24 May 2024

BSE Limited
Corporate Relationship Department
1st Floor, P. J. Towers,
Dalal Street, Fort,
Mumbai 400 001.

BSE Scrip Code: 500243

The Manager
Listing Department
National Stock Exchange of India Limited
Exchange Plaza, C -1, Block G,
Bandra-Kurla Complex, Bandra (E),
Mumbai 400 051.

NSE Scrip Code: KIRLOSIND

Sir / Madam,

Subject: Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 ("**SEBI LODR**")

This is in furtherance to the Company's intimation dated 23 May 2024 made in relation to the final Order dated 21 May 2024 passed by the National Company Law Tribunal, Mumbai ("**NCLT**") in the oppression and mismanagement petition filed by the Company and others (Petitioners), against Kirloskar Brothers Limited ("**Kirloskar Brothers/Respondent No. 1 company**"), its Board of Directors and Mrs. Pratima Kirloskar, being Company Petition No. 193 of 2017 – *Kirloskar Industries Limited & Ors. v. Kirloskar Brothers Limited & Ors.* ("**NCLT Order**").

We observe that a few newspapers have published inaccurate and misleading articles in respect of reporting the said NCLT Order and have attempted to suggest that permissions have been granted to the Petitioners allowing them to sell shares of Kirloskar Brothers, by selectively quoting the NCLT Order. However, the said articles omit to highlight several findings and observations pertaining to the oppression and mismanagement in the affairs of Kirloskar Brothers and the arbitrary conduct of the Board of Directors as well as the Compliance Officer of Kirloskar Brothers, and consequently do not bring out the true and accurate impact of the NCLT Order. It is therefore necessary to issue this further disclosure to bring the true and complete findings of the NCLT in the NCLT Order. The same have been reproduced from the NCLT Order hereinbelow:

Quote

*(iv)… **we are of the opinion that we do not find any clause in the DFS that gives exclusive ownership of Respondent No. 1 company to any one party** and such shareholding was given to the parties to the extent mentioned in Schedule II of the DFS which includes Petitioner Nos. 2 and 3 and Respondent No. 2. The Petitioners were allocated shareholding in Respondent No. 1 company for equalization of wealth amongst different faction, accordingly, to say that Petitioner must remain invested in these shares for the benefit of Respondent No. 2 and his family shall be in contravention of the principle of wealth equalization embodied in the DFS. **The shares of the Petitioners were not contemplated to be rendered piece of paper in that DFS also…However, such a restriction on transferability of shares is not found in the DFS in respect of Respondent No. 1 company**. It is pertinent to note that the shares in Respondent No. 1 company were allocated to the Petitioners to equalize the wealth of Kirloskar group amongst the family factions and such shares so received have economic value, which **the petitioners are entitled to monetise in the manner they wish**.*

*(v)**We are also of the opinion that Section 58(2) of the Act is not applicable in respect of shares of Respondent No. 1 company as the DFS does not have any provision that ousts any restriction on any party thereto from transferring or dealing in the shares in Respondent No. 1 Company**. The Respondents have not been able to show any such provision and have suggested that such restriction is "implied". However, we cannot accept this argument and the express provision of the DFS which is a full-fledged agreement setting out detailed clauses are to be considered as mandated by law including the Indian Evidence Act. The facts and circumstances and the manner in which the DFS was taken on record by Respondent No. 1 company's Board especially the timing of the same i.e., almost 7 years after the execution thereof, makes it evident that the DFS was taken on record under Section 58(2) of the Act without taking into consideration the purport of DFS perhaps **at the behest of Respondent No. 2 to ensure Respondent No. 1 company is bound by the same in furtherance of Respondent No. 2's claim of complete ownership and control thereof.***

...

*(vii)the record reflects that **the compliance officer of Respondent No. 1 company as well as the Board of Directors have acted arbitrarily in contravention of the Code of Conduct of Respondent No. 1 company** and by relying on the private DFS. We feel that **these instances show mismanagement in the affairs of Respondent No. 1 company**. **The Compliance Officer could not have withheld its consent for the extraneous reasons**, more so when the DFS, which is stated to be basis for withholding such consent, itself contemplate the division of shares in various Kirloskar Group Companies, particularly in Respondent No. 1 company, in order to equalize the wealth amongst the different factions of the family.*

...

*(x)...**it cannot be said that the affairs of Respondent No. 1 company, being a listed public company are being conducted in a completely transparent and independent manner. The affairs of Respondent No. 1 company are definitely influenced and coloured by the aspirations of Respondent No. 2 and his family members in running the affairs of Respondent No. 1 company as per their desires and without any interference as well as their interpretation of DFS and applicability to Respondent No. 1 company. This naturally has impacted the decisions of the Board of Directors of Respondent No. 1 company, its compliance officer and its participation in the legal proceedings.***

*(xi) The record and the submissions made by Respondent No. 1 company clearly show that **Respondent No. 1 company has not remained a neutral party in the present matter, contrary to settled law**. Most of the submissions made Respondent No. 1 and Respondent No. 2 are overlapping and Respondent No. 1 defended Respondent No. 2 wholeheartedly.*

...

*(xiii) **Therefore, in our view the Petitioners have been able to make out a case under Section 241 and 242 of the Act against the Respondents.***

Unquote

A copy of the said NCLT Order dated 21 May 2024 is enclosed and can be accessed at NCLT's website at https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138000062017/04/Order-Challenge/04_order-Challange_004_171638069712222688376 64de41990564.pdf

You are requested to take the same on record.

Yours sincerely,
For Kirloskar Industries Limited

ASHWINI VIJAY MALI
Digitally signed by ASHWINI VIJAY MALI
Date: 2024.05.24 12:29:08 +05'30'

Ashwini Mali
Company Secretary &
Compliance Officer

Encl.: as above

Kirloskar Industries Limited
A Kirloskar Group Company

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Tel: +91 (20) 29704374 | Fax: +91 (20) 29704374
Email: investorrelations@kirloskar.com | Website: www.kirloskarindustries.com
CIN: L70100PN1978PLC088972

THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH-I

C.P (IB) No.193/MB/C-I/2017

Under Section 241-242 of the Companies Act,2013

Kirloskar Industries Limited and Ors.

…**Petitioners**

Versus

Kirloskar Brothers Limited & Ors.

…Respondents

Order Pronounced on: 21.05.2024

Coram:

Hon'ble Member (Judicial)	:	Justice V.G. Bisht (Retd.)
Hon'ble Member (Technical)	:	Mr. Prabhat Kumar

Appearances:

For the Petitioner	:	Mr. Dinyar Madon, Sr. Advocate
For the Respondent	:	Mr. Janak Dwarkadas, Sr. Advoc ate for R1, Mr. Gaurav Joshi, Sr. Advocate for R 2 & 9, Mr. Aditya Mehta, For R3 and Mr. Ankit Lohia, for R4 to 8

ORDER

Per : Prabhat Kumar, Member (Technical)

1. The captioned petition has been filed by the Petitioners under Section 241 and 242 of the Companies Act, 2013 ("**Act**") read with Section 244 of the Act against the Respondents alleging oppressive acts committed by the management of Respondent No. 1 company i.e., Kirloskar Brothers Limited upon its minority shareholders and the mismanagement in affairs of Respondent No. 1 company by the Respondents. Respondent No. 1 company is a public listed company.

2. Petitioner No. 1 is also a public listed company and holds 23.91% shareholding in Respondent No. 1 company. Petitioner Nos. 2 and 3 are promoters of Respondent No. 1 company and hold 0.51% of the shareholding in Respondent No. 1 company, respectively. Collectively the Petitioners hold 24.93% of the shareholding of Respondent No. 1 company. Petitioner No. 2 was also a director of Respondent No. 1 company from September 19, 2000, to April 22, 2014.

3. Respondent No. 2 is the Chairman and Managing Director of Respondent No. 1 company. As on the date of filing of the company Petition, he held 22.07% of Respondent No. 1 Company's shareholding. Respondent No. 3 is the wife of Respondent No. 2. and at the time of filing of the Company Petition held 17.33% of its shareholding. Respondent Nos. 4 to 8 were the independent directors of Respondent No. 1 Company at the time of filing of the Company Petition. Respondent No. 9 is the son of Respondent No. 2 & Respondent No. 3 and at the time of filing of the Company Petition held approximately 0.08% of Respondent No. 1 Company shareholding. Respondent Nos. 2, 3 and 9 collectively held approximately 39.4% in Respondent No. 1 company at the time of

filing of the Petition. The Petitioners have stated that at present, Respondent Nos. 2, 3 and 9 collectively held approximately 39.93% of Respondent No. 1 Company, and along with Prakar Investments Private Limited held 40.27% shareholding in Respondent No. 1 Company.

4. Petitioner No. 2, Petitioner No. 3 and Respondent Nos. 2, 3 & 9 are individuals from the Kirloskar family. Petitioner No. 1 and Respondent No. 1 Company are amongst the Kirloskar group of companies.

A. <u>Petitioners' case:</u>

5. It is the Petitioners case that Petitioners have been oppressed by the Respondents and there is mismanagement in the affairs of Respondent No. 1 company on the grounds mentioned in the Petition:

   (i) The pre-clearance applications filed by the Petitioners for buying or selling of shares of Respondent No. 1 company/KBL have been arbitrarily rejected repeatedly, without providing any reasons, in complete contravention of law and Respondent No. 1 company/KBL's Code of Conduct, at the behest of Respondent No. 2 / Mr. Sanjay Kirloskar and his family who have claimed exclusive ownership, management and control over Respondent No. 1 company /KBL by relying on a Deed of Family Settlement dated September 11, 2009 entered into between the members of the Kirloskar family in their individual capacities.

(ii) Respondent No. 1 Company / KBL has failed to provide copies of the minutes of the Board meetings of Respondent No. 1 Company / KBL held during the period of Petitioner No. 2 / Mr. Rahul Kirloskar's directorship in Respondent No. 1 Company / KBL up to the date of his cessation as a director.

(iii) Continued acts of oppression and mismanagement in the affairs of Respondent No. 1 Company / KBL, as set out in MA No. 1007 of 2020, including continuous increase in the shareholding of Respondent No. 1 Company / KBL by Respondent No. 2 / Mr. Sanjay Kirloskar and his wife Respondent No. 3 / Mrs. Pratima Kirloskar, while the Petitioners being denied of pre-clearances to buy or sell shares of Respondent No. 1 Company / KBL.

(iv) Biased conduct of Respondent No. 1 Company / KBL and its failure to adopt a neutral stand in the present shareholder dispute.

(v) Unrelated cases filed/issues raised by the Respondents by misusing funds and resources of Respondent No. 1 Company / KBL to agitate personal disputes of Respondent No. 2 / Mr. Sanjay Kirloskar and his family members.

