and it can be inferred so from the terms and conditions of MOU/MOM. Having said so, it also compels us to think that by doing so petitioner was not going to get anything personally on the face of it though he could be rewarded by Suhasbhai Mehta indirectly or otherwise if the petition or his other effortswould have succeeded. It painsus to say that through this kind *modus-operandi* entrepreneurship is curtailed as the focus of all the parties get distracted when sword of change of management or ownership hangs, no capital commitment or expansion takes place which also impactsthe economic growthof the society adversely. It is seen from the chequered history of litigation that counsels of great stature appeared and the energies of the Court as

well as such persons have been grossly misused. Further, the Respondent No. 2 and 3 have already been burdened with the enormous costs of litigation during 33 years of pendency of this petition. It is also a settled policy that judicial process/ forums cannot be allowed to be used as an instrument of oppression. We draw support for this proposition from the decision of the Hon'ble Supreme Court in the case of *Punjab National Bank And Ors vs Surendra Prasad Sinha* wherein in a case where the appellant had filed criminal proceedings against the bank where fixed deposit given by them as security against a loan given by bank to a third party and which was adjusted by the bank after the recovery of such loan had become time barred. The appellant filed criminal suit. The Hon'ble Supreme Court not only dismissed the case on merit but also observed as under:

"It is also salutary to note that judicial process should not be an instrument of opperession of needless harassment. *The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officiers. There lies responsibilities and duty on the Magistracy to find whether the concerned excuse should be legally responsible for the offence against the juristic person or the persons impleaded then only process would be issued. At that statge the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstnces into consideration before*

*issuing process**lest it would be an instrument in the hands of private complaint as vendetta to harass the persons needlessly.** Vindication of majesty of justice and maitainance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. **Considered from any angle we find that the respondet had abused the process and laid complaind against all the appellants without any prima facie case to harass them for vendetta."***

In the present case the position of the petitioner is worst than the appellant in that case because in that case they had given their own Fixed Deposit (FD) as security which has been adjusted time barred whereas in the present case the petitioner has got no such locus or interest of its own. Further, by making the ultimate beneficiary as Respondent No. 12, the petitioner is acting with all malafide and in clever manner thinking that judicial forum can be used indirectly to obtain an undue gain and at least to harass the Respondent No. 2.In these circumstances, we are of the considered view that cost of litigation born by Respondent Nos. 1, 2 and 3 needs to be reimbursed. Accordingly, under Rule 113 of NCLT Rules, 2016,we order the Petitioner to pay a sum of **Rs. 25,00,000-00** (Rupees Twenty Five Lacs Only)as litigation costs to Respondent No. 1 within a period of 30 days from the date of this order and submit proof thereof to

the Registry of this Authority. We further hold that this is a clear cut case of abuse of process of law and waste of precious judicial time; hence, exemplary costs are also required to be imposed. Thus, we also impose a cost of Rs. 25,00,000-00(Rupees Twenty Five Lacs Only)on Petitioner No. 1 for doing so under Rule 113 of NCLT Rules, 2016 pay the same to PMCares Fundwithin a period of 30 days from the date of this order and submit proof of payment to Registery of this Authority.

MISCELLANEOUS

36. It was also contended that there is violation of provisions of Article 20 and provisions of Section 36 of the Companies Act, 1956, which, in view of our decision hereinabove, as got no merit; hence, rejected. We also find that certain claims have been made at various places by the Petitioner/Respondent No 12 which remains unsupported by any cogent material; hence, such averments stand rejected. In this regard, we may further point out that the evidentiary value of an affidavit per se depends upon cogent evidence being attached or produced to support the claims made therein and in the absence thereof merely because a statement has been made by way of affidavit, the same, in

our considered view, provide any assistance to the cause of such person.

37. Before parting, we submit that we have considered the submissions of all the parties carefully and in depth. The findings given by us are based upon such submissions, material on record as well facts and circumstance of the case. Thus, non-mentioning of any specific reply to any contention is for the sake of brevity only. We specifically point out that the Respondent No. 2 has made detailed submissions on each ground and as effectively controverted the claims both factual as well as legal made on behalf of the petitioner as well as Respondent No. 12 and 13.

38. In view of the above discussion, this petition stands dismissed and disposed of with costs as mentioned hereinbefore.

39. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

(Virendra Kumar Gupta)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

Signed on this, the 27thday of January, 2021.

Raeev Sen/Stenographer

National Company Law Appellate Tribunal, New Delhi

Principal Bench

Company Appeal (AT) No. 35 of 2021

IN THE MATTER OF:

Ramesh B.Desai & Anr. **...Appellants**

Vs.

Sayaji Industries Ltd. & Ors. **...Respondents**

Present:

For Appellant: **Mr. Sudipto Sarkar, Sr. Advocate**
Mr. Arvind Kumar Gupta, Mr. Arjun Sheth, Advocates

For Respondent: **Mr.Ramji Srinivasan, Sr. Advocate, Mr. Devang Nanavati, Sr. Advocate, Mr. Sandeep Singhi, Advocates, Ms. Rajshree Chaudhary, Mr. Shivkrit Rai, Ms. Anushree Kapadia, Advocates for R-1**

Mr. Arun Kathpalia, Sr. Advocate, Mr. Sandeep Singhi, Mr. Kauser Husain, Advocates for R2 and R3

ORDER

(Through Virtual Mode)

15.03.2021: Heard Learned Sr. Counsel for the Appellant. He submits that in the Impugned order, the Tribunal erroneously held that the Appellant has no locus-standi to file the application under Section 155 of the Companies Act, 1956, however, any Member of the Company can file the application. He further submits that the Tribunal has imposed the cost of Rs. 25 lakhs as litigation cost and also directed to pay Rs. 25 lakhs to 'Prime Minister's Care Fund' within 30 days. Such order may be stayed till pendency of appeal.

...contd.

Issue Notice.

Learned Sr. Counsel Mr. Srinivasan accepts notice on behalf of Respondent No. 1.

Learned Sr. Counsel, Shri Kathpalia accepts notice on behalf of Respondent Nos. 2 and 3.

Learned Counsel for Respondents submits that they intend to file reply-affidavit. However, they also submit that imposition of costs may be stayed subject to furnishing of adequate security.

Considered the submission, the order of imposition of cost is stayed subject to furnishing of adequate security within three weeks to the satisfaction of the concerned Tribunal and the Appellant shall file Affidavit of compliance within three weeks.

Issue notice to other Respondents i.e. R-4 and R-5.

Respondents may file their reply-affidavit within three weeks. Rejoinder, if any, may be filed by the Appellant within one week thereafter.

Let the matter be listed on **23rd April, 2021.**

[Justice Jarat Kumar Jain]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

S.S./kam