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Jagran

5th September, 2023

To,

Manager–CRD, BSE Ltd., Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai-400001	Equity	Scrip Code: 532705
		ISIN No.: INE199G01027

Listing Manager, National Stock Exchange of India Ltd., 'Exchange Plaza', Bandra Kurla Complex, Dalal Street, Bandra (E), Mumbai-400 051	Equity	Symbol: JAGRAN
		ISIN No.: INE199G01027
	NCD	Symbol: JARP24
		ISIN No.: INE199G07057

Dear Sir / Madam,

Sub.: Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

This is in furtherance to the mandatory disclosure made on 4th September, 2023 under Regulations 30(3), 30(4) read with Para B, Part A of Schedule III of SEBI (Listing Obligations and Disclosure Requirements), 2015 by Jagran Prakashan Limited.

Please see attached the order dated 4th September, 2023 (uploaded on 5th September, 2023) passed by the Hon'ble NCLT, Allahabad in the matter titled *Mahendra Mohan Gupta & Ors. v. Devendra Mohan Gupta & Ors., C.P. No. 64 of 2023,* by way of which the Hon'ble NCLT has held the company petition to be maintainable and dismissed C.A. No. 31 of 2023 filed by Respondents No. 5 and 12 challenging the maintainability of the company petition.

We will keep you updated of all developments in the matter.

The said information will also be uploaded on the corporate website of the Company (www.jplcorp.in), on the website of National Stock Exchange of India Limited (www.nseindia.com) and BSE Limited (www.bseindia.com).

Kindly take the above information on your record.

Thanking You,

For Jagran Prakashan Limited

Amit Jaiswal

JAGRAN PRAKASHAN LIMITED 2, Sarvodaya Nagar KANPUR

(Amit Jaiswal)
Chief Financial Officer and Company Secretary

Encl.: As Above

Jagran Prakashan Ltd
Jagran Building, 2 Sarvodaya Nagar, Kanpur 208 005
T +91 512 2216161, 2334300, 6672700
www.jagran.com www.jplcorp.in

CIN : L22219UP1975PLC004147
E-mail : jpl@jagran.com
Registered Office
2, Sarvodaya Nagar, Kanpur 208 005, Uttar Pradesh, India

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CA No.31/2023 IN CP No.64/ALD/2023

IN THE MATTER OF:

(Application under Section 244 of the Companies Act, 2013 read with Rule 32 and Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

1. Sanjay Gupta
S/o Late Narendra Mohan Gupta Director,
Jagran Media Network Investment Private Limited,
Whole-time Director Jagran Prakashan Limited
2, Sarvodaya Nagar, Kanpur, Uttar Pradesh,
India, 208005
Also at:
R/o Puran Niwas, 7/51,
Tilak Nagar, Kanpur,
Uttar Pradesh- 208002 **....Applicant No.1**

2. Tarun Gupta
S/o Mr. Dhirendra Mohan Gupta
R/o Puran Niwas,
7/51, Tilak Nagar,
Kanpur,
Uttar Pradesh- 208002 **....Applicant No.2**

Vs.

1. Mahendra Mohan Gupta
S/o Late Mr. Puran Chandra Gupta
2, Sarvodaya Nagar,
Kanpur, Uttar Pradesh, India – 208005
Also at:
R/o Puran Niwas, 7/51, Tilak Nagar, Kanpur
Uttar Pradesh- 208002
Also at:
Working as: Chairman and Director
Jagran Media Network Investment Private Limited,
And Chairman and Managing Director
Jagran Prakashan Limited

...Respondent No.1

-Sd- -Sd-

2. Shailesh Gupta
S/o Dr. Mahendra Mohan Gupta
2, Sarvodaya Nagar,
Kanpur, Uttar Pradesh, India- 20805
Also at:
R/o Puran Niwas, 7/51, Tilak Nagar, Kanpur,
Uttar Pradesh – 208002
Working as: Whole-time Director
Jagran Prakashan Limited
R/o Puran Niwas, 7/51,
Tilak Nagar, Kanpur,
Uttar Pradesh- 208002

...Respondent No.2

3. VRSM Enterprises LLP
Through its authorized representative
Dr. Mahendra Mohan Gupta
2, Sarvodaya Nagar, Kanpur
Uttar Pradesh- 208005

...Respondent No.3

AND IN THE MATTER OF:

Mahendra Mohan Gupta & Ors. ...Petitioners

Vs.

Devendra Mohan Gupta & Ors. ...Respondents

Order pronounced on 04.09.2023

CORAM:

Sh. Praveen Gupta	:	Member (Judicial)
Sh. Ashish Verma	:	Member (Technical)

Appearances (via Physical/ Video Conferencing)

Dr. U.K. Chaudhary, Sr. Adv. assisted by Sh. Vishal Gehrana & Ms. Megha Dugar, Advs.

: For the Res. No.12 in man CP & Applicant in CA No.31/2023

Sh. CA Sundaram with Sh. Puneet Bali & Sh. Anurag Khanna, Sr. Advs. Assisted by Ms. Roshini Musa, Sh. Rajat Jariwal, Sh. Abhishek Iyer, Ms. Nastassia Khurana, Ms. Aayushi Khurana, Sh.

-Sd- -Sd-

Varad Nath, Ms. Shatakshi Tripathi, Ms. Prerna Singh & Mr. Raghav Dev Garg, Advs.

: For the Respondent in CA No.31/2023

Dr. Abhishek Manu Singhvi, Sr. Adv. assisted by Sh. Vishal Gehrana & Ms. Megha Dugar, Advs.

: For the Res. nos.1 & 5 in main CP & Applicant in CA No.31/2023

Ms. Ruby Singh Ahuja, Sh. Vishal Gehrana, Ms. Hancy Maini, Ms. Tahira Karanjawala, Sh. Ashotosh P. Shukla Ms. Megha Dugar, Ms. Meghna Mishra & Sh. Yashonidhi Shukla, Advs.

: For the Res. No.1 to 17 in main CP & Applicant in CA No.31/2023

ORDER

Per : Praveen Gupta, Judicial Member

1. Ours this order will decide IA No 31/2023 which has been filed on behalf of the Respondent Nos.5 and 12 for seeking dismissal of the captioned petition bearing Company Petition No.64/2023 titled as Mahendra Mohan Gupta & Ors. Vs Devendra Mohan Gupta & Ors. on the ground of maintainability of the said petition.

2. It has been averred in the application that the Captioned Petition has been filed by the non-applicants under Section 241/242 alleging oppression & mis-management against the respondents i.e. Respondent No.18 (Jagran Media Network Investment Private Limited, hereinafter referred as 'JMNIPL') and Respondent No.19 (Jagran Prakashan Limited, hereinafter referred as 'JPL') wherein the non-

applicants/petitioners in the captioned petition have sought the following reliefs:-

"a) Pass an order declaring that the Respondents No. 1 to 17 have been guilty of diverse acts of oppression against the Petitioners;

b) Declare that the emails dated 29.05.2023 (including the statement dated 28.05.2023), 30.05.2023, 09.06.2023, 20.06.2023 and 07.07.2023 sent on behalf of other members of the other Gupta Family members as invalid and oppressive;

c) Declare that that the notice dated 22.06.2023 issued by Sanjay Gupta i.e., Respondent No. 5 under the alleged authority of the Board of JMNIPL calling for the Board Meeting of JMNIPL i.e. Respondent No. 18 on 14.07.2023 illegal and non-est;

d) Declare that the agenda item no. 5 read with clarification to item no. 5 of (1/2023-2024) meeting of the Board of Directors of JMNIPL proposed to be held on 14.07.2023 is illegal and non-est;

e) Permanently restrain the Respondents No. 1 to 17 from passing any resolution in the board meeting of JMNIPL that may have the effect of diluting the rights and powers conferred upon Petitioner No. 1 under Article 4.1 of the AoA of JMNIPL, including the right of the Petitioner No. 1 to vote on behalf of JMNIPL in the meeting of JPL;

f) Permanently restrain the Respondents no. 1-17 from removing Petitioner No. 1 as the Chairman and director of Respondent No. 18;

g) Permanently restrain the Respondent No. 1-17 from removing Petitioner No. 1 and 2 as directors of Respondent No. 19;

h) Permanently restrain the Respondents No. 1-17 from altering the direct/ indirect shareholdings of the Petitioners in Respondents No. 18 and 19, in any manner whatsoever;

i) Pass any other order (s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present matter.

INTERIM RELIEF(S) SOUGHT:

a) Restrain the Respondents No. 1-17 from conducting the proposed meeting of the Board of Directors of Respondent No.18 on 14.07.2023;

b) Restrain Respondents No. 1-17 from taking up the agenda item no. 5 read with clarification to item no. 5 of (1/2023-2024) in the proposed meeting of the Board of Directors of JMNIPL on 14.07.2023 and further, restrain Respondents No. 1 to 17 from taking up any other supplementary matter under agenda item no. 7, in a manner prejudicial to the existing interests of the Petitioners.

c) Restrain Respondent No. 18 from permitting any change of its authorized representative in the meetings of JPL;

d) Restrain the Respondents no. 1-17 from revoking or in any manner disturbing/diluting the effect and operation of Article 4.1 of the AoA;

e) Restrain the Respondents No. 1-17 from removing Petitioner No. 1 as the Chairman and director of Respondent No. 18;

f) Restrain the Respondents No. 1-17 from removing Petitioners No. 1 and 2 as CMD and WTD of Respondents No.19 respectively;

g) Restrain the Respondents No. 1-17 from removing Petitioners No. 1 and 2 as directors of Respondent No. 19;

h) Restrain the Respondents No. 1-17 from altering the direct/indirect shareholdings of the Petitioners in Respondents No. 18 and 19, in any manner whatsoever,

i) Injunction restraining the Respondents No. 1-17 from holding or convening any meeting of the board of directors or any general meeting of Respondent No. 18.;

j) Restrain Respondent No. 1-17 from directly and indirectly bringing any further material change in the management and control of Respondent No. 18 and 19

that is prejudicial to the affairs of the companies, and/or the interests of Petitioners in Respondent no. 18;

k) Pass any other/further relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present matter."

3. Before adverting in detail on the contents and merits of the present application, it will be relevant to take notice of the relevant facts giving rise to the filing of the captioned petition.