Deed of Family Settlement dated September 11, 2009 ("DFS"):

6. It is submitted that Respondent No. 2 has relied on a DFS entered into amongst the members of the Kirloskar family in their individual capacities for rejecting the pre-clearance applications of the

Petitioners for buying or selling shares of Respondent No. 1 and claiming sole right to purchase shares of Respondent No. 1 company. It is submitted that Respondent No. 2 has falsely contended that the true letter and spirit of the DFS was that ownership, control and management of Respondent No. 1 Company was to remain with Respondent No. 2 and his family to the exclusion of all other promoters and Respondent No. 2 has claimed that he was entitled to a first option to purchase any shares intended to be sold by any member of the promoter group. Accordingly, Respondent No. 2 offered to buy the 5,000 shares that Petitioner No. 2 wished to sell at market price.

7. The Petitioners submit that the reliance by Respondent No. 2 on events leading up to the execution of the DFS and the alleged issues arising therefrom have no relevance or connection with the subject matter of the Company Petition. The Petitioners have further submitted that notwithstanding the same, Respondent No. 2 has, despite abundantly clear language contained in the DFS that it was an agreement for distribution of the shares held by the Kirloskar family by bringing economic parity and the grant of operation, management, and control on companies to the extent of such shareholding, tried to provide a completely extraneous and incorrect interpretation to suit his own motives.

8. The Petitioners submit that in order to ensure that there were no disputes amongst the future generations, sometime around 2009 it was decided to distribute the shareholding of the Kirloskar family in the Kirloskar companies amongst the family members. It was agreed between the Kirloskar family members that each branch of the Kirloskar family that was a party to the DFS, would receive shares

of an equal value. To this end, the DFS was entered amongst the various branches of the family. This DFS did not have any covenant or provision restricting the rights of any person from buying or selling shares in accordance with law. The Petitioners submit that the key terms of the DFS are as follows:

(i) The parties to the DFS were Petitioner No. 2, Petitioner No. 3, Respondent No. 2, one Late Mr. Vikram Kirloskar (cousin brother) and one Late Mr. Gautam Kulkarni (cousin brother), each of whom also represented their respective branch of the family.

(ii) The DFS clearly mentions that the DFS has been entered amongst the signatories in their respective individual capacities, each representing their respective branch of the family. The parties to the DFS have not represented that they are acting as promoters, nor have they otherwise made any commitments in the DFS on behalf of the Kirloskar companies, nor have they signed the DFS on behalf of any company under their management and control. The DFS attaches consent letters from individuals being family members and descendants of each signatory agreeing to be bound by the same. Further, none of the Kirloskar companies (including Respondent No. 1 Company) have signed the DFS or subsequently adopted or ratified the same.

(iii) Under Clause 2 of the DFS, the parties have agreed that the ownership, management, and control (to the extent of the Kirloskar family's interest therein) in various entities would pass to the persons specified in Schedule II of the DFS to the extent

mentioned in Schedule II. This was merely a distribution of the family's assets by bringing economic parity and did not decide ownership of any companies whose shares were given to multiple branches.

(iv) Under Clause 7 of the DFS, the parties thereto have agreed that they would each be allotted all shares held by one Fairvalue Trust (a group holding concern) in one Better Value Holdings Ltd. ("BVH") and one Asara Sales & Investments Pvt. Ltd. ("Asara") (two other group holding concerns) equally, *inter alia* on the condition that they would not be entitled to sell / transfer the shares of BVH and Asara in the future without the mutual consent of all other parties. This makes it clear that the said restriction was only for BVH and Asara and for not all other companies, as is being alleged by the Respondents.

(v) Under Clause 8 of the DFS, the parties thereto have *inter alia* categorically agreed as follows:

"*8. In order that the distribution be fair and equitable, the parties hereto have agreed that notwithstanding and irrespective of anything contained in Clause 3 above:*

(i) SCK will pay a sum of Rs. 80.50 crores to VSK and ACK, RCK and GAK will pay a sum of Rs. 12.17 crores each to VSK.

Provided however that the sums referred to above shall become payable to VSK at the time VSK is ready to purchase the shares in terms of Clause 6 hereinabove.

(ii) On the happening of the Conditional Event, SCK and / or his nominees will receive shares of KBIL against the shares mentioned in Schedule II. It is agreed by SCK that he and / or his nominees are not entitled to such KBIL shares but ACK, RCK and GAK are entitled to the said KBIL shares equally as part of this settlement and therefore SCK agrees to transfer and cause his nominees, if any, to transfer such KBIL shares equally to ACK, RCK and GAK without any further consideration, immediately on the happening of the Conditional Event."

(vi) Under Clause 12 of the DFS, the parties thereto have *inter alia* agreed that (a) they would each hold an equal number of shares in Kirloskar Proprietary Ltd. (KPL); and at all times ensure unity and the joint, harmonious and smooth functioning of KPL and shall further extend their full and total co-operation towards protection, promotion and defence of the trademark, tradename, logo and copyright "Kirloskar" and further agree to work together to enhance and strengthen the same.

(vii) Clause 18 of the DFS clearly provides that any amendment thereto must be in writing. Thus, the Respondents' attempts to canvass alternative clauses which are absent from the DFS are of no avail.

(viii) Schedule II of the DFS lists the various Kirloskar companies, and the extent to which the ownership, management and control thereof would be passed to each party to the DFS:

a) With respect to Respondent No. 1 Company, Gautam Kulkarni and Petitioner No. 2 & Petitioner No. 3 would each receive 52,88,218 shares, while Respondent No. 2 would receive 3,73,95,188 shares therein. Vikram Kirloskar would receive no shares in Respondent No. 1 Company.

b) With respect to KPL, each of the 5 (five) signatories of the DFS would receive an equal number of shares therein i.e., 919.

c) Each of Gautam Kulkarni and Petitioner No. 2 & Petitioner No. 3 would receive equal shareholding in 7 (seven) other group companies (Kirloskar Oil Engines Ltd., Kirloskar Pneumatic Co. Ltd., Kirloskar Ferrous Industries Ltd., G.G. Dandekar Machine Works Ltd., Kirloskar Integrated Technologies Ltd., Kirloskar Consultants Ltd., and Kirloskar Chillers Ltd.). Neither Respondent No. 2 nor Vikram Kirloskar would receive any shares in these companies.

d) Vikram Kirloskar alone would receive shares in 2 (two) other group companies (Quadrant Communications Ltd. and Kirloskar Systems Ltd.). None of the other signatories to the DFS would receive any shares in these companies.

e) Respondent No. 2 alone would receive shares in 5 (five) other group companies (Kirloskar Corrocoat Ltd., Quadromatic Engineering Pvt. Ltd., Pressmatic Electro Stamping Pvt. Ltd., Hematic Motors Pvt. Ltd., and

Kirloskar Ebara Pumps Ltd.). None of the other signatories to the DFS would receive any shares in these companies.

f) Since the aforesaid distribution of shares did not result in an equal distribution of shares by bringing monetary parity, the parties to the DFS agreed that Respondent No. 2 would pay an amount of Rs. 80.50 Crores to Vikram Kirloskar, Petitioner No. 3 and Petitioner No. 2, solely for making the distribution fair and equitable.

(ix) It was further submitted by the Petitioners that Schedule II of the DFS makes it clear that, wherever the parties wished for any 1 (one) of them to have exclusive control over the family shareholding in a particular company, all of their shareholding in such company was transferred to that party. For example, the entire shareholding (to the extent held by the Kirloskar family) of Quadromatic Engineering Private Limited, Pressmatic Electro Stamping Private Limited, Hematic Motors Private Limited, Kirloskar Ebara Pumps Limited was entirely transferred to Respondent No. 2 to the exclusion of all other parties to the DFS. Similarly, the entire shareholding of Quadrant Communications Limited and Kirloskar Systems Limited to the extent held by the Kirloskar family was entirely transferred to Vikram to the exclusion of all other parties to the DFS. However, in contrast, the Kirloskar family's shareholding in all other companies (including Respondent No. 1 Company, KPCL, KPL, KOEL) forming a part of the Kirloskar group was divided only to the extent of the shareholding so transferred to the relevant party of the DFS in the manner specified therein.

This clearly demonstrates that the parties to the DFS were conscious of instances where the ownership, management and control (to the extent of the Kirloskar family's shareholding) of a particular company was to be transferred completely to a single party and instances where ownership, management and control (to the extent of the Kirloskar family's shareholding) of a particular company was to be held by more than 1 (one) party to the extent of the shareholding transferred to each such party. It is important to note that the DFS does not distribute the "businesses" amongst the parties to the DFS on a mutually exclusive basis but only distributes the shares held by the Kirloskar family in Kirloskar companies amongst various family members. In fact, the word "businesses" has not even been defined in the DFS, let alone attributing a business to a particular individual.

(x) The Petitioners submitted that Respondent No. 2 was granted ownership, management, and control of the Kirloskar family's shareholding in 5 (five) companies to the exclusion of other family members, as stated above. However, in the case of Respondent No. 1 Company (which is a listed public limited company) and KPL, the shareholding of the Kirloskar family was distributed amongst more than 1 (one) family member and not exclusively to any family member.

(xi) Clause 2 of the DFS makes it clear that the transfer contemplated in Schedule II was of the ownership, management and control of the respective companies, to the extent of the shareholding mentioned therein. Therefore, each of the parties would be entitled to management and control of these

companies proportionate with their shareholding therein, and no more. Petitioners submit that the DFS cannot be construed to give Respondent No. 2 and his family complete ownership and control over Respondent No. 1 Company, which is a listed public limited company, to the exclusion of the other shareholders. Respondent No. 2's case is that while Petitioner No. 2 & Petitioner No. 3 retained ownership of certain shares in Respondent No. 1 Company, the complete ownership, management and control thereof was to vest solely in Respondent No. 2. However, the same is not borne out by the provisions of the DFS and in fact is contrary to the terms thereof. If that had indeed been the intention of the parties, then Schedule II of the DFS would have clearly recorded that all shares of Respondent No. 1 Company would be transferred to Respondent No. 2, to the exclusion of Petitioner No. 2 & Petitioner No. 3, Gautam and Vikram (Vikram in any event did not receive any shares of Respondent No. 1 Company under the DFS). The DFS neither requires Petitioner No. 2, Petitioner No. 3 and Gautam to vote as per the directions of Respondent No. 2 nor does the DFS contain any pre-emptive provisions in relation to purchase the shares of Respondent No. 1 Company from the other shareholders of Respondent No. 1 Company.

(xii) Further, Clause 2 of the DFS also makes it clear that the transfer contemplated in Schedule II thereto would only be to the extent of the Kirloskar family's interest in each of the respective companies and to the extent of each member's shareholding mentioned therein (i.e., Schedule II).

(xiii) The Petitioners submit that there is no explicit restriction in the DFS restraining the Petitioners from dealing with their shareholding in Respondent No. 1 Company. By Clauses 7 and

12 of the DFS, the parties specifically agreed that they would not sell their shares in BVH, Asara and KPL, in the future without the unanimous mutual consent of all other parties. Further, by Clause 12 of the DFS, the parties specifically agreed that any future purchase of shares of KPL from third parties would be acquired equally by each of them, in order to prevent any change in their inter-se shareholding ratio. Such clauses are notable by their absence in relation to Respondent No. 1 Company, thereby clearly suggesting lack of any such understanding in respect of Respondent No. 1 Company.

(xiv) It has been submitted that the proviso to Section 58(2) of the Act permits a company to enforce any contract or arrangement between two or more persons in respect of transfer of securities. However, the DFS does not in any manner cast any restriction or fetter on any of the parties thereto from dealing in the shares held by them in Respondent No. 1 Company. It is therefore submitted that Respondent No. 1 wrongly took the DFS on record under this provision.

(xv) The DFS clearly does not restrict and, therefore, permits Petitioner No. 2 & Petitioner No. 3 or any other shareholder, in their proprietary right, to deal with the shares of Respondent No. 1 Company transferred to them under Schedule II as they wish, as well as to acquire additional shares thereof. Where it was the intent of the parties to the DFS to create any restriction on acquisition or sale of shares of a particular company, the DFS clearly spelt out the same as in the case of KPL, BVH and Asara. This itself demonstrates that the parties did not intend to create any fetters on acquisition or transferability of shares of any other company including Respondent No. 1 Company. Therefore, the DFS, in so far as Respondent No. 1 Company is concerned, is

not in any manner an agreement restricting the transferability of shares within the scope of Section 58(2) of the Act. However, interestingly, Respondent No. 1 Company placed the DFS before its Board and acknowledged the DFS under provisions of Section 58(2) of the Act in the year 2016 (i.e., after 7 years of the execution of the DFS). There is no explanation as to undertaking of such an action by the Board of Directors of Respondent No. 1 Company suddenly after 7 years of execution of the DFS. However, despite doing so, Respondent No. 1 Company has not incorporated the provisions of the DFS in its articles of association till date. This in fact, could create confusion and mislead shareholders and investors in as much as in the view of Respondent No. 1 Company's shareholders certain shares of Respondent No. 1 Company would not be freely transferable despite being a public listed company while the balance shares are freely transferable. Such conduct once again establishes a biased approach, mismanagement in the affairs of Respondent No. 1 Company and tantamount to oppressive actions against the shareholders of Respondent No. 1 Company.

(xvi) The DFS was executed on September 11, 2009. Section 58(2) of the Act was notified on September 12, 2013. If the DFS actually contained any restriction on transfer of shares, the board would have taken the same on record immediately upon Section 58(2) of the Act coming into force. However, the board of Respondent No. 1 Company / KBL only took the DFS on record on April 18, 2016 (i.e., after 7 years of execution of the said DFS). This timing is very important as by 2016, the Respondents had already adopted a hostile attitude towards the Petitioners and were in the process of conducting a purported 'internal investigation' into an inter-se

promoter group transaction which had taken place on October 6, 2010. This was also done after Petitioner No. 2 / Mr. Rahul Kirloskar had attempted to purchase 39,70,000 (approximately 5% of the shareholding) of Respondent No. 1 Company / KBL by way of a pre-clearance application dated February 3, 2016 – which was initially rejected by the Compliance Officer on February 4, 2016 without providing any reasons.

(xvii) It is submitted that Respondent No. 2 / Mr. Sanjay Kirloskar has misused his position of control over Respondent No. 1 Company / KBL to involve it in a private dispute. Respondent No. 1 Company / KBL is a listed entity, and the Petitioners are entitled to freely trade in its shares. The Respondents have acted oppressively by causing Respondent No. 1 Company / KBL to take on record the DFS under Section 58 (2) of the Act and enforce an incorrect and a purportedly "implied" interpretation thereof, solely in order to prevent the Petitioners from dealing with their shares while Respondent No. 2 / Mr. Sanjay Kirloskar and Respondent No. 3 / Mrs. Pratima Kirloskar have continued to increase their shareholding in Respondent No. 1 Company / KBL from time to time.

(xviii) The true purport of the DFS is found at Clause 2 and Schedule II. Further, Clause 18 provides that any amendment must be in writing.

9. The Petitioners submit that the language of the DFS is very clear. There is no provision, explicit or implicit, restraining any party from dealing with any shares of Respondent No. 1 Company / KBL, or awarding complete ownership, management, and control of Respondent No. 1 Company / KBL to any party. Each of the parties

only received ownership, management, and control to the extent of the shares in Respondent No. 1 Company / KBL awarded to them. Therefore, no such extraneous restrictions can be read into the DFS, as sought by the Respondents.

10. In fact, Respondent No. 1's counsel admitted that there is no clause in the DFS prohibiting the Petitioners from buying shares and submitted that the same must be implied. This argument however is contrary to Sections 91 & 92 of the Evidence Act which exclude such extraneous evidence regarding the contents of a written document such as the DFS.

11. The Petitioners further refuted the Respondents contention that the Petitioners' interpretation of the DFS would mean that there was only a temporary transfer of control, and that from the very next day Respondent No. 2 would be in control of more shares than actually transferred to him by exercising voting rights in respect of such shares. They further contended that:

(i) The DFS is not a shareholders agreement designed to govern the relationship between shareholders of a particular company. As suggested by the name 'Deed of Family Settlement,' it is a document designed to settle the affairs of the family, by effecting a division of its assets amongst the various branches. Barring a few companies (KPL, BVH and Asara as set out in Clauses 7 and 12), the DFS does not in any manner contemplate any restrictions whatsoever on how each of the branches may deal with their shares in any company. None of the other branches can have any say in relation to the same. Thus, even the day after the DFS, any party could have freely bought or sold shares in any of the companies which formed the subject matter thereof.

(ii) In fact, the Respondents' have themselves altered the balance, by subsequently purchasing additional shares in Respondent No. 1 Company / KBL, while preventing the Petitioners from either buying or selling shares, while continuing to purchase shares in their own right. In fact, Respondent No. 2's stand is that the Petitioners can only sell to him. If this was truly the intention of the DFS, then the Respondents would have never purchased shares in their own right.

12. It has been stated that the Respondents contentions that complete management, ownership, and control of Respondent No. 1 Company / KBL was to completely come to Respondent No. 2/Mr. Sanjay Kirloskar's share are incorrect. The Petitioners are the largest minority shareholders of Respondent No. 1 Company / KBL holding 24.92% of its shareholding. Respondent Nos. 2, 3 and 9 collectively hold approximately 39.5% of its shareholding. Thus, neither group has an absolute majority. In fact, the Petitioners' shareholding consequent and since the execution of the DFS is large enough that it can block a special resolution from being passed (either with the support of shareholders holding 0.08% of the shares, or independently if less than 100% of the shareholders vote). In fact, with the support of public shareholders, the Petitioners could even defeat an ordinary resolution proposed by the Respondents or ensure passage of a resolution opposed by the Respondents. Thus, the Petitioners have been accorded significant management, ownership, and control of Respondent No. 1 Company / KBL. This is further established by the fact that Petitioner No. 2 was a director of Respondent No. 1 Company /KBL from well prior to the DFS, up until April 22, 2014 (i.e., even 5 years after execution of the DFS).

13. It is submitted that Schedule II of the DFS clearly delineates which companies are to go to which parties, thereby the various branches thus received sole ownership of shares in numerous entities: (i) Vikram Kirloskar got sole ownership of 2 companies, (ii) Respondent No. 2 of 5 companies, and (iii) Petitioner Nos. 2 and 3 and Gautam Kulkarni collectively of 7 companies. Only two companies were to be shared – KPL and Respondent No. 1. The DFS contains various provisions regarding the manner in which KPL's affairs would be conducted – however, it is absolutely silent with respect to Respondent No. 1 Company / KBL.

14. In fact, the only 'equalisation' contemplated in the DFS is at Clause 8 thereof:
    a. Respondent No. 2 pays 80.50 crores to Vikram Kirloskar;
    b. Petitioner No. 2 pays 12.17 crores to Vikram Kirloskar;
    c. Petitioner No. 3 pays 12.17 crores to Vikram Kirloskar;
    d. Gautam Kulkarni pays 12.17 crores to Vikram Kirloskar.

15. It is submitted that this in fact establishes that Petitioner Nos. 2 and 3 and Gautam Kulkarni received shares of Respondent No. 1 Company / KBL by way of absolute and unfettered ownership and had even parted with money for the same.

16. It is submitted that this fact is contrary to Respondent No. 2's own case that:

    "*5.8 The intention of the parties to the DFS clearly was that the management, ownership and control of KBL was to completely come to my share. The other parties to the DFS were allotted other companies as stated above. However, at the time of the DFS, KBL had higher profitability and*

market capitalization, as compared to the other then existent Kirloskar group companies which were the subject matter to the provisions of the DFS. Only for this reason and in an attempt to equalize the worth of all the three groups, Petitioner Nos. 2, 3 and Late Gautam Kulkarni were each permitted and allotted, from Better Value Holdings Ltd., as off market transactions, 52,88,218 shares of KBL and were permitted to hold these shares of KBL. …"

17. Thus, by Respondent Nos. 1 and 2's admission, the shares of Respondent No. 1 Company / KBL allotted to Petitioner Nos. 2 and 3 had value. According to the aforesaid Respondents, the very purpose of allotting them was to provide value by 'equalising' the worth of the three groups. If they had no value, then the worth of the three groups would have remained unequal despite such allotment. The value of a share is nothing but the ability of the owner to monetise the same. If the Petitioners are unable to monetise these shares, then they have no value and there was no point of transferring the shares to Petitioner Nos. 2 and 3 even for equalization.

18. The Petitioners submit that therefore, Respondent Nos. 1 and 2 are blatantly infringing upon the proprietary rights of the Petitioners to deal with their shares in Respondent No. 1 Company/KBL freely. It is alleged that this conduct is oppressive against the said Petitioners.

Rejection of Petitioner No.2's pre-clearance applications

19. It is the Petitioner's grievance that Respondent Nos. 2, 3 & 9 viz. Mr. Sanjay Kirloskar, Mrs. Pratima Kirloskar and Mr. Alok

Kirloskar have abused their position in Respondent No. 1 Company by preventing Petitioner No. 2 and his affiliates from acquiring additional shares thereof, while themselves increasing their respective shareholding in Respondent No. 1 Company. Petitioner No. 2 is a promoter and shareholder of Respondent No. 1 company. The pre-clearance applications filed by the said Petitioner for buying or selling of shares of Respondent No. 1 company in 2016 have been arbitrarily rejected, without providing any reasons, in complete contravention of law and Respondent No. 1 company's Code of Conduct, at the behest of Respondent No. 2 and his family who have claimed exclusive ownership, management and control of Respondent No. 1 company, by relying on a Deed of Family Settlement (DFS) dated September 11, 2009 entered into between the members of the Kirloskar family in their individual capacities

20. The Petitioners submit that Respondent No. 1 Company has implemented the 'Code of Practice and Procedures for Fair Disclosure of Unpublished Price Sensitive Information and Code of Conduct to Regulate, Monitor and Report Trading by Insiders of Kirloskar Brothers Limited' ("Code of Conduct") , with effect from May 15, 2005, under the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations"). As per the Code of Conduct, no insider of Respondent No. 1 Company (which would include Petitioner No. 2 / Mr. Rahul Kirloskar and his affiliates) could trade in its shares without obtaining a pre-clearance of such transactions. The Code of Conduct provides for the appointment of a compliance officer for Respondent No. 1 Company / KBL ("**Compliance Officer**"), who would report to the Chairman and Managing Director / Executive Director of Respondent No. 1 Company / KBL. The Compliance Officer would

be responsible for pre-clearing transactions and is *inter alia* entitled to seek declarations from a pre-clearance applicant that such applicant is not in possession of any unpublished price sensitive information. The Code of Conduct does not permit rejection of a pre-clearance application on any ground other than possession of unpublished price sensitive information.