4. Petitioners No. 1, 2 and 3 who have filed the captioned petition together hold 16.18% shareholding in Respondent No.18 Company. The said respondent No.18 Company holds 67.97% shareholding in Respondent No.19. The Respondent No.18 is a family run company under the control of "Gupta Family", comprising of Petitioners No.1 and 2 along with Respondents No.1 to 17. The sole objective of the Respondent No.18 is to hold and manage its stake in Respondent No.19 Company. Petitioner No.1 has been at the helms of affairs of the Respondent No.19 Company as a Chairman and Managing Director and has been Chairman and Director of Respondent No.18 Company. In order to control and manage the stakes of Gupta Family in Respondent No.19 Company, a mechanism was developed whereby the Blackstone GPV Capital Partners (Mauritius) V-Q Ltd. invested in Respondent

No.18 which became the holding Company of the Respondent No.19 and the investment such made was largely received by the members of Gupta Family and to execute the transaction with the Blackstone GPV Capital Partners (Mauritius) V-Q Ltd, the shareholding of "Gupta Family" was transferred from Respondent No.19 to Respondent No.18 after taking the necessary permission from the Ministry of Information & Broadcasting and thereafter, a security subscription and shareholders agreement was executed between Respondent No.18, the Gupta Family and Blackstone on 28th June, 2011.

AVERMENTS FROM APPLICATION

5. It has been contended by the Applicants that Petitioners are not eligible to file company Petition under section 241/242 of the Companies Act, 2013 against Respondent No. 18 and 19. In terms of section 241 of the Companies Act, 2013, company petition must either be filed by (a) not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or (b) any member or members holding not less than one-tenth of the issued share capital of the Company. Present Petition is not fulfilling the requisite requirement as mandated under this

section. Petitioners do not possess one tenth of the issued share capital for raising the issue of oppression and mis-management in Respondent No. 19 Company.

6. The applicant contends that Respondent No. 18 and Respondent No. 19 Company are two different legal entities. Therefore, Petitioners (Non-Applicants) are not entitled to file composite petition against Respondent No. 18 and Respondent No. 19 Companies.

7. It has been averred and contended by the Ld. Senior Counsels representing both the Applicants that the Petitioner No.1 holds 0.06% of the shareholding in Respondent No.19 and Petitioner No.3 holds 0.23% of the shareholding in the same company; therefore, both Petitioners No.1 and 3 collectively hold only 0.29% of the shareholding in Respondent No.19, in view of the fact that the Petitioner No.2 is not even a shareholder in the said company.

8. It is contended on behalf of the applicants that the stand of the petitioners that they are directly and indirectly holding 11.29% stake in Respondent No.19 Company is erroneous. Further, the Respondent No. 18 and 19 companies are totally distinct legal entities and the petitioners may have a cause of

action under Section 241 & 242 against Respondent No.18 company; however, they fail to qualify the criteria of Section 244 of the Act in so far as alleging oppression and mis-management into the affairs of Respondent No.19 Company for the reason that the petitioners do not possess the requisite qualification for bringing a petition against Respondent No.19 for want of requisite 10% of the issued share capital to become eligible to institute such a proceeding under Section 241/242 of the Companies Act.

REPLY BY NON-APPLICANTS/PETITIONERS

9. The reply has been filed on behalf of the non-applicants/petitioners to the present application, thereby alleging that the application filed is totally malicious with a view to deny the petitioners/non-applicants an effective hearing on their application bearing CA No.30/2023 whereby stay has been sought on the resolution passed in the meeting held on 14th July, 2023 by the directors of the Respondent No.18 company.

10. It is averred in the reply that the Respondent No.19 is *inter-alia* engaged in the business of printing and publishing newspapers under the name Danik Jagran and Late Sri Puran

Chand Gupta had setup a partnership firm namely Jagran Publications bringing in his sons as partners as and when they attained the age of majority. In 1975, The JPL was incorporated as a private limited company for taking over the business of Jagran Publications. Subsequently, the Respondent No.19 Company also acquired the brand name Dainik Jagran in 1997. The Respondent No.18 however was incorporated in the year 1990 and prior to 2011, the shares of JPL were directly owned by the "Gupta Family" i.e. Petitioners No.1 and 2 and Respondents No.1 to 17. It was in 2011 that the members of the Gupta Family transferred their direct shareholding in Respondent No.19 Company to Respondent No.18 Company which was then utilized for managing the family shareholding and new articles of association of Respondent No.18 were adopted in 2011 which have not been amended till date.

11. It is further averred in the reply that the petitioners/non-applicants collectively hold 16.18% shareholding in Respondent No.18 which is more than 1/10 issued share capital of the Respondent No.18 Company.

12. It is further averred that the petitioners directly and indirectly hold 11.29% in JPL i.e. Respondent No.19 Company and in 2011, the petitioners along with the remaining members of the Gupta Family transferred their individual shareholdings in Respondent No.19 company to Respondent No.18 Company and such a transfer of the shareholding was completed pursuant to receiving the requisite approval from the Ministry of Information and Broadcasting and there is a consolidated shareholding of 67.97% of Respondent No.19 Company in Respondent No.18 Company, as stated above.

13. It is further averred that 100% of the Respondent No.18 shareholding is owned entirely by the 19 members of the Gupta Family i.e. Petitioners No.1 and 3 and Respondents No.1 to 17 and the board of Respondent No.18 is constituted entirely of the Directors from the Gupta Family and as such the Respondent No.18 Company functions as the holding company of Respondent No.19 Company and thus Gupta Family is having control over Respondent No 19 Company through Respondent No 18 Company.

14. It is further averred that even a cursory piercing of the corporate veil would show the prevailing control in

Respondent No.19 Company is entirely that of Respondent No.18 which itself is a company 100% held by the Gupta Family.

15. It is further averred that the Respondent No.19 Company has 18 Directors on its board out of which 8 are members of the Gupta Family and any major decision taken in the subsidiary i.e. Respondent No.19 at the shareholder level is necessarily controlled by Gupta Family through Respondent No.18 Company, it also has significant influence in the decision being taken in the board meeting of the Respondent No.19. It has also been stated that the affairs of both the companies are thus inextricably linked and affairs of the Respondent No.18 have direct consequences in the affairs of Respondent No.19 Company.

16. It is alleged in the reply that the board meeting of Respondent No.18 on 14th July, 2023 was held only by Respondents No.1 to 17 with intention to appoint/authorize the representative of the Respondent No. 18 to vote on behalf of Respondent No.18 in the AGM of JPL and therefore, no action can be taken with respect to Respondent No.18 Company without affecting the affairs of Respondent No.19 Company and further therefore,

while Respondent No.18 and 19 companies are registered as distinct legal entities; however, lifting of the corporate veil and the shareholding pattern of both companies would clearly show that both the companies are inextricably linked.

17. It is also further stated in reply by the petitioners/non-applicants that the maintainability of the captioned petition is not a strict question of law independent from the facts of the present case and decision upon the same as a preliminary issue cannot be taken without thorough investigation into the facts of the captioned petition. This is especially so since the pervading control for the purpose of piercing the corporate veil would itself be a mixed question of facts and law.

REJOINDER BY THE APPLICANT

18. A rejoinder has been filed on behalf of the applicant reiterating its averments already made in the application that the Respondent No.18 is the holding company of Respondent No.19 having 67.97% shareholding and it is erroneous on the part of the petitioners/non-applicants to say that the affairs of both the companies are inextricably linked and the Respondent No.18 affairs have direct consequences in the affairs of the Respondent No.19 Company.

19. It is further averred in the rejoinder that while it is true that the sole objective of the Respondent No.18 Company is to hold and manage its 67.89% stake in Respondent No.19 Company, it is fallacious to claim that Respondent No.18 Company through Gupta family *de-facto* controls the affairs and decisions in the Respondent No.19 Company.

20. It is further averred in the Rejoinder that Respondent No.19 is a public listed company limited by shares and not a wholly owned subsidiary of Respondent No.18. Therefore, it is wrong to contend that Respondent No.19 is owned or controlled by Gupta Family. Moreover, the public shareholding in Respondent No.19 Company is almost 30% of the entire shareholding and besides the Gupta Family Directors, the board of Respondent No.19 comprises of 18 directors out of which 9 are independent directors, and each endowed with independent voting rights. Any decision made at the board level is determined by the majority and collective will of the board of the Directors and therefore by no stretch of imagination can a composite petition be filed against both Respondents No.18 and 19 on the wholly wrong premise that

Respondent No.18 controls the affairs of Respondent No.19 or their affairs are inextricably linked.

21. It is further stated in the Rejoinder that both Respondent No.18 and 19 are distinct legal entities and the contention of petitioners/non-applicants for lifting of the corporate veil to unveil a supposed relationship between the two companies lacks any valid basis or substance.

22. It is stated that the attempt made by the petitioner/non-applicant to obfuscate this clear distinction is a misrepresentation of the facts. The legal distinction between the two entities remains intact and there are no grounds to eradicate this difference and the principle of lifting of the corporate veil is only applicable in exceptional cases where compelling circumstances exist.

23. It is also stated in the Rejoinder that any decision taken within the board of Respondent No.18 is in accordance with the majority will of its Board of Directors and such decisions derive their legitimacy from the articles of association and relevant provisions of the Act. Since both the companies are different legal entities and therefore, the decisions taken by the Board of Directors of Respondent No.18 remain confined

to its own affairs and cannot intrude upon the independent operations and decision making process of Respondent No.19.

24. It has therefore been averred in the rejoinder that the resolution passed by the Respondent No.18 on 14th July, 2023 to authorize a representative to attend general meetings of its subsidiary under Section 113 of the Act is separate and distinct from the purported authority derived from Article 4.1 of the Articles of Association of Respondent No.18.

25. It is also stated that the shareholding of 16.18% of the Petitioners in Respondent No.18 will not translate into 11.29% shareholding in Respondent No.19 indirectly and such a contention raised by the petitioners/non-applicant lacks any substantial legal basis.

SUBMISSIONS MADE ON BEHALF OF THE APPLICANT

26. It was contended by the Ld. Senior Counsels representing the applicant that the cumulative shareholding of the Petitioners No.1, 2 and 3 in Respondent No.19 company is merely 0.29% which is far below the threshold of 10% shareholding required under Section 244 (1) (a) of the Companies Act for the purpose of instituting petition under section 241 and 242 of the Companies Act, 2013. Therefore, it is contended in the

written submission filed by the Applicant that the Petitioners are statutorily barred to file the Company Petition raising an issue of alleged oppression inter alia in Respondent No. 19 for not having the minimum threshold as mandated under section 244 of the Act. They also contended that there is a statutory bar in filling a composite petition under section 241-242.