21. The counsel for the Petitioner has submitted that Petitioner No. 2 / Mr. Rahul Kirloskar had previously in February 2016 proposed purchasing 39,70,000 (comprising about 5% of the paid-up share capital of Respondent No. 1 Company / KBL) shares of Respondent No. 1 Company / KBL but the same was subsequently withdrawn by Petitioner No. 2. It is submitted that it is a matter of interesting coincidence that soon after this request for purchase of shares of Respondent No. 1 Company / KBL was made by Petitioner No. 2 / Mr. Rahul Kirloskar, the DFS was hurriedly placed before the Board of Respondent No. 1 Company / KBL and was acknowledged and adopted by the Board specifically under Section 58(2) of the Act. Accordingly, by a Resolution dated April 18, 2016, Respondent No. 1 Company / KBL's Board of Directors recognised the DFS and resolved to recognise and enforce the terms thereof "in letter and in spirit" in accordance with Section 58(2) of the Act by refusing to grant consent to any transaction by a signatory thereto which was contrary to the terms thereof. On April 19, 2016, Respondent No. 1 Company / KBL disclosed its Board's resolution dated April 18, 2016, to the stock exchanges viz. BSE & the NSE. On the same day, Respondent No. 1 Company / KBL released a corporate announcement regarding the DFS to the BSE. Respondent No. 1 Company / KBL could not have taken the DFS on record. Respondent No. 1 Company / KBL was not a party to

the DFS and was not bound by the same. Further, the DFS is not an agreement within the scope of Section 58(2) of the Act, and does not in any manner restrict the free transferability of Respondent No. 1 Company / KBL's shares. The aforesaid Board resolution dated April 18, 2016, is directly contrary to the terms of the DFS.

22. A plain reading of the proviso to Section 58(2) of the Act suggests that the proviso simply permits a company to recognise contracts entered into between parties pertaining to transferability of shares.

Respondent No. 2's increase in Shareholding:

23. It has been submitted that in 2016, Respondent No. 2 / Mr. Sanjay Kirloskar made several pre-clearance applications under the Code of Conduct for purchase of shares of Respondent No. 1 Company / KBL. These applications were promptly permitted by the Compliance Officer. Respondent No. 2 / Mr. Sanjay Kirloskar thereby increased his shareholding in Respondent No. 1 Company / KBL by 16,65,798 shares i.e., approximately by 2%. It is pertinent to note that all of the pre-clearance applications were submitted (and approved by the Compliance Officer of Respondent No. 1 Company / KBL) subsequent to Petitioner No. 2 / Mr. Rahul Kirloskar's pre-clearance application dated February 3, 2016 being rejected by the Compliance Officer of Respondent No. 1 Company / KBL.

Rejection of KCPL's application:

24. It has been submitted that Petitioner No. 2 / Mr. Rahul Kirloskar & Petitioner No. 3 / Mr. Atul Kirloskar own and control 53.5% of the shareholding in Kirloskar Chillers Private Limited ("KCPL"). On

September 6, 2015, KCPL proposed to purchase 50,000 shares of Respondent No. 1 Company / KBL by filing a pre-clearance application. However, the said application was rejected by the compliance officer of Respondent No. 1 company on the ground that an approved pre-clearance was already in place for promoters, and there were no balance shares available for trade. The Petitioners submit that the alleged headroom earmarked for promoters was not disclosed and Respondent No. 2 / Mr. Sanjay Kirloskar and Respondent No. 3 / Mrs. Pratima Kirloskar were permitted to purchase shares even thereafter.

Rejection of Petitioner No. 2's first pre-clearance application:

25. At the same time, Petitioner No. 2 / Mr. Rahul Kirloskar on September 7, 2016 once again attempted to buy 5,000 shares of Respondent No. 1 Company / KBL by making a pre-clearance application. The Petitioners have provided the timeline and correspondence in this regard in the pleadings and its submissions filed before this Tribunal. However, by a letter dated September 7, 2016, the Compliance Officer rejected Petitioner No. 2 / Mr. Rahul Kirloskar's application without providing any reasons. Thereafter by an email dated September 8, 2016, Petitioner No. 2 / Mr. Rahul Kirloskar requested the Compliance Officer to immediately provide reasons for the rejection of its pre-clearance application. By an email dated September 14, 2016, the Compliance Officer informed Petitioner No. 2 / Mr. Rahul Kirloskar that its pre-clearance application had been rejected *inter alia* due to the DFS, in its true letter and spirit. He further informed Petitioner No. 2 / Mr. Rahul Kirloskar that the DFS had been intimated to the stock exchanges on April 18, 2016. By a letter dated September 15, 2016, Petitioner No.

2 / Mr. Rahul Kirloskar addressed his protest to Respondent No. 1 Company / KBL's Board of Directors (i.e., Respondent Nos. 2 & 4-9) regarding the rejection of his pre-clearance application. He noted that the purchase of shares in Respondent No. 1 Company / KBL by other promoters permitted by the Compliance Officer revealed the Compliance Officer's bias. On November 3, 2016, the Compliance Officer informed Petitioner No. 2 / Mr. Rahul Kirloskar that Respondent No. 1 Company / KBL's Board of Directors had found his rejection of the pre-clearance application to be justified.

Rejection of Petitioner No. 2's second pre-clearance application:

(i) Soon after, Petitioner No. 2 / Mr. Rahul Kirloskar proposed to sell 5,000 shares of Respondent No. 1 Company / KBL, the however same was also rejected citing the same reasons and by an email dated December 1, 2016 issued to Petitioner No. 2 / Mr. Rahul Kirloskar, Respondent No. 2 / Mr. Sanjay Kirloskar reiterated his incorrect interpretation of the DFS given by him in his email dated November 22, 2016, and once again offered to purchase the 5,000 shares of Respondent No. 1 Company / KBL that Petitioner No. 2 / Mr. Rahul Kirloskar wished to sell, at market price.

Complaints to SEBI

26. It is submitted that aggrieved by the arbitrary rejection of their pre-clearance applications, KCPL and Petitioner No. 2 / Mr. Rahul Kirloskar addressed complaints to SEBI, respectively. By

a letter dated February 14, 2018, SEBI informed Petitioner No. 2 / Mr. Rahul Kirloskar that it had already issued an informal guidance dated February 3, 2017 to KCPL on a similar issue. Further, SEBI stated that as Petitioner No. 2 / Mr. Rahul Kirloskar had filed a petition before the Hon'ble National Company Law Tribunal inter alia on this issue, the matter was *sub judice*.

27. Respondent Nos. 2, 3 and 9 viz. Mr. Sanjay Kirloskar, Mrs. Pratima Kirloskar and Mr. Alok Kirloskar have used their controlling position over Respondent No. 1 Company/KBL to oppress the Petitioners by causing the Board of Directors of Respondent No. 1 Company/KBL to take the DFS on record under Section 58(2) of the Act and using the same to deny the aforesaid pre-clearance applications, for their own ulterior motives. It is submitted that without prejudice to the submission that the Respondents could not have used the DFS as a ground for rejecting the pre-clearance applications filed by Petitioner No. 2 / Mr. Rahul Kirloskar and KCPL, in any event the terms of the DFS could never have been binding upon KCPL, who was not a party thereto.

28. By its letter dated September 12, 2016 , the Compliance Officer initially informed KCPL that its pre-clearance application had been rejected as other promoter pre-clearances were in place, and there were no balance shares available for trade. However, by his letter dated December 16, 2016 , the Compliance Officer informed SEBI that KCPL's application had been rejected in light of the DFS. This shows the conduct and state of affairs in Respondent No. 1 Company / KBL which is a listed public

limited company. The changing stand in relation to rejection of the pre-clearance application of KCPL demonstrates the *mala fide* and oppressive manner in which the Respondents have conducted Respondent No. 1 Company / KBL. It is clear that Respondent No. 1 Company / KBL was intent on rejecting KCPL's application one way or the other, and the reasons provided for the same were merely a smokescreen.

29. The aforesaid pre-clearance applications were rejected in a mechanical fashion, without application of mind by the Compliance Officer or otherwise providing any reasons for such rejection. It was only after repeated reminders that some, albeit often contradictory and with underlying ulterior motives, reasons were provided for the same. This demonstrates the mismanagement in the affairs and oppressive manner in which Respondent No. 1 Company / KBL's affairs are being conducted.

30. The Petitioners have further relied on the judgment in In ***Needle Industries (India) Ltd. & Anr. v. Needle Industries Newey (India) Holding Ltd. & Anr. [(1981) 3 SCC 333]***, where the Hon'ble Supreme Court of India held that:

"49. … But a series of illegal acts following upon one another can, in context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom these acts are directed….

52. … The person complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is

unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as a shareholder…"

31. It is submitted that the Respondents' actions undoubtedly fall within the above category. They have repeatedly and unfairly acted to prevent Petitioner No. 2/ Mr. Rahul Kirloskar and other Kirloskar companies from increasing their shareholding in Respondent No. 1 Company / KBL or otherwise deal with the shares held by them in Respondent No. 1 Company / KBL in the manner they deem fit, in an oppressive and arbitrary manner, causing them great prejudice in the exercise of their legal and proprietary rights as shareholders.

Failure to provide extracts of minutes of Board Meetings

32. It is the Petitioners case that the Respondents have blatantly denied Petitioner No. 2 / Mr. Rahul Kirloskar the undisputed rights available to him under law as a past director of Respondent No. 1 Company / KBL. Petitioner No. 2 / Mr. Rahul Kirloskar was a director of Respondent No. 1 Company / KBL from September 19, 2000 to April 22, 2014 . In accordance with Section 118(10) of the Act read with Clause 7.7.2 of the Secretarial Standards-1 issued by the Institute of Company Secretaries of India, a director is entitled to receive signed copies of the minutes of board meetings held during his directorship, even after he ceases to be a director. Petitioner No. 2 / Mr. Rahul Kirloskar was accordingly entitled to receive copies of the minutes of the meetings of Respondent No. 1 Company / KBL's Board of Directors.

Biased conduct of Respondent No. 1 Company / KBL and its failure to adopt a neutral stand in the present shareholder dispute

33. It is the Petitioners allegation that Respondent No. 1 Company / KBL has not adopted a neutral stance in the present matter. The Respondent No. 1 Company/KBL has sided with Respondent No. 2 / Mr. Sanjay Kirloskar and opposed grant of any reliefs in the Petitioners' favour. It is submitted that Respondent No. 1 Company / KBL ought to have taken a neutral stance, as is expected in shareholder disputes such as these and Respondent No. 2 / Mr. Sanjay Kirloskar has abused his position of control over Respondent No. 1 Company / KBL in order to compel it to take an adversarial stance in the present dispute. Respondent No. 1 Company / KBL's funds and resources ought not to be used to participate in a private dispute between individuals who are also shareholders of Respondent No. 1 Company / KBL.

34. It has been alleged that Respondent No. 1 company/KBL and Respondent No. 2 have filed joint applications and pleadings in the captioned matter and Respondent No. 1 Company / KBL is not a neutral party to these proceedings. This itself demonstrates oppressive actions and mismanagement in the affairs of Respondent No. 1 Company / KBL against minority shareholders.

35. The Petitioners submit that in their Affidavits in Reply, the Respondents have brought on record several unrelated issues and frivolous cases initiated by Respondent No. 1 Company/KBL at the behest of Respondent No. 2 / Mr. Sanjay Kirloskar by misusing the resources and funds of Respondent No. 1 Company/KBL. These cases/issues are absolutely irrelevant and have no co-relation or bearing whatsoever with the subject matter of the Company Petition and the continued acts of oppression and mismanagement in the

affairs of Respondent No. 1 Company / KBL . All the purported issues raised by Respondent No. 2 / Mr. Sanjay Kirloskar are events that have arisen after filing of the Company Petition and in any event have no bearing or correlation with the Company Petition.

36. The Petitioners have relied on the judgment of ***Pravin Arjun Patel & Ors. v. Kishore Yashraj Patel & Ors. [Appeal from Order No. 231 of 1990 dated 23/25/28.3.1990],*** passed by the Hon'ble Bombay High Court:

"Another fact which must be mentioned at this stage is that normally in fights between shareholders, the Company does not get involved. In this case, the father of the 1st Respondent has filed or got filed affidavits of the Company which reflect nothing else but his case. This is a practice which must be deprecated. For this reason, not much reliance could be placed upon the Affidavits filed by the Company."

Allegations against independent directors

37. The Petitioners have also alleged that the independent directors of Respondent No. 1 company have been supporting the continued acts of oppression and mismanagement in the affairs of Respondent No. 1 Company / KBL on account of Respondent No. 1Company / KBL acting in a manner that supports the malicious actions of Respondent No. 2 / Mr. Sanjay Kirloskar and his family, by not raising any objections to the actions taken by Respondent No. 2 / Mr. Sanjay Kirloskar or Respondent No. 1 Company / KBL.

B. **Respondents case:**

Respondent No. 1 company

The Petitioners have failed to establish that it would be just and equitable to wind up Respondent No. 1 Company

38. It is Respondent No. 1 Company's case that the Petitioners have failed to aver or establish the threshold requirements for exercise of jurisdiction under Sections 241, 242 and 244 of the Companies Act, 2013, i.e. the existence of circumstances that would make it just and equitable to wind up Respondent No. 1 Company. Having failed to do so, the present Petition is not maintainable and must be dismissed at the outset.

39. The Respondent has contended that Sections 241 and 242 of the Act were brought into effect on 1st June 2016 and 9th September 2016. The present Petition was affirmed and filed on or about 11th May 2017. Prior to the Act being brought into force, a petition for oppression and/or mismanagement was maintainable under Sections 397 and 398, respectively, of the Companies Act, 1956 ("**1956 Act**"). A perusal of the relevant provisions of the 1956 Act and compared with the present 2013 Act, would show that legislative intent was that the law laid down while interpreting Sections 397 and 398 of the 1956 Act should apply with equal force to Sections 241 and 242 of the Act. This is because a plain reading of the relevant provisions demonstrates that these provisions are worded in a substantially similar, if not identical, manner. In fact, the legislature has, in Section 241 of the Act, fused the separate concepts of 'oppression' and 'mismanagement' prevalent under Sections 397 and 398 of the 1956 Act, into one single section.

40. The Respondent has contended that it is trite law that an action for oppression and/or mismanagement is an alternative to winding up of the company. The Respondent has relied on the decision of the Supreme Court (3 Judges) in ***Shanti Prasad Jain vs. Kalinga Tubes Ltd. — AIR 1965 SC 1535*** rendered under the 1956 Act.

41. The respondent has further contended that an action for oppression and/or mismanagement is founded on the same principles as an action for just and equitable winding up of a company and is nothing but an alternative thereto. Such an action enables the court to allow the company to continue operations under suitable directions as it believes that an order of winding up would be prejudicial to the interests of all its shareholders. The respondent has further contended that a preliminary requirement to maintain an application under Sections 241, 242 and 244 of the Act is to show that there is "just and equitable cause for winding up the Company" and has relied on the decision of Shanti Prasad Jain (supra) in this regard.

42. The respondent has also relied upon the judgments in *Needle Industries (India) Ltd. and Ors.* vs. *Needle Industries Newey (India) Holding Ltd. and Ors* (3 Judges). — **(1981) 3 SCC 333;** *Hanuman Prasad Bagri v. Bagress Cereals (P) Ltd.* - **(2001)** 4 **SCC 420;** Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad - **(2005) 11 SCC 314;** *Kamal Kumar Dutta and Ors.* vs. *Ruby General Hospital Ltd. and Ors.* (2 Judges) — **(2006)** 7 **SCC 613;** *Vardhaman Dye Stuff lndustries Pvt. Ltd. v. M.R. Shah* (Single Judge) - **2007 SCC OnLine Bom 789**; *M.S.D.C. Radharamanan* vs. *M.S.D. Chandrasekara Raja and Ors.* —

(2008) 6 **SCC 750;** *Chatterjee Petrochem (I) Pvt. Ltd.* vs. *Haldia Petrochemicals Ltd. and Ors.* — **(2011) 10 SCC** 466 in support of their argument that the Petitioners have not satisfied the jurisdiction required for maintaining a Petition under Sections 241 and 242 of the Companies Act, 2013 because there is no pleading whatsoever to justify or demonstrate that the facts which the Petitioners alleged to be acts of oppression or mismanagement are such that would trigger the just and equitable clause for winding up of the Company or make out any ground for the grant of relief under Sections 241 and 242 of the Companies Act, 2013.

43. The respondent has further submitted that it is settled law that no amount of proof can replace pleadings and the Petition is utterly lacking any pleadings whatsoever which demonstrate and on the basis of which the NCLT can form an "opinion" that the acts of oppression alleged in the Petition constitute a fit case for the just and equitable winding up" of Respondent No. 1. The respondent has relied on the judgment of ***Anathula Sudhakar vs. P. Buchi Reddy & Ors. - 2008 4 SCC 594, para 29*.**

<u>The disputes raised in the Petition pertain to the interpretation of the Deed of Family Settlement dated 11th September 2009 and are not related to any act of oppression or mismanagement</u>

44. It is the respondent's case that from 1937 till about 1994, the late Shantanu Rao L. Kirloskar (SLK), i.e. the grandfather of Respondent No. 2 was at the helm and in control of all affairs of all Kirloskar Group Companies. Under his aegis, in or about 1985, various Kirloskar Group Companies were demarcated between different

branches of the Kirloskar family. Respondent No. 2 was given the management and control of Respondent No. 1, and, while Petitioner Nos. 2 and 3 were put in charge of Kirloskar Oil Engines Limited (KOEL) and Kirloskar Pneumatic Co. Ltd. (KPC). It was further agreed that various Kirloskar Group Companies would not compete with each other. Late SLK's Will dated 29th September 1989 reiterates the said understanding that the control of each individual Kirloskar Group Company shall remain within the branch managing the company.

45. The respondent further submitted that the members of the Kirloskar family executed a Deed of Family Settlement on 11th September, 2009 (DFS) to bring about a consensual settlement, *inter alia*, whereby it was agreed that the ownership, control and management, of Kirloskar Group companies, by each branch of the Kirloskar family would be clearly defined for the smooth functioning of the business and to preserve peace, harmony, goodwill, prestige and properties of the family and to avoid unpleasant happenings such as court litigations.

46. The respondent has contended that following principal reliefs sought for by the Petitioners in the Petition are in the teeth of, contrary to and inconsistent with the entire object, purpose and interpretation of the DFS, in as much as if these reliefs are granted the ownership, management and control of Respondent No. 1 which is to vest in Respondent No. 2 and his family, will be defeated. It is contended that the said reliefs do not arise and cannot arise out of the Petitioners' proprietary rights as a shareholder but are based on the Petitioners' faulty interpretation of the DFS. It is trite law that a case for oppression and /or mismanagement by a shareholder must relate

to the proprietary rights of the shareholder that arise from their shareholding in the company. The respondent has relied on the judgment of *Shanti Prasad Jain v. Kalinga Tubes Ltd.* (supra); *Needle Industries (India) LU. v. Needle Industries Newey (India) Holding Ltd.,* (supra) in support of its contention.

47. In relation to the Petitioner No. 2 allegation in respect of denial of his right of inspection of minutes of Board meetings in contravention of the Secretarial Standards, the respondent submitted that a Petition under Sections 241 and 242 of the Companies Act 2013 is maintainable only where the action (i.e., the alleged oppression or mismanagement) complained of arises out of proprietary rights in the capacity as a shareholder. It is submitted therefore that directorial complaints of the nature presently complained of cannot be the subject matter of the present Petition.

The Object and Purpose of executing the Deed of Family Settlement

48. The respondent submits that the object and intent underlying the DFS was to segregate the ownership, management and control of the Kirloskar Group corporate entities and vest the same into each of the branches of the Kirloskar Family and in the manner provided in the family settlement. The DFS is an agreement inter se the members of the Kirloskar Family, inter alia, (i) to ensure the smooth functioning of the management, ownership and control of the Kirloskar Group Companies; (ii) with the view to, and on the principle that, the family must present a united face to the outside world and industrial community. In order to ensure the smooth functioning of the management, ownership and control of the Kirloskar Group entities,

under Clause 15 of the DFS, the parties agreed not to engage in directly competitive business with each other. The actions of the Petitioners, it is submitted, are contrary to and entirely disregard the object and purpose of the DFS in letter and spirit.

49. The respondent has relied on various clauses of the DFS some of which overlap with the clauses relied by the petitioner no. 2, albeit with respondent's interpretation of the said clauses viz. clause 2, Schedule II, Clause 3 to 5, Clause 6 to 8, Clause 10, Clause 12, Clause 14, Clause 15, Clause 16.