27. The Ld. Senior Counsels representing the applicant has relied upon a judgment cited as ***Syed Musharraf Mehdi and Another vs. Frontline Soft Ltd. and others- (2007) 135 Comp Cas 280 (CLB) : (2007) 78 CLA 52*** wherein para 7 the Company Law Board observed as under:-

> *"7. Thus, this decision of the apex court does not go in aid of the petitioners. In this connection beneficial reference is invited to Mahendra Singh Rathore v. Rajput Hotel and Resorts P. Ltd., [1998] 1 Comp LJ 160 (CLB) wherein it has been held that the applicant, while applying under section 397/398 must hold the requisite number of shares at the time of filing the petition. While this is the legal position, the petition would be dismissed even if his shareholding is increased subsequent to filing of the application. Therefore, the plea of the petitioners that they will be in a position to muster the requisite percentage shareholding subsequent to filing of the present company petition does not at all merit any consideration. The requirement of requisite percentage is vital and go to the root of the matter, which cannot be broken and overlooked as envisaged in Pratap Singh v. Krishna Gupta, AIR*

1956 SC 140, and therefore, cannot be directory. The nature of the provisions of section 399(1) is not procedural, but it is a part of substantive law and therefore, applying the principles enunciated by the Supreme Court in Shaikh Salim Haji Abdul Khayumsab v. Kumar, [2006] 1 ALT 1, the requirements of section 399(1) should be construed as mandatory. Section 399(1) is not a procedural provision. Furthermore, the word "shall" used therein is considered to be imperative in nature and it has to be interpreted as mandatory having regard to the text and context of the statute, irrespective of the fact whether any prejudice is caused. This is all the more evident from sub-section (4) of section 399, which empowers the Central Government to exercise its discretion to permit a lesser number of members to file an application than that prescribed by sub-section (1) of section 399. A combined reading of sub-sections (1) and (4) would show that the Company Law Board has no option but to reject the application made under section 397/398, not being supported by the requisite number of members as at the time of filing the application before the Company Law Board. Thus, the requirements of section 399(1), being statutory are not directory in nature, breach of which cannot be waived by the Company Law Board. This being the settled legal position, the present company petition, not satisfying the mandatory requirements of section 399(1) is liable to be dismissed, in which case there is no need to elaborate and go into the other procedural and technical defects contained therein. In this background, the decision in Dove Investments P. Ltd. v. Gujarat Industrial Inv. Corporation Ltd., [2006] 129 Comp Cas 929: (2006) 2 SCC 619: AIR 2006 SC 1454 and Sterling Holiday Resort (India) Ltd. v. Gujarat Industrial Inv. Corporation, [2006] 129 Comp Cas 929: (2006) 2 SCC 619: AIR 2006 SC 1454, holding that procedural provisions are not mandatory is inapplicable to the facts of the present case. Similarly, the decisions in (a) Shreenath v. Rajesh, (1998) 4 SCC 543: AIR 1998 SC 1827, and (b) Delhi Development Authority v. Skipper Construction Co. P. Ltd., (1996) 4 SCC 622:

AIR 1996 SC 2005: [1997] 89 Comp Cas 362, having been rendered in the context of interpreting procedural law and procedural/technical requirements will be of little assistance to the petitioners. For these reasons, the petitioners do not possess the requisite locus standi to maintain the petition. Accordingly, the company petition is dismissed without considering its merits. The petitioners are at liberty to initiate appropriate action under the relevant provisions of the Act, redressing their grievances, if so advised. Accordingly, the unnumbered petition stands disposed of."

28. The Ld. Senior Counsels representing the applicant further argued that the Company Petition is being filed admittedly in a nature of a composite petition against Respondents alleging oppression in two companies i.e. Respondent No. 18 and 19 on the averment that Respondent No. 19 is a subsidiary of Respondent No. 18 and the Petitioners hold 16.8% shares in Respondent No.18 and by virtue thereof can also include the affairs of Respondent 19 in the affairs Respondent no. 18, i.e. the holding company. As per them, this legal position is not tenable in facts and circumstances of the present case and also on the basis of the case laws relied upon by the Petitioners because such view is not supported by the new regime which has come into force under section 241-242 read with 244 of the Companies Act, 2013. In support of their above argument that under new regime, filing of composite

petition u/s 241-242 against two or more companies is not permitted, they relied upon the judgment of the National Company Law Appellate Tribunal, New Delhi cited as ***2017 SCC Online NCLAT 112 (The Punjab Produce & Trading Co. Pvt. Ltd. vs. Pilani Investments & Corporation Ltd. & Ors.)***. The relevant part of the para 27, 28, 29, 30, 31 and 32 are reproduced below.

> *".....*
>
> *27. In "Vodafone International Holdings BV v. Union of India reported in (2012) 6 SCC 613" the Hon'ble Supreme Court has laid down the principle that the right of a shareholder may assume the character of a controlling interest where the extent of the shareholding enables the shareholder to control the management. Shares, and the rights which emanate from them, flow together and cannot be dissected. Therefore, control and management is a facet of the holding of shares.*
>
> *28. As per the averment in the petition, the appellant has not claimed that the 9th respondent is a subsidiary of 1st respondent. On the date of presentation of the petition, the 1st respondent company was a single largest shareholder of the 9th respondent company. But in spite of these facts, the 1st respondent company has no controlling power over the affairs of the 9th respondent company.*
>
> *29. The Tribunal rightly held that the holding company and subsidiary company remain distinct legal entities and even if appellant/petition has a cause of action under Sections 397 and 398 against 1st respondent company, and they qualified the criteria of Section 399 of the Companies Act, even on that basis, the appellant, will not get any right to question 'oppression and mismanagement' against the 9th respondent*

company, as the appellant does not possess the requisite qualification for bringing a petition against the 9th respondent company.

30. Therefore, once the appellant has no right to question the 'oppression and mismanagement' of the 9th respondent company, it cannot raise any question of act of 'oppression and mismanagement' qua the 9th respondent company in so far it relates to 10th, 11th, 12th and 13th respondents are concerned, who were not the shareholders of the 1st respondent company but shareholders of the 9th respondent company.

31. If the action of the other respondents are held to be oppressive against the appellant or mismanagement of the 1st respondent company that will not render any decision taken in another company i.e. the 9th respondent company as void or illegal.

32. In view of the aforesaid ground, the Tribunal having directed to delete the 9th, 10th, 11th, 12th and 13th respondents from arena of the respondents, we find no ground to interfere with impugned orders all dated 23rd December 2016. In absence of any merit, the appeals are dismissed. However, in the facts and circumstances of the case there shall be no order as to cost."

29. It has been further pointed out by them that the above decision of the NCLAT has been upheld by the Hon'ble Supreme Court of India vide Order dated 24.04.2017in Punjab Produce & Trading Co. Pvt. Ltd. Vs Pilani Investments & Corporations Ltd. & Ors. (Civil Appeal No. 5239-5241 of 2017).

30. The Ld. Senior Counsels representing the applicant further relied upon the judgment passed before the Company Law

Board, Mumbai Bench cited as ***2011 SCC Online CLB 80 (M/s. Alibante Developments Ltd. (Cyprus) vs. M/s. Matheran Realty Private Limited and others).*** The relevant part reproduced as under:-

> *"20……..*
>
> *…….Pursuant to allotment the R1, R8 and R3 have entered into share subscription agreement whereby the R3 was allotted 476 class 'A' shares and 19,99,524 class 'B' shares which constitutes 32.25% and the promoter i.e. R1's holding goes down to 67.75% in R8. The question arises whether the petitioner is entitled to be offered shares prior to allotment to R3. It is an admitted fact that the petitioner is not a shareholder of R8 and need not be uttered any shares to them and the petition is not maintainable against the R8 in which he is not a shareholder. The counsel for the respondent No. 8 also contended that to file a petition under Sec. 397-398, right as shareholder must be affected and relied upon the proposition of the Apex Court in the matter of Shanti Prasad Jain v. Kalinga Tubes. The Apex Court has held that "oppression involved at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as shareholder." As stated above the petitioner is not a shareholder in R8 and no need to offer any shaves to them. A beneficial reference is drawn from the judgement of the Division Bench of Madras High Court decided in LPA Nos. 129 to 131 of 2002 dated 7.9.2011 in the matter of Amalgamations Limited v. Shankar Sundaram, at para 29 wherein the Hon'ble High Court held that "therefore, when a person is not a member of a Company, his alleging oppression and invoking the provisions of Sec. 397 against that Company does not arise. Therefore, a shareholder of a holding company cannot complain of oppression by a subsidiary in which he is not a member as there is not legal relation between him and the subsidiary company." I follow*

the judgement and it is fully applicable to the facts of the present case. The R8 is a separate entity and its shareholding is also different. By allotting shares to R3 there is no dilution of economic shareholding of the petitioner as alleged and the respondents have acted for the benefit of the Company. Accordingly the issue is answered.

……..”

31. The Ld. Senior Counsels further argued that in the present case, the maintainability of the Company Petition is a preliminary issue, and it must be heard and decided at the threshold. In support, they relied upon the judgment of the Hon’ble Supreme Court of India cited as ***Smt. Ujjam Bai vs. State of Uttar Pradesh 1962 SCC Online SC 8.*** The relevant part of para 19 of the judgement is reproduced below.

“….

19. …..The jurisdiction of an inferior tribunal may depends upon the fulfilment of some condition precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the tribunal has to try and the determination whether it exists or not is logically prior to the determination of the actual question which the tribunal has to try. The tribunal must itself decide as to the collateral fact when, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not. There may be tribunals which, by virtue of legislation constituting them, have the power to determine finally the preliminary facts on winch the further exercise of

their jurisdiction depends; but, subject to that an inferior tribunal cannot, by a wrong decision with regard to a collateral fact, give itself a jurisdiction which it would not otherwise possess." (Halsbury's. Laws of England, 3rd Edn. Vol. 11 page 59)……."