50. The respondent contends that the expression "...to the extent mentioned therein...", appearing at the end of Clause 2 above, is meant to indicate the extent of the shareholding which will be held by the family member to whom the ownership, management and control has passed on so as to enable such family member to exercise ownership, management and control over the company mentioned against his name in Schedule II. Schedule II sets out the specific number of shares to be transferred to each of the Parties, i.e. to each of the five branches of the Kirloskar family so that ownership, management and control is passed to each Party. Clauses 3 to 5 sets out the distribution of shares held by KSL, BVH andAsara to the Parties. Schedules III, IVA and IVB details out the distribution of these shares to the Parties. Clause 6 (read with Schedule V) provides for Vikram Kirloskar (one of the parties) to purchase the shares set out in Schedule V from the companies designated in Clause 1 (e), (f) and (g) of the DFS. Clause 7 provides for the equal allotment to all parties of the shares held by the Fairvalue Trust in the capital of BVH and Asara on payment of face value. Clause 8 provides that in order that the distribution is fair and equitable, notwithstanding anything contained

in Clause 3, the parties have agreed, inter alia, that (i) Respondent No. 2 would pay an amount of Rs. 80.50 crore to Vikram Kirloskar and (ii) Petitioner Nos. 2, 3 and Gautam Kulkarni would pay an amount of Rs. 12.17 crores each to Vikram Kirloskar. Clause 8 further provided that Respondent Nos. 2 would transfer and cause his nominees to transfer their stake in KBIL to Petitioner Nos. 2, 3 and Gautam Kulkarni without any further consideration. Clause 10 provides for the dissolution of the Fairvalue Trust after completion of all actions under the DFS within a mutually agreed period. Clause 12 provides that parties would hold equal number of shares in Kirloskar Proprietary Ltd as set out in Schedule IVA to the DFS and would have equal representation (one nominee each) on the board of directors of KPL. Clause 14 provides that the Schedules and Annexures to the DFS are incorporated into and deemed to form part of the DFS. Clause 15 provides for a non-compete obligation, and that no party would cause damage to the name and reputation of "Kirloskar" including by engaging in a directly competitive business.

51. The respondent has submitted that under Schedule II the number of shares of Respondent No. 1 allotted to Respondent No. 2 (and his family) is substantially more than the shares allotted to any other Party to the DFS. Under Schedule II, while Respondent No. 2 was allotted 3,73,95,188 shares (35.36%) of Respondent No. 1, the other family branches (including Petitioner Nos. 2 and 3) were each allotted 52,88,218 shares (5%) of Respondent No. 1 and evidently, the ownership, management and control of Respondent No. 1 accordingly vested in Respondent No. 2.

52. The respondent has further submitted that the result of the DFS and the allotment of shares to the Respondent No. 2 Group against

payment of consideration, was that the shareholding of Respondent No. 2 Group in Respondent No. 1 increased by 35.36% and became approximately 36.45% whereas the shareholding of the Petitioner Nos. 2, 3 and the Late Gautam Kulkarni became approximately 5% each (after taking into account the 52,88,218 shares allotted under the DFS).

53. It has been further contended by the respondents that after signing of the DFS in 2009 and till disputes arose in 2014 Petitioner Nos. 2 and 3, both, acted strictly in accordance with the terms of the DFS and the interpretation thereof as set out herein above. This is evident from the fact that they voted on their shares held in Respondent No. 1 Company in favour of Respondent No. 2. They also signed proxy forms enabling Respondent No. 2 to vote on their shares held by them in Respondent No. 1. Petitioner No. 1's authorized representatives also executed proxy forms in favour of Respondent No. 2 to vote at the general meetings of Respondent No. 1.

54. The respondent has further contended that the DFS needs to be read harmoniously. It is contended that on a true and proper interpretation the parties to the DFS gave up/ surrendered /relinquished ownership, management and control of the respective companies mentioned in Schedule II to the other parties in whose favour the ownership, management and control passed under the DFS.

55. The Respondent contended that if and when any other party to the DFS (or entities under its control) wished to sell shares held in Respondent No. 1, it was required to first offer to sell them to Respondent No. 2 in order to ensure that the ownership, management and control of Respondent No. 1 remained with

Respondent No 2 and his family. Accordingly, in response to the Petitioner No. 2's pre- clearance application to sell 5,000 shares of Respondent No. 1, Respondent No. 2 offered to purchase the said shares at the prevailing market value. However, Petitioner No. 2 did not accept such an offer, despite stating in the said pre-clearance application that he proposed to sell at the market price. Thus, no monetary loss or injury would have been caused to Petitioner No. 2 had he accepted Respondent No. 2's offer and there is no oppression as alleged or at all.

56. The respondent further contends that the Petitioners' contention that no separate consideration was paid by the Respondent No. 2 Group for the ownership, management and control of Respondent No. 1 overlooks the fact that the DFS is a family arrangement and is a distribution of the assets of the Kirloskar family inter se the family members. This inter se distribution of assets, which equally involves relinquishing ownership rights over certain assets in favour of others, is itself consideration for the assets received by each of the named members in the DFS. No separate consideration is required for this purpose. Any payments made under the DFS are simply to equalize the distribution between the family members.

57. The respondent has cited various judgments in support of his arguments viz. *Kale versus Dy Director of Consolidation,* **(1976)** 3 **SCC 119;** *Ram Charan Das v. Girja Nandini Devi & Ors,* **AIR 1966 SC 323;** *H.S. Singhania v. G.H. Singhania,* **(2006)** 4 **SCC 658;** *S. Shanmugam Pillai v. K. Shanmugam Pillai***,** **(1973)** 2 **SCC 312**

58. It is further contended by the respondent that the Petitioners hold 24.92% of the shareholding in Respondent No. 1. If the Petitioners are allowed to acquire further shares in Respondent No. 1, they would be in a position to block any special resolution from being passed. This would, in turn, hamper Respondent No. 2's control over Respondent No.1 and would create a deadlock in the management and affairs of Respondent No. 1 Company.

59. It has been further contended that in light of Section 58(2) of the Companies Act, the Petitioner group is not entitled to challenge the ownership, management and control or to destabilize the ownership, management and control of Respondent No. 1 from Respondent No. 2 and in view of the proviso to Section 58(2) of the Act, the Compliance Officer was justified in refusing to grant pre-clearance as sought for by the Petitioners.

60. It has been further submitted that admittedly the Board of Directors of Respondent No. 1 had resolved that the Compliance Officer's decision to reject Petitioner No. 2 pre- clearance application dated 7th September 2016, and Kirloskar Chillers Pvt. Ltd.'s pre-clearance application dated 6th September 2016 was justified and could not be reversed by the board. Further, complaints on the basis of rejection of pre-clearance applications are matters which allege violations of the SEBI (Prohibition of Insider Trading) Regulations and are therefore within the exclusive jurisdiction of the SEBIAct, 1992, to be adjudicated upon by SEBI. The same do not give rise to an actionable cause of action to the Petitioners to invoke the NCLT's jurisdiction under Sections 241 and 242 of the Companies Act, 2013.

61. The respondent has also raised contentions in respect of clause 15 of the DFS which is a non-compete clause as per the respondent.

Refusal to provide copies of Board minutes

62. It is submitted that a Petition under Sections 241 and 242 of the Companies Act 2013 is maintainable only where the action (i.e., the alleged oppression or mismanagement) complained of arises out of proprietary rights in the capacity as a shareholder. It is submitted therefore that directorial complaints of the nature presently complained of cannot be the subject matter of the present Petition. Further and in any event, assuming that the action complained of (i.e., refusal to provide copies of the minutes of the Board Meetings) can, at all, be related to a 'proprietary right' of the Petitioners, the same is not and cannot constitute a ground for the 'just and equitable winding up' of Respondent No. 1.

63. It has been further submitted that Respondent No. 1 was always ready and willing to offer and provide inspection of the minutes to Petitioner No. 2. The Company's decision to require the Petitioner to execute a non- disclosure undertaking is fully in compliance with the guidance notes for the Secretarial Standards on meetings of the Board of Directors (SS-I) which provide that "*…in order to protect the interest of a company, a system may be introduced requiring a person ceasing to be a director who desires to inspect the Minutes Book to submit a formal application in writing and furnish non-disclosure undertaking to ensure that he is bound by obligations of confidentiality.*"

Contentions of Respondent No. 2 and 9

64. Respondent Nos. 2 and 9 submit that they have adopted the submissions made on behalf of Respondent No. 1. Respondent No. 2 & 9 have made some additional submissions, which are discussed in successive para.

65. Shortly after receipt of Petitioner No. 2's request dated 21st November 2016 to sell 5000 shares of Respondent No. 1, Respondent No. 2 addressed an email the very next day, i.e., on 22nd November 2016 to Petitioner No. 2, *inter alia,* stating as follows:

"*I have been informed about the receipt of your pre-clearance application dated November 21, 2016 for the sale of 5000 equity shares of Kirloskar Brothers Limited (KBL).*

In true letter and spirit of the "Deed of Family Settlement" executed amongst us on September 11, 2009, it was agreed, inter alia, that the ownership, control and management of KBL will remain with me and my family to the exclusion of any interference from any of the remaining promoters, including you.

In view of the aforesaid and under the facts and circumstances, I would like to inform you that in case any Promoter or a member of the Promoter group desires or intends to sell the shares of KBL they should first be offered to me. I am interested anal willing to buy the shares which you intend to sell at the prevailing market price.

Therefore, you are requested to offer to sale 5000 shares to me at the prevailing market price."

66. As Petitioner No. 2's email did not contain any explanation or reasons as to why the Minutes were being sought three years after Petitioner No. 2 had ceased to be a Director of Respondent No. 1,

the Company Secretary of Respondent No. 1, by email dated 16th March 2015 called upon Petitioner No. 2 to, inter alia,

> "…kindly provide us with the reasons and purpose of your request for us to *better understand your request…" and further also stated that "…[w]e reiterate that the minutes of the Board Meetings during your tenure as a director of the Company (i.e. September 19, 2000 to April 22, 2014), will be kept ready for inspection to be taken by you, in accordance with applicable laws, subject to you furnishing a non-disclosure undertaking to the Company*."

67. Pertinently, despite the above, Petitioner No. 2 has failed to furnish the requisite Non-Disclosure Undertaking or to take inspection of the Minutes of the Board Meetings for this period. The request to furnish reasons for the seeking copies of the Minutes as well as to furnish a Non-Disclosure Undertaking is not, and cannot be seen to be, oppressive particularly in light of the fact that by this time the Petitioners were in active litigation with Respondent No. 1, inter alia, in relation to the enforcement of the DFS and the non-compete obligations contained therein.
68. Given the fact that the Petitioners are admittedly competing with KBL through KOEL and La-Gajjar (being the subsidiary and set-down subsidiary of Petitioner No. 1), which is an evident breach of the non-compete obligations contained in the DFS, and given that the Board Minutes will necessary contain confidential information relating the business of KBL, the Respondents in calling upon the Petitioner No. 2 to furnish reasons for the request made and to furnish the Non-Disclosure Undertaking cannot be seen to have acted oppressively.
69. It is submitted that an internal audit was conducted in the year 2016, by Respondent No. 1, in relation to transfers of shareholding that took place in the October 2010 in order to ascertain whether all

relevant information had been shared by Mr. Alawani by his Letter dated 10th May 2012 which was addressed to SEBI on behalf of KBL. There is and can be no illegality or oppression in providing true and correct information to a statutory authority, i.e., SEBI and by doing so KBL has merely complied with its legal obligations. The Petitioners have entirely failed to demonstrate in what manner the audit can be said to be oppressive in nature.