SUBMISSION MADE ON BEHALF OF PETITIONER/NON-APPLICANT)

32. On the contrary, the Ld. Senior Counsels representing the petitioners/non-applicants argued that a composite oppression and mismanagement petition is maintainable against both holding and subsidiary companies. They also stressed taking a view contrary to the Applicant that for the petition to be maintainable in terms of Section 244 of the Companies Act, 2013, it is not necessary for the petitioner to hold any direct shareholding in the subsidiary company if he/she holds more than 10% of the issued share capital in the holding company. It is contended that relief under section 397 and 398 (equivalent to the present sections 241-241 in the new regime of the Companies Act, 2013) can be sought against subsidiary companies as well, as if the the corporate veil is lifted, and then the holding company and subsidiaries will be regarded as one and the same for the purpose of granting relief. In support, they relied upon the judgment passed by the Hon'ble Supreme

Court of India on 27.03.2017 titled as ***Shankar Sundaram vs. Amalgamations Ltd. and Ors- Civil Appeal Nos.4574-4575/2017***. The relevant part is reproduced below.

> *".....*
>
> *Further, the subsidiary companies against whom the appellant has not made any allegations in the Petition and no relief has been sought for against need not be added as parties. However, Respondent Nos. 8, 9, 13, 14, 16, 17 and 18 and Respondent Nos. 4 and 7 should be added as parties and the appellant shall be at liberty to argue on the grounds in the said Petition and the prayer regarding the alleged mis-management of the companies in question in case the corporate veil is lifted. The Section 397/398 Petition is maintainable as the appellant holds 10% of the share capital in the holding company. The High Court is not correct in saying that the subsidiary companies above mentioned should be struck from the array of parties as, if the corporate veil is lifted, the holding and subsidiaries companies will be regarded as one and the same for the purpose of granting relief in the said Petition. The High Court Judgment is upheld insofar as it treats the Company Petition as being under Section 397/398 and not Section 235 of the Companies Act, 1956.*
>
> *We further make it clear that the National Company Law Tribunal shall deal with and decide the case independently and in accordance with law, without being influenced by any observation made by the High Court in the matter.*
>
> *....."*

-Sd- -Sd-

33. The Ld. Sr. Counsels appearing for the petitioners/non-applicants further presented before us that in an oppression and mismanagement petition filed under section 397 and 398 of the Companies Act, 1956, the Court has the power to direct investigation not only into the affairs of the company against whom the proceedings have been initiated but also the other entity, be it a subsidiary or holding company. In support raising this arguments , they relied upon the judgment passed by the Hon'ble High Court of Calcutta on 14.10.1999 tilted as **"*Bajarang Prasad Jalan and another vs. Raigarh Jute and Textile Mills Ltd. and others 1999 SCC Online Cal 534*".** The relevant part of the para 44, 45 and 47 are reproduced below.

> *"……*
>
> *44. In the instant case, the application of respondent No. 2 (Raigarh Trading Co.) for dismissal of the instant application as against respondent No. 2 (RTC) was allowed by the learned single judge in part by rejecting some of the reliefs claimed by the petitioner against RTC. Being aggrieved, against the said judgment, the petitioner preferred an appeal being C.A. No. 207 of 1990, which was disposed of by an order dated September 24, 1992, by a Division Bench of this court and therein, it was observed as under:*

"It, therefore, appears that in a proceeding under sections 397 and 398, the court has got wide powers including the power directing investigation not only into the affairs of the company against whom the proceedings has been initiated but also the other entity, be it a subsidiary or a holding company."

45. Mr. Sen, however, referred to the observations of the Division Bench judgment which are to the following effect:

"Whether the appellants could press for the reliefs claimed against respondent No. 2 in the context of averments made in the petition are in our view not strict questions of law not being dependent on facts and in deciding such question as preliminary issue, the court cannot dispose of the same without thorough investigation into the facts as pleaded in the petition."

.....

47. We are of the considered view that the observation of the Division Bench to the effect that in proceeding under sections 397 and 398 the power of the court includes the power directing investigation not only into the affairs of the company against whom proceeding has been initiated but also other entity, be it a subsidiary or a holding company would conclude the matter as to the jurisdiction of this court. Being a judgment of a co-ordinate jurisdiction of this High Court and the observations having been made in relation to this very proceeding, we are not inclined to take any other or different view of the matter.

.... "

34. The Ld. Sr. Counsels appearing for the petitioners/non-applicants have canvassed before us that for the purpose of section 398 of the Companies Act, the affairs of a

corporate would also include the affairs of its departments or branches. The Companies Act treat the holding and its subsidiaries as a unified group, rather than as a separate personified institutions and various provisions shed light on the meaning and nature of section 398. Raising these contentions, they relied upon the judgment passed by the Hon'ble Allahabad High Court on 14.02.1962 titled as **"*Life Insurance Corporation of India vs. Hari Das Mundhra and others 1962 SCC Online All 252.*"** The relevant part of the judgement are reproduced below.

> *".....*
>
> *7. A holding company and a subsidiary company are separate legal entities. Broadly speaking, their affairs are separate. But the very expressions "holding company" and "subsidiary company" denote close connection between the affairs of two such companies. For certain purposes, affairs of a subsidiary have been treated as affairs of the corresponding holding company (see section 214(2), section 318(3)(e) and section 338 of the Act). It is not necessary to decide the larger question whether in every case brought under sections 397 and 398 of the Act, the court is entitled to make an inquiry into the affairs of the subsidiary company. It will be sufficient to consider whether such a course is permissible in the present case.*
>
> *.....*
>
> *32. Having cleared the minor hurdles we now reach the citadel of controversy whether the court should in considering the complaint of a member of the Corporation about mismanagement of the affairs of*

the Corporation by and misfeasance of, its directors, confine the probe strictly to the affairs of the Corporation or may also scrutinise the interfused affairs of the Corporation and the company, a subsidiary of it. Learned counsel for H.D. Mundhra and T.D. Mundhra, intrenching in the traditional notion of separate corporate personality, has stoutly supported the first view; but learned counsel for the appellant and the Central Government, taking their stand on business reality, have vigorously pressed for the second view.

.....

40. It may be observed that in the ultimate sense the investments of the company were made from the pocket of the Corporation.

.....

59. The case of Merchandise Transport Ltd. v. British Transport Commission [1961] 3 All E.R. 495, 512.] goes a long way in support of my line of approach. There a company, who manufactured furniture and owned vans for transport of new furniture on C-licence, transferred the vans to its wholly owned subsidiary, who applied to use the vans on A-licence for transport of furniture of the parent company and on return goods of others. On C-licence vans had to return empty. The licensing authority refused A-licence for it thought that the parent company was manipulating to gain illegitimate economic advantage for itself through the guise of its subsidiary. The appellate tribunal granted licence on the view that the two companies were different persons. Reversing the order of the tribunal, Devlin J. said:

"The fact that two persons are separate in law does not mean that one may not be under the control of the other to such an extent that together they constitute one commercial unit. It may be a case of parent and subsidiary; or it may be a case in which one man, though nominally independent, is in truth the instrument of another; or it may be a case in

which a man has simply put his vehicles in the name of his wife. Whenever a licensing authority is satisfied that sort of relationship exists and that the dominant party is using it to obtain contrary to the intent of the Act an advantage which he would not otherwise get, he is entitled if not bound, to exercise his discretion so as to ensure that the scheme of the Act is complied with in the spirit as well as in the letter."

……

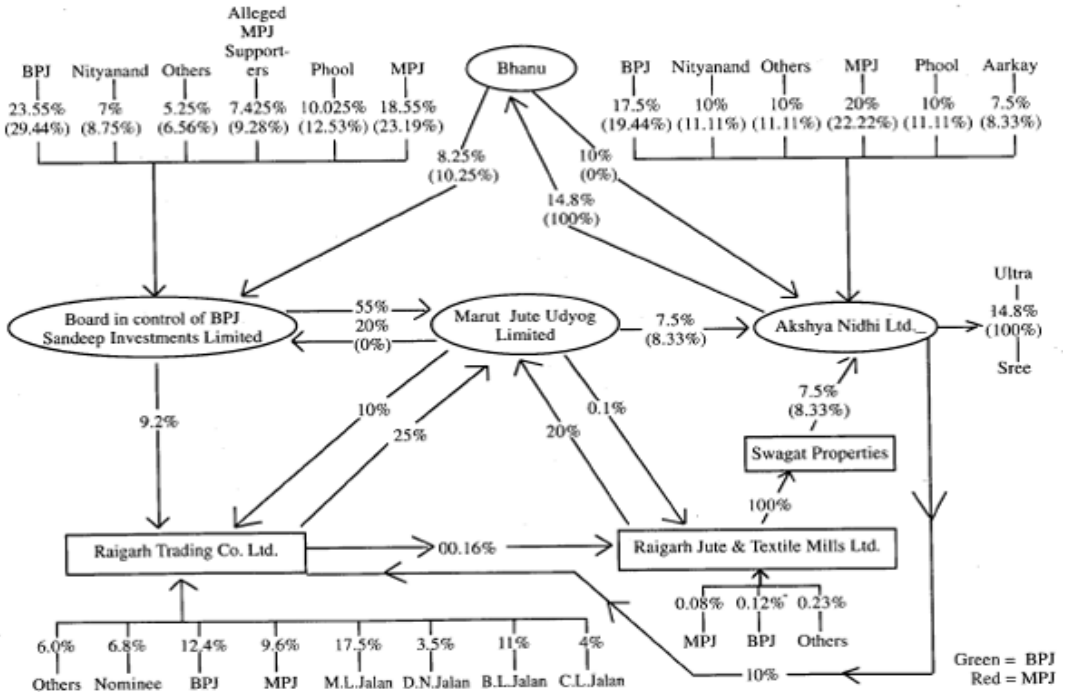
62. In John M. Taylor v. Standard Gas and Electric Company [83 L. Ed. 669.], it was said that

"the doctrine of corporate entity… will not be regarded when so to do would work fraud or injustice."

35. The Ld. Sr. Counsel representing the Petitioner/Non-Applicant further relied upon the judgment cited as ***Bajrang Prasad Jalan and Ors. vs. Mahabir Prasad Jalan and Ors. AIR 1999 Cal 156*** in support of their contention that for the purpose of considering a matter of oppression, the action on the part of the majority shareholders of a holding company may also be applied in the case of the subsidiary companies as holding company hold majority shares in subsidiary companies particularly when both the holding company and the subsidiaries are family companies and for that limited purpose corporate

veil can be lifted. The relevant part of the para 17, 21, 22, 27, 55 and 84 are reproduced below.

> *".....*
>
> *17. The present application was filed on 12th September, 1990. Affidavits thereafter were exchanged. During the course of hearing written submissions have also been presented before this Court. As in the other two cases a preliminary objection had been taken as regard maintainability of the application, inter alia on the ground that as a suit having been filed, the instant application is not maintainable, and further the petitioners having no share in any companies other than Akshay Nidhi Ltd. this application is not maintainable as against the said Companies.*
>
> *.....*
>
> *21. There cannot be any doubt that the Applicant (BPS) and his group are minority shareholders. However, the companies are so inter-linked and interwoven, there cannot be any doubt that one company had connection with the other subsidiary companies of Akshay Nidhi Ltd., as would be evident from the following chart:—*



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22. Furthermore, the fact as noticed hereinbefore, clearly shows that behind all the aforementioned companies individuals have their hand which allegedly were manoeuvring the affairs of the company in such a manner so as to oust others from the affairs of the company. The rights, expectations and obligations of the members of family, their nominees and relations has to be considered in the backdrop of events and it cannot be said that even if fact exists, the veil of the company cannot be lifted. Exercise of right under Sections 397 and 398 of the Companies Act comes within the purview of the equitable jurisdiction of the company Court. There can hardly be any dispute that in view of the structures of share the respondent Nos. 2 to 5 in truth and substance and subsidiary companies of Akshay Nidhi Ltd. which is thus, a holding Company and thus in such a situation, the Court cannot be a helpless spectator in looking behind the corporate veil so as to disentitle itself from considering as to whether in fact there had been mismanagement of oppression by one group or the other. There is another aspect of the matter. Provisions of Section 397 and 398 are taken recourse to in a piquant situation where two groups running the company are at logger heads so that it is impossible for them to join hands together and run the affairs of the company. The Court in such a situation would exercise its equitable jurisdiction and may grant appropriate reliefs.

....

27. It is also a trite law that over the affairs of company in question its entire affairs including those of the subsidiary companies can also be looked into.

....

55. In Scottish Co-operative Wholesale Society Ltd. v. Meyer, reported in 1958 (3) All ER 66 also it has been held that when a Court is in seisin of a matter under Section 397/398 of the Companies Act it can take notice of the affairs of the subsidiary companies also.

…

84. However, in Hungerfold Investment Trust Ltd., Re v. Turner Morrison and Co. Ltd., reported in 1972 (1) ILR Cal. 286, a division bench of this Court referring to the provision of Sections 4, 42, 212, 213, 214(2), 235, 295(2)(b), 370 and 372 of the Companies Act held that the said provisions are clear indication that although holding companies and subsidiary companies are treated to be separates but there are many restrictions and qualifications in relation thereto. But there cannot be any doubt whatsoever that for the purpose considering a matter of oppression, the action on the part of the majority shareholders of a holding company may also be applied in the case of the subsidiary companies as holding companies hold majority shares in the subsidiary companies particularly when both holding company and subsidiaries are family companies and for that limited purpose the corporate veil can be lifted. In the decision itself it has been held:—

> *"The principles indicate that the wide powers of Ss. 397 and 398 of the Companies Act, 1956 given to the Court should no doubt be used in appropriate cases, but they must be used with caution and not to substitute the company by the Court management for every difference of opinion between the shareholders."*

36. The Ld. Sr. Counsel representing the petitioner/non-applicant further relied upon the judgment cited as ***Life Insurance Corporation of India vs. Escort Ltd. and Ors. (1986) 1 Supreme Court Cases 264*** while submitting that the corporate veil can be lifted where associated companies are inextricably connected so as to be, part of one concern**.** The relevant part of the judgement is reproduced below.

"....

90. It was submitted that the thirteen Caparo companies were thirteen companies in name only; they were but one and that one was an individual, Mr Swraj Paul. One had only to pierce the corporate veil to discover Mr Swraj Paul lurking behind. It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin, or each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning M.R. in Wallersteiner v. Moir [(1974) 3 All ER 217] and the decisions of this Court in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar [AIR 1965 SC 40 : (1964) 6 SCR 885] , CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] and Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] — While it is firmly established ever since Salomon v. A. Salomon & Co. Ltd. [1897 AC 22] was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances Pennington in his Company Law (4th Edn.) states:

"Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means

to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard text hooks on corporation tax, income tax, capital gains tax and capital transfer tax.

The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members."

In Palmer's Company Law (23rd Edn.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Edn.), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In Tata Engineering and Locomotive Co. Ltd. [AIR 1965 SC 40 : (1964) 6 SCR 885] the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where

a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.

....."

37. The Ld. Sr. Counsels representing the petitioners/non-applicants further argued relying upon the judgment cited as ***(1988) 4 Supreme Court Cases 59 (State of U.P. and others vs. Renusagar Power Co. and Ors.)*** that it is a settled law that when affairs of two companies i.e, holding and subsidiary are inextricably linked up together, the corporate veil must be pierced and the two companies will be treated as one concern**.** The relevant part of the judgement is reproduced below.

".....

66. It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the

condition of industrial licence of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of takeover of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order the profits of Renusagar have been treated as the profits of Hindalco.

67. In the aforesaid view of the matter we are of the opinion that the corporate veil should be lifted and Hindalco and Renusagar be treated as one concern and Renusagar's power plant must be treated as the own source of generation of Hindalco and should be liable to duty on that basis. In the premises the consumption of such energy by Hindalco will fall under Section 3(1)(c) of the Act. The learned Additional Advocate-General for the State relied on several decisions, some of which have been noted.

68. The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon case [1897 AC 22] still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji in the New Jurisprudence [Tagore Law Lectures, p. 183].

….”

Citing the judgment in case of ***Arcelor Mittal India Private Limited vs Satish Kumar Gupta (2019) 2 SCC 1***; it is also argued by the Ld. Counsels of Petitioners/Non-Applicants that in certain cases, there is general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the common economic unit of the whole group. It is held in this judgment that "*Further, this principle is applied even to a group companies, so that one is able to look at the economic entity of the group as a whole*"

38. After relying on the above case laws, it is argued before us that all the above case laws, make it clear that-

a) the court has power to lift/pierce the corporate veil in vide veriety of cases, and

b) the principle itself is flexible dynamic and has been applied in a plethora of cases with differing facts , circumstances and issues of law

39. The Ld. Senior Counsels by drawing the above conclusion on the basis of the legal principles derived by them from the case laws cited by them , submitted further that the captioned company petition is a fit case for lifting/piercing the corporate

veil to understand the true nature of the JMNIPL and JPL relationship. In order to show the relationship between these two Respondent Companies i.e. Respondent No. 18 and 19. , following facts of the case have been put up before us :-

a. JMNIPL and JPL are family run group companies.

b. JMNIPL has no business activity except holding and managing its stake in JPL.

c. JMNIPL's business, since 2011, has been to manage its shareholding in JPL. The affairs of JMNIPL and JPL are inextricably linked as JMNIPL (as the holding company) carries on no other trade as a company and only controls JPL through majority shareholding. It can be stated that JMNIPL functions as an extension of the Gupta Family with regard to its controlling interest in JPL.

d. The board of JMNIPL consists of six directors who are all members of the Gupta Family. The same six directors also sit as directors on the board of JPL.

e. The Gupta Family, which holds 100% shareholding in JMNIPL, has its 9 nominees as directors on the board of JPL, 8 being family members and 1 being an employee director. The board of JPL consists of a total 18 directors. As per Article 111 and 113 of the Articles of Association ("AoA") of JPL the Chairman and the Managing Director of JPL shall be nominees of the Gupta Family. Further, as per Article 111 of the AoA of JPL, Chairman shall have a casting vote at the board meetings, shareholder meetings and any committee meetings where he presides. Therefore, it is evident that Gupta Family (through JMNIPL) is not only the largest shareholder of JPL (67.97%) but it also exercises extensive control over the board of JPL.

f. Before 2011, the Gupta Family members were holding direct shareholding in JPL. In 2011, pursuant

to the entry of a foreign investor and to give effect to the transaction the shareholding of the members of Gupta Family was acquired by JMNIPL. JMNIPL was incorporated in 1990, under the name of P.C. Overseas Private Limited for carrying out export-import business, however, the business was never started, and it lay as a defunct company until 2011. In 2011, new AoA were adopted which made it clear that the only business of JMNIPL was to hold and manage the shareholding of JPL.

g. The consolidation of shareholding in JMNIPL to give effect to the obligation on the Gupta Family to act as a single unit, as per Clause 3.A (iii) of the Guidelines for Publication of Newspapers and Periodicals dealing with News and Current Affairs and Publication of Facsimile Additions of Foreign Newspaper issued by the Ministry of Information and Broadcasting dated 30.03.2006. This further shows the intention of the Gupta Family to ensure that JMNIPL functions as an extension of the Gupta Family in managing the latter's stake in JPL.

40. In order to show the control of Gupta Family in the affairs of JPL through their indirect share holding in that company at present, the Ld. Sr. Counsel representing the Petitioners/ Non-Applicants has referred to the approval dated 02.12.2022 granted by the Ministry of Information and Broadcasting, Government of India, which is attached at page 393 (Volume III) of the petition, to the effect that a request letter dated 16.06.2022 was made to the said Ministry to grant its approval in relation to change in the shareholding of the largest Indian shareholder of Jagran Prakashan Limited (JPL)

i.e. the Respondent No.19 Company. It was submitted that in the request letter dated 16.06.2022, the largest Indian shareholder of JPL in terms of the Ministry of Information and Broadcasting guidelines, the Respondent No.18 has approached with the request that the Respondent No.18 be allowed to transfer JPL shareholding held by it to its shareholders as per law as it was originally held by them, so that they can directly exercise control as it was earlier being done and thus, it is quite clear that at present they have indirect control on JPL through JMNIPL and therefore, holding of 11.29% share in JPL by the petitioners as averred in the petition has been justified by the Ld. Sr. Counsels representing Petitioners/Non-Applicants.