70. The enquiry conducted by SEBI into allegations of insider trading against the Petitioners was pursuant to a distinct statutory mandate invested in SEBI as contemplated under the PIT Regulations, 1992. The preparation of a report to aid this investigation cannot be seen as oppression or mismanagement and is in any event, not relatable to the proprietary rights of the Petitioners as shareholders of Respondent No. 1.
71. The Respondents submits that the Petitioners have raised new grounds for the first time in the course of oral arguments.Petitioners virtually abandoned the grounds of oppression raised in the Petition and instead sought to make out a case for just and equitable winding up of Respondent No. 1, inter alia, by alleging that Respondent No. 2 is misusing the funds of Respondent No. 1 by initiating and prosecuting litigations against the Petitioners in the name of the Company.
72. This contention does not form part of the case pleaded in the Petition and therefore cannot be considered at this stage. In support of the contention the Respondent has relied on the decision of the Hon'ble Supreme Court in the case of Shanti Prasad Jain v Kalinga Tubes Ltd. [AIR 1965 SC 1535, Para 35] as followed by the High Court in the case of Shree Ram Urban Infrastructure Ltd. V Shri R.K. Dhall & Ors. (2009 SCC OnLine Bom 2086, Para 4].

73. Respondent No. 1 has been constrained to adopt these legal proceedings in view of the illegalities committed by the Petitioners, including (i) causing Kirloskar Proprietary Limited ("KPL") to terminate the permanent user agreements executed in favour of Respondent No. 1 to use the 'Kirloskar' trademark and (ii) breaching the provisions of the DFS by carrying on pump businesses in competition with Respondent No. 1.
74. Each of the litigations have been initiated in order to protect the interest of Respondent No. 1 and its shareholders in view of the illegal actions of the Petitioners in breach of their contractual obligations, inter alia, under the DFS.
75. Only in relation to the business an arrangement / understanding ("the said understanding") was arrived at between the various members of the Kirloskar family the salient features of which are as follows:

    i. The management and control of the Kirloskar Group Companies was compartmentalized and divided between various branches of the Kirloskar Group.

    ii. The management and control of the various Kirloskar Group Companies were specified to be within the control and management of a particular branch of the Kirloskar family and were to remain at all material times within the control and management of that particular group. Though there would be cross shareholdings that would be held between the members of the different family branches groups in *inter se* body corporates, such shareholding was to be held and rights thereon were to be exercised for the benefit and as per the will of the branch in control and management of such body corporate.

iii. Broadly, the division was based on the distinct businesses which the companies were carrying on. The management and control of the Respondent No.1 Company, which was carrying on the business of pumps came to Respondent No. 2.

iv. The businesses of the Kirloskar Group Companies were to be complementary and not competitive *inter se* i.e., with each other/ members of the Kirloskar Group Companies, in the greater interest of the Kirloskar group.

76. The recitals to DFS also reiterate the said understanding and also set out the circumstances, the object and purpose for which the DFS came to be executed. Some relevant recitals are reproduced here below,

> "*B.* *The Parties hereto have, for some time in the past, been managing various companies in the tradition set by Shri S. L. Kirloskar. Names of the major companies managed by the Parties, both public and private, are listed in Schedule I to this DFS.*
>
> …
>
> *D.* *It is apprehended that differences of opinion may arise between the Parties in respect of ownership, management and control of the Kirloskar Group (as hereinafter defined) on account of various reasons, including clash of attitudes and behaviour. The Parties hereto felt that it is prudent to take steps so that issues do not get transformed into problems and problems do not lead to emergencies as these will hamper the progress of the Kirloskar Group affecting the peace, harmony, goodwill, prestige and properties of Kirloskar Family.*
>
> *E.* *The Parties hereto felt that before the fifth generation gets fully involved in family business, it will be wise to effect a family settlement whereby the ownership, control and management of*

each branch of the Kirloskar Family gets clearly defined for smooth functioning of the business and to preserve peace, harmony, goodwill, prestige and properties of the family and to avoid unpleasant happenings such as court litigations, etc.

F. The Parties hereto also feel that in spite of likely internal differences, the family must, to the outside world and industrial community, present a united face and the family settlement shall be on this principle…" (Emphasis supplied)

77. The DFS is in force, has been implemented and is valid, subsisting and binding upon all the parties thereto, including Petitioner Nos. 2, 3 and Respondent No. 2 (and their respective branches). The DFS is a continuation of the pre-existing oral arrangement; the formation thereof; sought to ensure that the management and control of the Kirloskar group companies would be held in accordance therewith. It is in this backdrop that the terms of the DFS are liable to be interpreted and enforced.

The Petitioners conduct, including by filing the present Petition, is to seek to engineer disputes and defeat the intent and purpose of the DFS.

78. The Petitioners were required and are legally obliged to hold the shareholding in Respondent No. 1 consistent with and are liable to exercise rights thereon in accordance with, Respondent No. 2's ownership, management, and control of Respondent No. 1 in term of the DFS. Hence, the Petitioners were and are under a continuing obligation in view of the terms, letter, and spirit of the DFS, to offer Respondent No. 2 the shares of Respondent No. 1 held by them before selling or transacting with or in favour of any other person/s. This is apparent from and/or implied in the DFS (which all accept) and is necessarily required to be implied to ensure that the DFS is adhered to

and implemented in accordance with its true letter, spirit, and construction.

79. The aforesaid agreement and understanding is also clear from the conduct of the parties between the years 2009 till the end of 2014 i.e. when the disputes arose, as set our below:

    i. Throughout this period, Petitioner Nos. 2, 3 and Late Gautam Kulkarni have voted on their shares in Respondent No. 2's favour.

    ii. In fact, as was done during the period of the said understanding, for the period 2009 to 2014, even post the DFS, Petitioners Nos. 2, 3 and Late Gautam Kulkarni have signed proxy forms enabling Respondent No. 2 to vote on shares held by them in Respondent No. 1.

    iii. Petitioner No.1 has passed a board resolution dated 22nd October, 2010 authorizing certain employees and/or key managerial personnel of the Petitioner No. 1 to attend and vote on behalf of the Petitioner No. 1 at all general meetings of other body corporates wherein the Petitioner No. 1 had investments or in which the company may invest in the future.

    iv. Further, such employees and/or key managerial personnel of the Petitioner No. 1 that were authorized to attend and vote on behalf of Petitioner No. 1 at general meetings of Respondent No. 1 would provide Respondent No. 2 with the authority to vote at the general meetings of Respondent No. 1 by executing proxy forms.

80. Clearly, the present Petition seeks to defeat the rights of Respondent No. 2 (and his branch) to manage and control Respondent No. 1. This

is in the teeth of the provisions of the DFS by which the Petitioner Nos. 2 and 3 have solemnly agreed that ownership, management, and control over Respondent No. 1 will remain with Respondent No. 2's branch of the Kirloskar family in view of his continued control over the company from 1985 onwards as per the said understanding and in accordance with the last wishes of SLK.

81. The Respondents submits that the Petitioners do not have the best interest of Respondent No. 1 Company in mind is evident from the following instances and acts of the Petitioners that are clearly counter-productive to the interests of Respondent No.1:

    a. Actions by KOEL in 2014, in breach of non-compete obligation under Clause 15 of the DFS.

        i. Since 1926, Respondent No. 1 has manufactured, marketed, sold, and distributed *inter alia* all electric, submersible, and mono block pumps to the exclusion of all other Kirloskar family branches and companies.

        ii. However, almost immediately upon Petitioner No. 2's resignation from the board of Respondent No. 1 in April 2014, KOEL commenced competing against Respondent No.1. KOEL is a company under the control of the Petitioners and started acquiring electric, submersible, and mono-block pump sets from third parties and marketing and distributing them under trademarks "Kirloskar" and "Varsha/Varsha Electric" and was also attempting to use the same distributors as Respondent No.1.

iii. This was in clear breach of Clause 15 of the DFS, which provides for a bar against directly competitive business:

> *"No Party shall do or omit to do any act, deed or thing which will cause damage to the name and reputation of "Kirloskar" including engaging in a directly competitive business and shall strive to bring in efficiency, competence and innovation in the business run by him, so as to enhance the brand "Kirloskar". The Parties also agree to co-operate with each other to ensure smooth implementation of this settlement and agree to do such things and acts and sign such deeds and documents as may be necessary or expedient to give effect to the provisions of the DFS."* (emphasis supplied)

iv. KBL therefore was required to issue multiple letters to KOEL calling upon KOEL not to act in breach of the DFS or carry any competing business.

b. Acquisition in La-Gajjar Machineries Private Limited ("**La-Gajjar**") in breach of the non-compete obligation under Clause 15 of the DFS.

i. On 21st June 2017, KOEL entered into an agreement to acquire 76% stake in La-Gajjar, a company engaged in the manufacturing of electric, submersible and monobloc pumps and pump sets, a business directly competing with Respondent No. 1's business.

ii. Despite putting KOEL and its board of directors to notice that such an acquisition would be in material breach of the DFS, Petitioner Nos. 2 and 3 neglected

their obligations under the DFS and caused KOEL to complete the acquisition of 76% stake in La-Gajjar.

iii. As a result of the acquisition, KOEL started selling electric, submersible and monobloc pumps, through this subsidiary, under the brand name "Varuna", and advertising products in direct competition to those manufactured and sold by Respondent No. 1.

iv. In view of, *inter alia*, such violations of the DFS, Respondent No. 2 was constrained to institute the DFS Suit before the Civil Judge, Senior Division Pune for enforcement of the DFS.

c. Actions in Kirloskar Proprietary Limited (KPL)

i. On 2 April 2018, KPL issued 6 separate notices to Respondent No. 1 purporting to unilaterally terminate the user agreements between KPL and Respondent No.1 and called upon Respondent No. 1 to execute fresh user agreements in terms of the purported drafts enclosed therewith, which were *inter alia* unacceptable, disadvantageous and contrary to the protection of the Kirloskar brand and trademarks.

ii. It was contrary to the pre-arranged scheme and understanding, including the various Deeds of Assignments, basis which KPL held the trademarks.

iii. Thus Petitioner Nos. 2 and 3, through KPL have acted to the detriment of Respondent No. 1.

iv. Respondent No. 1 was thus constrained to institute the TM Suit for enforcement of Respondent No. 1's proprietary interests in Kirloskar marks.

v. Further, though the termination notices were subsequently withdrawn on 3rd March 2020, KPL later filed Trademark Application No. 4408723 in class 7 to register "*Kirloskar Oil Engines*" (Stylised representation) as trademark, which was again in breach of the non-compete obligation under the DFS.

d. Further breaches by KOEL of the non-compete obligation under Clause 15 of the DFS.

i. It appears that during the pendency of the DFS Suit, KOEL contacted Respondent No. 1's employees to recruit them for its fire-fighting pump segment. It further published an advertisement for such recruitment, with detailed job responsibilities. This was evidently after commencing or with a view to commence manufacture and sale of such pumps and pump-sets that would directly compete with those of Respondent No. 1 (which has been in this business since 1970s) and violate the DFS

ii. KOEL further published pump selection guide and product catalogue indicating that it had commenced manufacture and sale of various products which was evidently in direct competition with Respondent No. 1's products.

e. However, after disputes have arisen between the parties, Petitioner Nos. 2 and 3 have not acted in the interest of Respondent No. 1 as illustrated hereunder –

i. On 27 July 2017, at Respondent No. 1's AGM, the Petitioners voted against Respondent No. 2's re-appointment as a director of Respondent No. 1 (although this resolution was still passed by ordinary majority)

ii. At the 100th AGM of Respondent No. 1 held on 25th September 2020, Petitioner Nos. 2 and 3 voted against the re-appointment of Respondent No. 5 as an independent director of Respondent No. 1. The resolution for such re-appointment was not passed, although Respondent No. 5 has excellent credentials and his continued presence on the board of Respondent No. 1 would have benefitted Respondent No. 1.