41. It has been further mentioned in the request letter that the Respondent No.18 has no business activity except holding and managing its 67.97% of stake in JPL i.e. the Respondent No.19 Company. It was further submitted that as per the guidelines dated 31.03.2006, attached as Annexure P-11 at page 371, the transfer of shareholding is provided that in case of a combination of such entities, each of the parties shall have entered into a legally binding agreement to act as a

single unit in managing the matters of the new entity and thus, both JMNIPL and JPL working as single economic unit, has also been justified by the Ld. Sr. Counsel as argued by them during hearing.

42. The Ld. Sr. Counsels representing the Applicants; however, deny that no conclusive inference can be drawn by use of the term single unit in the guidelines dated 31.03.2006, as the intent of the guidelines is to provide for a mechanism for such a transfer of the shareholding relating to the media and publications by a Largest Indian Shareholder, which will not make Respondent No.18 and 19 as single unit for the purpose of maintainability of the present petition under the Companies Act.

43. The Ld. Sr. Counsel representing the Petitioners also relied upon certain provisions of the Articles of Association of the Respondent No.18 Company, wherein according to him, there has been an overwhelming reference with regard to the conduct and management of affairs of the Respondent No.19 Company by the Respondent No.18 Company. Some of the relevant clauses of the Articles of Association of the Respondent No.18 Company relied upon, are as under :-

“……

“Controlling”, Controlled by' or "Control" means, with respect to any person; (i) the ownership of more than 50%· (fifty percent) of the equity shares or other voting securities of such entity; or (ii) the possession of the power to direct the management and policies of such entity; or (iii) the power to appoint a majority or the directors, managers, partners or other individuals exercising similar authority with respect to such Person by virtue of ownership of voting securities or management or contract or in any other manner, whether directly or indirect, including through one or more other entities; and the terms “Common Control” shall be construed accordingly;

“Investor” means Blackstone GPV Capital Partners (Mauritius) V-Q Ltd., a company incorporated under the laws of Mauritius and having its principal place of business at Level 6, One Cathedral Square, Jules Koenig Street, Port Louis, Republic of Mauritius;

“Jagran” means Jagran Prakashan Limited, a company incorporated under the laws of India and having its registered office at 2, Sarvodaya Nagar, Kanpur, Uttar Pradesh, India;

“Operating Business” means the print media, advertising and promotional business of Jagran, including (i) printing and publishing a Hindi daily newspaper under the name and title “Dainik Jagran” from various centers spread over various States in India, with several sub-editions excluding publication of Dainik Jagran in State of Madhya Pradesh and District Jhansi, (ii) printing and publishing I-Next, a bilingual daily; (iii) printing and publishing City Plus, an English weekly; (iv) printing and publishing a various magazines and journals etc; (v) outdoor advertising; (vi)

promotional marketing; (vii) event management and (viii) internet and mobile phone based businesses;

"Promoters" mean, Mr. Mahendra Mohan Gupta, Mr. Sanjay Gupta, Mr. Dhirendra Mohan Gupta, Mr. Yogendra Mohan Gupta, Mr. Devendra Mohan Gupta, Mr. Sandeep Gupta, Mrs. Madhu Gupta, Mr. Devesh Gupta, Mr. Tarun Gupta, Mrs. Vijaya Gupta, Mr. Sunil Gupta, Mr. Sameer Gupta, Mrs. Raj Gupta, Mr. Bharat Gupta, Mr. Rahul Gupta, Mrs. Rajni Gupta and Mr. Siddhartha Gupta, collectively;

4. POWER OF ATTORNEY

4.1 Each of the Promoters undertakes that Mr. Mahendra Mohan Gupta has been irrevocably appointed as agent and attorney-in-fact for each such Promoter, for and on behalf of such Promoter, to agree and execute any amendments to the provisions of these Articles, to give and receive notices and communications to agree to negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to these Articles, and to take or exercise all rights of the Promoters under these Articles. It is clarified that the Promoters shall be acting as a 'single unit' in the exercise of their rights under these Articles, and therefore all such rights of the promoters shall be exercised by Mr. Mahendra Mohan Gupta only and Mr. Mahendra Mohan Gupta has been duly authorized to exercise such rights on behalf of each such Promoter. All the Promoters shall be jointly and severally liable for all obligations of the Promoters pursuant to these Articles.

10.3 Chairman

10.3.1. A Promoter Director shall always be the non-executive chairman of the Board ("Chairman")

Mr. Mahendra Mohan Gupta is nominated by the promoters as first Chairman.

10.3.2. The Chairman shall not have a second or casting vote.

10.3.3. The compensation of the Chairman shall be determined by the Board as it may deem fit.**13 NON-COMPETE AND NON-SOLICITATION**

13.1 Restriction

Jagran or its subsidiaries shall be the exclusive vehicle through which the Promoters, the Company and/or their Affiliates shall pursue the Operating Business as may be conducted as of July 21, 2011 and the Company or its subsidiaries shall be the exclusive vehicle through which the Promoters and/or their Affiliates shall pursue the Business. Further, the promoters shall not, and shall cause their Affiliates not to, directly, indirectly, or beneficially, invest in or participate in or be financially engaged, concerned with or interested in any undertaking or in the management or operations of any Person (including, but not limited to, any joint venture, partnership or other arrangement of whatsoever nature) engaged in business operations or activities similar to be business operations or activities conducted by Jagran or the Company or its Subsidiaries or in any other manner competes with Jagran or the Company, other than a passive shareholding of less than 5% (five percent) in a body corporate.

14.3 Insurance

The Company shall, and shall ensure that each of its Subsidiaries shall, keep insured at all times and maintain insurance policies in a sufficient amount and with such coverage as are generally maintained by responsible companies in the same industry. Such policies shall be sufficient to cover liabilities in relation to, fire, acts of God that the facilities of the Company

could be subject to and such other liabilities which the Company and its Subsidiaries may, in the reasonable opinion of the Investor, be considered at risk in course of its businesses. The Promoters shall cause the Company and the Company shall take out directors and officers insurance for all investor Directors (and their alternates) in a sufficient amount and with such coverage as is generally maintained by responsible companies in the same industry.

14.4 Related party Transactions

14.1.2 The Promoters and the company shall ensure that any and all agreements, contracts or similar arrangements between Jagran and the Promoters o r any other Jagran Related Party (each, a **"Jagran Related party Transaction"**) shall; (i) be on an arms length basis, (ii) not be unlawful or illegal, and (iii) be as per the prevalent market standards and practices for industries engaged in a business similar or identical to the Operating Business. The Promoters shall ensure that all material information relating to any such Jagran Related Party Transactions exceeding Rs. 100,000,000 (Rupees One hundred million) proposed to be undertaken by Jagran shall be disclosed to the Jagran Board, before any final decision is taken in relation to the transaction.

14.8 <u>Continuous Listing</u>

The Promoters and the Company undertake that Jagran shall remain listed on a recognized stock exchange in India (with nationwide trading terminals). In the event that the public shareholding of Jagran falls below the minimum level of public shareholding as may be required under the

listing Agreement or any other regulations of the SEBI, the Company and the Promoters shall sell such number of Equity Securities and/or Jagran shall issue such number of Equity Securities as required to ensure that Jagran continues to be listed on a recognized stock exchange in India (with nationwide trading terminals).

14.9 <u>Adherence to FIPB Approval</u>

Any dividends received by the Company from Jagran in any Financial year after July 21, 2011 shall, subject to applicable Law and after meeting tax liability if any, be distributed to the shareholders in proportion to their Ownership as soon as reasonably possible after such dividends have been received by the Company and in any event in the same financial year unless the Shareholders mutually decide otherwise.

……."

44. It is contended by the Ld. Sr. Counsel representing the Petitioners/ Non-Applicants that overwhelming reference of Respondent No.19 Company in the Articles of Association of the Respondent No.18 Company would indicate that there is a direct and intrinsic relations between the two companies, and there is no separation of Respondent No.19 from its holding Respondent No.18 Company, is possible. He further submits that such a reference of Respondent No.19 Company in the Articles of Association of Respondent No.18 Company, is in

line with the decision taken by the Gupta family to transfer all of its shares in Respondent No.19 to the Respondent No.18 Company, which has been created as an investment vehicle to have a majority holding in Respondent No.19 Company. All the Gupta family have 100% shareholding in Respondent No.18 Company and any reference of Respondent No.19 cannot be seen and read in isolation to the Respondent No.18 Company, even though about 32% of the shareholding of the Respondent No.19 Company is in public domain being a public limited listed company.

45. The Ld. Sr. Counsel for non-applicants has also relied upon the Articles of Association of Respondent No.19 Company, which are enumerated in Volume II of the petition, where the authorized share capital of the company is stated to be 75 Crore divided into 37 Crore 50 Lakh equity shares of Rs.2/- each with power to increase or reduce the capital of the Company and to divide the shares in the capital for the time being into several classes and overwhelming reference has also made in the Articles of Association of Respondent No.19 Company as regards to the Respondent No.18 Company, as the Gupta family has been jointly defined consisting of the

members of the Gupta family, wherein the Largest Indian Shareholder for the purpose of the print media guidelines shall mean the Gupta family.

46. Some of the clauses of the Articles of Association of Respondent No.19 Company, as relied upon by the Ld. Sr. Counsel on behalf of the Petitioners/ Non-Applicants, are as under :-

"……

(xxiv) ***"Gupta Family"*** means jointly the following Individual Members :

Mr. Yogendra Mohan Gupta S/o Late Mr. Puran Chandra Gupta

Mr. Mahendra Mohan Gupta S/o Late Mr. Puran Chandra Gupta

Mr. Dhirendra Mohan Gupta S/o Late Mr. Puran Chandra Gupta

Mr. Devendra Mohan Gupta S/o Late Mr. Puran Chandra Gupta

Mr. Shailendra Mohan Gupta S/o Late Mr. Puran Chandra Gupta

Mrs. Saroja Gupta, Widow of Late Mr. Narendra Mohan Gupta

Mr. Sanjay Gupta S/o Late Mr. Narendra Mohan Gupta

Mr. Sandeep Gupta S/o Late Mr. Narendra Mohan Gupta

Mrs. Vijaya Gupta W/o Mr.Yogendra Mohan Gupta

Mr. Sunil Gupta S/o Mr. Yogendra Mohan Gupta

Mr. Sameer Gupta S/o Mr. Yogendra Mohan Gupta

Mrs. Pramila Gupta W/o Mr. Mahendra Mohan Gupta

Mr. Shailesh Gupta S/o Mr. Mahendra Mohan Gupta

Mrs. Madhu Gupta W/o Mr. Dhirendra Mohan Gupta

Mr. Devesh Gupta S/o Mr. Dhirendra Mohan Gupta

Mr. Tarun Gupta S/o Mr. Dhirendra Mohan Gupta

Mrs. Raj Gupta W/o Mr. Devendra Mohan Gupta

Mr. Bharat Gupta S/o Mr. Devendra Mohan Gupta

Mr. Rahul Gupta S/o Mr. Devendra Mohan Gupta

Mrs. Rajni Gupta W/o Mr. Shailendra Mohan Gupta

Mr. Siddhartha Gupta S/o Mr. Shailendra Mohan Gupta

(which expression would include the respective legal heirs and legal representatives of the above Individuals) including their Affiliates;

CONSTITUTION OF THE BOARD AND BOARD MEETINGS

97. Constitution of the Board

(i) The Board, exclusive of alternate Directors will be not less than 4 (four) and more than 20 (Twenty) Directors.

(ii) (Deleted in the 34" AGM of the Company held on 26.8.2010)

(iii) So long as the Gupta Family hold not less than 10% of the Paid-Up Capital of the Company Three (3) Directors nominated by the Gupta Family (including the Managing Director) shall be non-retiring Directors and the other Directors shall be liable to retire by rotation.

(iv) Directors shall not be required to hold qualification Shares.

(v) (Deleted in the 34" AGM of the Company held on 26.8.2010)

CHAIRMAN

111. A nominee of the Gupta Family shall be the Chairman of the Board. The Chairman of the Board shall have a second or casting vote at meetings of the Board or any Committee thereof or at the meetings of Shareholders where the Chairman presides.

MANAGING DIRECTOR AND WHOLE-TIME DIRECTORS

113. Subject to Applicable Law and provisions hereof, the Board of Directors may, subject to Section 197A, of the Act appoint one or more Directors as the Managing Director (the "MD") or the Wholetime Director (by whatever name called) for the management of the Company's affairs, for such period and on such terms as they think fit. His/their appointment shall be automatically terminated if he/they cease to be Director/Directors. Their remuneration shall be decided by the Board of Directors from time to time.

The MD shall be a nominee of the Gupta Family. The Company may, in addition to the MD, have other Wholetime working Directors appointed out of the Gupta Family, nominee Directors and/or any other Wholetime Director(s), possessing necessary expertise in operational and financial matters, as the Board may decide from time to time.

The MD shall be responsible for the conduct of the day-to-day management, Business and affairs of the Company. The MD shall undertake the management of the Company and perform all the administrative functions and other duties of the Company necessary for the effective transaction of its Business with full powers to do all acts, matters and things deemed necessary, proper and expedient thereof and generally to exercise all the power and authorities of the Company except such of them as by the Act or any statutory modifications thereof for the time being in force or by these presents are or may be expressly directed to be

exercised by the Company in a General Meeting or by the Board, provided that on subsequent regulation it shall not invalidate any prior act of the MD which would have been valid if such regulation had not been made.

114. The MD shall be delegated by the Board adequate power and authority to undertake, conduct and carry on the day-to-day management, Business and affairs of Company. The MD shall report to and function subject to the supervision, direction and Control of the Board.

……."

47. It is further contended by the Ld. Sr. Counsel representing the Petitioners/ Non-Applicants that the provisions of the clauses of the Articles of Association even create the mandate in a manner that the Chairman of the Board is appointed from amongst the Gupta family as well as the MD shall be a nominee of the Gupta family, and apart from this, the company i.e. (Respondent No.19) may in addition to MD have other whole time working Directors appointed out of the Gupta family. Even though in all, there are 18 Directors, out of which eight are from the Gupta family, one being an employee, and nine being independent Directors, specific reference and mandate cast upon for the purpose of the appointment of the Chairman and the Managing Director in the Board of Directors of the Respondent No.19 Company, is also one of the determining factors showing control of

Respondent No.19 by the Respondent No.18 as well as by the members of the Gupta family in managing the affairs of the Respondent No.19 Company, and therefore, they are inseparable from one another one being a subsidiary of other.

48. By citing above facts of the case, provisions of the Article of Associations of both companies i.e. JMNIPL and JPL and after referring to relevant case laws as discussed in aforesaid paras, relevant provisions of the Companies Act, 2013 have also been referred to us by the Ld. Sr Counsels of the Petitioners/Non-Applicants to strengthen their arguments that JMNIPL is 100% owned and controlled by members of the Gupta Family, which include the Petitioners as well as Respondents No.1-17, JMNIPL, in turn holds 67.97% shareholding in JPL and controls the later company by virtue of its shareholdings. The provisions of the Companies Act, 2013 referred are -

> (46) "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies; [Explanation.–For the purposes of this clause, the expression "company " includes any body corporate.]
>
> (87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the

holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies: Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the Directors;

(c) the expression "company" includes any body corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

(27) "control" shall include the right to appoint majority of the Directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

49. By referring to above provisions, it has been argued that as per section 2(87) of the Companies Act, 2913, since JMNIPL exercise more than ½ of the total voting power in JPL, this company can be termed as a subsidiary of JMNIPL and JMNIPL, by virtue of its shareholdings also controls the management and policy decisions in JPL. It is also stressed by them that it is admitted fact that JMNIPL has no business and its only business is the management of affairs of its subsidiary i.e. JPL, which is very much clear from the Memorandum and Article of Association of both JMNIPL and JPL. Therefore, in their view, JPL is a necessary party to the captioned petition as the effect of oppression of the majority in JMNIPL are being felt at the subsidiary level also by the petitioners and thus, they finally pleaded for the maintainability of the captioned petition and dismissal of the instant application questioning the maintainability of the captioned petition.

50. The Ld. Sr. Counsels of the Applicants in their rebuttal arguments, tried to show that all the case laws cited by the Ld. Counsels for Petitioners/Non-Applicants in support of their plea on lifting of veil for taking Holding and Subsidiary

companies as single economic unit, showing them intrinsically interlinked to justify the composite petition filed against Respondent No 18 and 19 despite the fact that the Petitioners are not holding requisite shareholdings in Respondent No. 19, are distinguishable on facts and they will not apply in present case. They further stressed on their arguments raised earlier that the there is no provision in section 241-242 to file composite petition and the petitioners are statutory barred to file Company Petition in respect of Respondent No.19 in terms of section 244, and therefore, the Company Petition filed by the Petitioners may be dismissed at the threshold due to its non-maintainability under section 241-242 and 244 of the Act and accordingly, the dismissal application filed by the Applicants being considered in this order, may be allowed.

FINDINGS AND ORDER

51. We have heard the Ld. Senior Counsels representing the parties and perused the record. The present application filed by the applicants (Respondents No.5 and 12 in the main petition) seeking dismissal of the captioned company petition filed by the petitioners/non-applicant primarily on the ground

that since the petitioners cumulatively do not possess 10% shareholding in Respondent No.19 Company, though they have the requisite shareholding in Respondent No.18 Company, the present composite petition is not maintainable for want of requisite shareholding of the petitioners in Respondent No.19 Company. As per Section 244(1)(a), the requirement of having 10% shareholding is necessary for the purpose of becoming eligible to raise any allegations against oppression and mismanagement touching Respondent No.19 in which the petitioners have only 0.29% shareholding.

52. It is also contended by the Ld. Senior Counsels representing the applicant that even though the Respondent No.18 is having 67.97% in Respondent No.19 Company, this cannot be read as the petitioners having indirect shareholding of 11.29% in Respondent No.19, as there is no concept of "indirect shareholding" for the purpose of becoming eligible under Section 244(1) (a) of the Companies Act, 2013.

53. The judgment relied upon by the Ld. Senior Counsels representing the applicant namely Syed Musharraf Mehdi **(Supra)** deals with a situation where the petitioners in that matter have pleaded that they will be in a position to muster

the requisite percentage of shareholding subsequent to filing of the company petition which will not merit any consideration. The combined reading of the sub-sections (1) and (4) of Section 399 of the Companies Act, 1956 would show that the Company Law Board has no option but to reject the application made under Section 397/398, not being supported by the requisite number of the members at the time of filing the application before the Company Law Board. In this case, issue regarding the maintainability of the petition u/s 397/398 was only regarding examination of direct shareholding in the main respondent company against which oppression was alleged to decide whether a petition can be filed with less than the minimum shareholding and then can be sustained with additional shareholding being coming at later stage. However, the facts of the present case is different in which the shareholding of the Petitioners in the first respondent company being a holding company is more than the threshold limit and only issue is whether through holding company, the petitioners can claim being also affected by its subsidiary whose affairs are shown to be intrinsically linked with holding company and hence, we don't find that this case law may apply in the present case.

54. The judgment in Pilani Investments and Corporation Ltd. **(Supra)** relied upon by the applicant relates to the issue wherein one of the respondent i.e. Respondent No.9 had filed an interlocutory application with prayer to dismiss the company petition as against the said Applicant/Respondent No.9 and its Directors who were impleaded as Respondents No.10 and 11 to the Company Petition. The main plea taken in that application was that the Respondents No. 9, 10 and 11 are not shareholders of the 1st Respondent Company M/s. Pilani Investments and Corporation Ltd, nor the directors and against them no allegation of 'Oppression and Mismanagement' had been alleged. Another interlocutory application was moved by Respondents No. 12 and 13 with similar prayer. In that case; the applications were heard and allowed by the National Company Law Tribunal, Kolkata Bench against which the appeals had been filed before the Hon'ble National Company Law Appellate Tribunal. In that case, the 1st Respondent Company was the single largest shareholders in the Respondent No.9 Company to the extent of 36.7% which later declined to 30.64% after the impugned acts of oppression and mismanagement.

55. The Hon'ble NCLAT has observed that admittedly, 1st respondent company is not the holding company of the 9th respondent company. It is also found that though 1st Respondent Company is shareholder of the 9th Respondent Company, mismanagement in respect of 9th Respondent Company has not been alleged. It is very specifically mentioned in the order that the Tribunal noticed that appellants have not mentioned anywhere in the petition that 1st Respondent Company is holding company of the 9th Respondent Company and even during appeal before the Appellate Tribunal, no such case has been put up the Appellant that the 1st Respondent Company is holding company of the 9th Respondent Company or that the 9th Respondent Company is subsidiary company of the 1st Respondent Company. It is also observed in the said order by relying on the decision of the Hon'ble Supreme Court in case of "***Vodafone International Holdings BV vs. Union of India reported in (2012) 6 SCC 613***" that the control and management is a facet of the holding of shares. It is very clearly held in the said decision that as per the averment in the petition, the appellant has not claimed that 9th Respondent is a subsidiary of 1st Respondent and on the date

of presentation of the petition in that case, the 1st Respondent Company was a single largest shareholder of the 9th Respondent Company but inspite of these facts, the 1st Respondent Company has no controlling power over the affairs of the 9th Respondent Company. Under the above background of the case , it has been held that the holding company and the subsidiary company remain distinct and legal entities and even if the appellant/petitioner had a cause of action under section 397 and 398 against the 1st respondent company, and they qualified the criteria of section 399 of the Companies Act, even on that basis, they will not get any right to question oppression and mismanagement against the Respondent No.9 Company as the appellant/petitioner does not possess the requisite qualification for bringing a petition against the Respondent No.9 Company. It is lastly observed by the Hon'ble NCLAT that the Tribunal having directed to delete the Respondents No. 9, 10, 11, 12 and 13 from the arena of the Respondents, the Hon'ble NCLAT did not find any ground to interfere with the orders passed by the NCLT.

56. The said judgment of Pilani Investments & Corporations Ltd. **(Supra)** may not come directly to the help of the applicant. Firstly, because the 1st respondent was not the holding company of the 9th Respondent Company as the former held only 36.78% which after dilution went down to 30.64% and hence, 1st Respondent Company had no controlling power over the affairs of the 9th Respondent Company, and secondly the NCLT had deleted Respondents No.9 to 13 from the array of Respondents Contrary to above facts of the case of *Pilani Investments*, in the present case, the JMNIPL is holding company of JPL holding its 67.97% shares and hence, exercising control over the management of the JPL in view of the judgment in case of ***Vodafone International Holdings(supra)*** as referred to in the judgment of ***Pilani Investments(supra)*** to draw a conclusion that though the 1st Respondent Company was a single largest shareholder of the 9th Respondent Company , but in spite of these facts , the 1st Respondent Company has no controlling power over the affairs of the 9th Respondent Company. Same is not the case in the captioned petition as JMNIPL has full control over the affairs of JPL due to shareholdings being more than 50% and

Chairman and Managing Directors being appointed in JPL from Gupta Family who have 100% control over JMNIPL.

57. Another judgment relied upon by the Ld. Senior Counsel is that of Matheran Realty Private Limited **(Supra)** wherein it has been observed that it is an admitted fact that the petitioner is not a shareholder of Respondent No.8 and that petition is not maintainable against the Respondent No.8 in which he is not a shareholder. It has been observed that a shareholder of the holding company cannot complain of oppression by a subsidiary company in which he is not a member as there is no legal relation between him and the subsidiary company. In this case, the petitioner who did not have any share in the subsidiary company was not held entitled to maintain the petition.

58. We have also examined the case law cited by the Ld. Senior Counsels representing the petitioner/non-applicant, the main contention on behalf of the petitioner/non-applicant is that even though the petitioners would not directly have the requisite 10% shareholding in Respondent No.19 company, however, the Respondent No.18 itself is a holding company of Respondent No.19 wherein Petitioners have more than 10%

shareholding and therefore , through Respondent No.18 would entitle them to maintain the petition as against Respondent No. 19 which in fact is a subsidiary and being controlled by Respondent No.18 by virtue of having 67.97% shareholding in Respondent No.19. The contention raised by the Ld. Senior Counsels representing the Petitioner/Non-Applicant hinges around the doctrine of lifting of the corporate veil in a situation where the affairs of the subsidiary company i.e. Respondent No.19 are wholistically controlled by the Respondent No.18.

59. It has been observed by the Hon'ble Supreme Court in case of ***Shankar Sundaram*** **(Supra)** that the Section 397/398 petition is maintainable as the applicant holds 10% of the share capital in the holding company and therefore, it has been held that the High Court was not correct in saying that the subsidiary companies above mentioned should be struck from the array of parties as, if the corporate veil is lifted, the holding and subsidiary companies will be regarded as one and the same for the purpose of granting relief in the said petition. According to our considered opinion, the judgment in ***Shankar Sundaram (Supra)*** would cover the controversy

that the management and affairs of the subsidiary company can also be looked into by the lifting the corporate veil where the petitioners under 397 and 398 of Companies Act,1956 Act approach the Court. It is also noticed that as per the decision in the case of ***Shankar Sundaram (Supra)***, it was held by the Hon'ble Supreme Court that the Respondent Nos.8, 9, 13, 14, 16, 17 and 18, and Respondent Nos.4 and 7 should be added as parties and the appellant shall be at liberty to argue on the grounds of the said petition, and the prayer regarding the alleged mismanagement of the companies in question in case the corporate veil is lifted. Out of the aforementioned respondents in the said matter, many of them are the public limited company i.e. Respondent Nos.8, 9, 13 and 16. Out of these public Ltd. companies, the respondent no.13 is a public limited listed company. The contention made on behalf of the Ld. Sr. Counsel representing the Petitioners/ Non-Applicants finds force from the judgment of the ***Shankar Sundaram (Supra)***, which deals with the situation, where the corporate veil is lifted even with respect to the public limited company including the public limited listed company as well, which precisely is the situation in the present case also as the Respondent No.19 Company is a public limited listed

company and is held by the Respondent No.18 Company in majority i.e. by 67.97% of the shareholding, possessed by the Gupta family.

60. In ***Bajrang Prasad Jalan vs Raigarh Jute and Textile Mills Ltd. (Supra),*** the Hon'ble Calcutta High Court held that proceedings under Section 397 and 398 would include the power for directing investigation not only into the affairs of the company against whom proceedings have been initiated but also other entity be it a subsidiary or holding company which would conclude the matter as to the jurisdiction.

61. The question with regard to looking into the affairs of the holding company and that of the subsidiary company by lifting the corporate veil as well as the conditions under which this concept can be applied, has been further decided by the Hon'ble High Court of Calcutta in another judgment of the same name i.e. ***Bajrang Prasad Jalan vs Mahabir Prasad Jalan & Ors (Supra).*** It has been observed that even if the petitioners may not be in possession of the requisite shareholding, the companies are intrinsically connected and interwoven in such a manner that there is no room for

uncertainty regarding the affiliation of one company with the other subsidiary companies.

62. We are conscious of the position of law that the lifting of the corporate veil is not a mechanical process, but has to be seen in the context of individual facts and circumstances, where the affairs of the subsidiary company have to be seen from the point of view of its management and control by the holding company. In the aforesaid judgment, it was also held that it is a trite law that over the affairs of the company in question its entire affairs including those of the subsidiary companies can also be looked into. In the judgment of ***LIC vs Escorts (1986) 1 SCC 264***, it is held that lifting of veil is permissible where associated companies are inextricably connected as to be, in reality , part of one concern keeping in view the effect on parties who may be affected. If this test is adopted in the facts and circumstances of the present case, it would be discernable that the sole objective of creation of Respondent No.18 Company was to provide a mechanism by creation of an Investment Vehicle for and on behalf of the entire Gupta Family to hold substantial share as a single unit in the Respondent No.19 Company. Thus, the affairs of the

Respondent No.19 company are being controlled and regulated by the holding company i.e. Respondent No.18 which has 67.97% in Respondent No.19 and the entire Gupta Family have 100% shareholding in Respondent No.18 Company. Even though, it may be noted that the Respondent No.19 Company is a public limited listed company limited by share; however, the majority is being held by the Investment Company i.e. Respondent No.18 which in turn is held 100% by the Gupta Family. Therefore, there is a direct and pervasive control of Gupta Family in the affairs and management of Respondent No.19. The only purpose of creation of the Respondent No.18 was to control and manage the affairs of the Respondent No.19 Company, as already noticed above. Thus, the facts and circumstances of the present case in the light of the judgments referred to above would warrant looking into the affairs of Respondent No.19 Company to the extent of being regulated and controlled by Respondent No.18 i.e. to the extent of 67.97% where the 8 members of the Gupta Family are the Directors in the Respondent No.19 Company. Therefore, lifting of corporate veil under these circumstances to discover the manner in which the Respondent No.18 controls and manages the affairs

of the Respondent No.19 is justified. Any representation of the members of Respondent No.18 in the meetings of the Respondent No.19 would thus also govern the manner in which the affairs of the Respondent No.19 are regulated and controlled by such representations. Thus, any decision taken in the meeting of the Board of Directors of Respondent No.18 with regard to the nominations to represent in the meeting of the Respondent No.19 would be of importance for the purpose of lifting veil and cannot be seen with an opaque glass. There has to be a transparency of affairs in the best interest of corporate governance of Respondent No.19. We are however not making any observations on whether or not any such nomination made by the respondent no. 18 would be legal or not and whether or not such nomination would make out a case for oppression and mismanagement, being a question purely of merit which is not under adjudication in the present application.

63. In view of our foregoing discussions, we are of the considered opinion that in view of the fact that the Respondent No.18 Company not only is a holding company of Respondent No.19, but in its Articles of Association provides for definite control

and governance in as much as even in the Articles of Association of the Respondent No.19 Company as reproduced in earlier part of this order, would show that the Chairman and the Managing Director in the Respondent No.19 Company have to be the members from the Gupta family, thereby the control of Respondent No.19 by the Respondent No.18 by way of the 100% shareholding of Gupta family is without any ambiguity, and therefore, the decisions taken in the meeting of the Board of the Respondent No.18 Company would have direct bearing on the governance of the Respondent No.19 Company being its subsidiary in so far as it relates and restricts in the manner provided in the respective Articles of Association of both the companies. Thus, there is a case made out, where not only there is a direct control of Respondent No.18 over its subsidiary company, but the circumstances as discussed hereinabove would warrant lifting of the corporate veil, and therefore, the instant petition in the present format is maintainable.

64. Accordingly, we hold that the main petition i.e. CP No.64/ALD/2023 is maintainable, and we are therefore not inclined to entertain the CA No.31/2023 which is therefore

dismissed. However, it is made abundantly clear that anything said or expressed in the present order shall not be construed as an expression or opinion whatsoever on the merits or otherwise of the matter in the main petition. Ordered accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Dated : 4th September, 2023

Ankita Sharma
(LRA)