82. The Petitioners are engaging in the aforesaid activities against the interest of Respondent No.1 while simultaneously collecting huge dividends from Respondent No.1 to the tune of more than Rs 60 crores from 2009-2023.

83. It is trite law that the interests of the company vis-à-vis the shareholders must be uppermost in the mind of the court while granting reliefs in a Petition filed under Section 241/242 of the Act ***[Sangramsinh P. Gaekwad & Ors. Vs. Shantadevi P. Gaekwad & Ors. (2005) 11 SCC 314 – para 181].***

<u>Submissions advanced by Respondent No.3</u>

84. It is submitted that there is no relief sought specifically in respect of Respondent No. 3 in the above Petition. The Petitioners have also filed Miscellaneous Application No. 1007 of 2020 in the present Petition inter alia praying for an order restraining Respondent Nos. 2,3 and 9 (hereinafter referred to as "Respondent No.3's family') from acquiring further shares of KBL and diluting the shareholding of the Petitioners. The Petition and the said Application do not mention any specific alleged wrongful act of Respondent No.3 nor they contain any specific allegation against Respondent No.3. It is submitted that from the perusal of pleadings, it is apparent that the Petition and the said Application is in respect of disputes that have arisen between certain shareholders promoters of KBL as also arising out of the Deed of Family Settlement dated 11th September 2009 ("DFS") and in relation to which, Special Civil Suit No. 798 of 2018 ("the said Suit") is pending before the Hon'ble Civil Judge, Pune. Respondent No. 3, being the wife of Respondent No. 2, was not concerned with and had no role to play in the management of the affairs of KBL, and these submissions are restricted only to the limited extent of the false allegations made against Respondent No. 3.

85. The Petitioners are well aware and/or are deemed to have knowledge from public records that Respondent No. 3 has, in 2017 and 2018 (i.e. during the pendency of the Company Petition) increased the shareholding in KBL. These changes in her shareholding have, whenever required to by law, been duly reported to the Stock Exchanges and relevant authorities, from time to time and also reflected in the annual reports of KBL. Respondent No. 3's family has never acquired or attempted to acquire any shares of the listed companies controlled and managed by the Petitioner Nos. 2 and 3 pursuant to the DFS, contrary to the attempts made by them to usurp control over KBL after having taken consideration by way of control

premium and vested and agreed to vest absolute control and management of KBL with Respondent No. 3's family solely, absolutely and forever.

Submissions advanced by Respondent No. 4 to 8

86. It is submitted that the specific relief sought in respect of Respondent Nos. 4 to 8 is as follows:

> "*D. For appropriate orders, reliefs and direction for removal of Respondent No. 2 and 4 to 9 from the Board of Directors of Respondent No. 1 for inter alia having failed and neglected to discharge of their fiduciary duties as directors of Respondent No. 1 and acting in a manner detrimental to the interests of Respondent No. 1;*"

87. The Petitioners also filed Miscellaneous Application No. 1007 in June 2020 ("Miscellaneous Application") in the present Petition inter alia alleging that the appointment of Respondent No. 5 as an Additional Director on the board of KBL was in violation of the Companies Act, 2013. The specific relief sought in respect of Respondent No. 5 is as follows:

> "b. *that pending the hearing and final disposal of the Company Petition, this Hon'ble Court be pleased to pass an order restraining Respondent No. 5 from acting as an Independent Director of Respondent No. 1 and holding out/ representing himself to be an Independent Director of Respondent No. 1;"*

88. Respondent Nos. 4 to 8 were Independent Directors of KBL at the time of the filing of the Petition, and the reliefs against them are sought in their capacity as Independent Directors. Subsequent to the filing of the Petition, Respondent Nos. 4 to 8 have all ceased as Directors of KBL.

89. As regards Respondent No. 5, he was appointed as an Independent Director of KBL and retired as Independent Director of KBL, subsequent to completion of his term on 26th April 2020. Thereafter, Respondent No. 5 was appointed as an Additional Director of KBL on 27th April 2020 and stood for re-election as an Independent Director at the 100th Annual General Meeting of KBL. For reasons mentioned herein below, it appears that the Petitioners (who hold about 23% of the shares of KBL) voted against his re-appointment. Consequently, Respondent No. 5 ceased to be a Director of KBL on and from 25th September, 2020 and hence all reliefs sought against him are also infructuous.

90. **Petitioners' response/rejoinder to Respondents contentions**

In response to Respondents the contentions, the Petitioners have stated as follows:

91. The Petitioner has contended that the right to sell is nothing but a proprietary right. The Petitioner states that the Collins Dictionary defines the term "proprietary rights" as meaning "rights of ownership". Thus, 'proprietary rights' are nothing but the rights which flow from or are incidental to ownership. The Petitioner has relied on the judgment of ***DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [(2003) 5 SCC 622]***, in which the Hon'ble Supreme Court held that:

"*36. Right of transfer of land is indisputably incidental to the right of ownership.*

…

54. … Ownership of land jurisprudentially involves a bundle of rights. One of such rights is the right to transfer. Such a right, being incidental to the right of ownership, having regard to Article 300-A of the Constitution of India, cannot be taken away save by authority of law."

92. The Petitioner has further relied on the judgment in ***Harsha Nitin Kokate v. Saraswat Co-op. Bank Ltd. & Ors. [(2010) 3 Mah LJ 780]***, in which the Hon'ble Bombay High Court held that:

"*24. … Upon such nomination, therefore, all the rights incidental to ownership would follow. This would include the right to transfer the shares, pledge the shares or hold the shares…*"

93. The Petitioner has also relied on the judgment in ***Indian Iron and Steel Co. Ltd. v. Dalhousie Holdings Ltd. [AIR 1957 Cal 293]***, in which the Hon'ble Calcutta High Court held:

"*14. … The question, therefore, is could the company transfer these shares? Prima facie the company as the owners of those shares, like any other owner, can certainly transfer its own shares or its property. Therefore, prima facie the company has a legal right to transfer the shares which it holds. Right to transfer is an obvious incident of legal ownership. …*"

94. The Petitioners have contended that the right to transfer a share of a company is incidental to the right of ownership of such share and is a part of the 'proprietary right' of ownership of such share and the Respondents have violated the Petitioners' proprietary right to transfer their shareholding in Respondent No. 1 Company / KBL. The Petition is thus maintainable.

95. The petitioners have submitted that the Respondents have wrongly contended that the Petition is not maintainable as the Compliance Officer acts under SEBI guidelines, and therefore any grievance in respect thereof lies before SEBI. This contention in fact stands closed. Respondent No. 1 had previously filed an application challenging the maintainability of the present Petition on this very ground. This Hon'ble Tribunal had dismissed the aforesaid application vide its Order dated April 25, 2019 . Respondent No. 1 challenged the aforesaid order before the Hon'ble NCLAT by filing Company Appeal (AT) No. 149 of 2019, which was dismissed by an Order dated July 3, 2019. While dismissing the appeal, the Hon'ble NCLAT recorded the following observations:

"4. Learned counsel appearing on behalf of the Appellant has taken similar plea that the Tribunal cannot decide whether any act is in violation of provisions of 'Securities and Exchange Board of India Act' (SEBI Act). It can only be decided by the SEBI and thereafter the Security Appellate Tribunal.
5. However, we are not inclined to accept such submission as the Tribunal has jurisdiction to decide as to whether any act of a member or group of members of the Company is prejudicial or oppressive to the interest of any member or members or prejudicial to the interest or oppressive to the company. During such decision it can notice as to whether any of the provisions of the SEBI Act has been violated by any member or members or the Company which has caused prejudice to or oppressive to a member or members or the Company though it has no jurisdiction to pass any penal order in terms of the 'Securities and Exchange Board of India Act' (SEBI Act)."

96. The Petitioners have contended that the Respondents claim that ownership, management, and control are each very different concepts. However, the DFS treats these concepts interchangeably.

Even if the Respondents' interpretation is to be accepted, then the same should apply equally to all parties, all of whom should be on the board of Respondent No. 1 Company / KBL as all are entitled to the 'ownership' and 'control' rights which flow from the shares transferred to them and owned by them respectively.

97. Petitioners submitted that the pleadings on record and the arguments advanced by the Petitioners amply show that a case has been made out for winding up on just and equitable grounds as the facts on record and the affidavits filed by the Respondents establish a continuous series of acts of oppression and mismanagement, thereby justifying and establishing a case for winding up of Respondent No. 1 Company / KBL on just and equitable grounds. It was contended by the petitioners that what the sections 241 and 242 require in this regard is that, while the Petitioners do not need to explicitly plead the words 'that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,' it is necessary to place on record facts which lead to the Hon'ble Tribunal to such an opinion. The Petitioners have further submitted that the Respondents have relied on a number of judgments in this regard which are wholly inapposite. None of these judgements are authorities for the proposition that a petitioner must explicitly plead winding up or the exact words stated in the section. The judgments hold only that the facts set out by the Petitioners must show that there are just and equitable grounds for winding up, and that on the basis of these facts, the court must be able to come to such a conclusion.

Sangram Singh Gaekwad "*Reliefs must be granted having regard to the exigencies of the situation and the court must arrive at a conclusion upon*

analysing the materials brought on record that the affairs the company were such that it would be just and equitable to order winding up thereof and that the majority acting through the Board of Directors by reason of abusing their dominant position had oppressed the minority shareholders.

Kalinga Tubes a petitioner must "*show that there is just and equitable cause for winding up the company*".

Hanuman Prasad Bagri "*In order to be successful on this ground, the petitioners have to make out a case for winding up of the Company on just and equitable grounds. If the facts fall short of the case set out for winding up on just and equitable grounds no relief can be granted to the petitioners.*"

Kamal Kumar Dutta (para 31, placitum e) relies on an extract from ***Kalinga Tubes***, that the court has power to pass such orders "*if it comes to the conclusion… that winding up the company would unfairly prejudice such member or members, but that otherwise the facts might justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up.*"

The judgment in ***Caparo***, though it says that the Petitioner "*has to prove the acts of oppression and that too of a nature which would normally make out a case of winding up of the company under just and equitable clause*" also holds that: (*at sub-para (d)*) that: "*(d) Even if a case of oppression is not made out, in exercise of its equitable jurisdiction, the Court can grant relief and pass the necessary orders. This would normally be in those cases where two sets of shareholders cannot do business together and have been fighting litigation for years and there is lack of probity amongst the parties and the Court is of the opinion that a permanent solution has to be found.*"

Tata Consultancy (paras 84-90 & 92) similarly only holds that the court needs to arrive at such a conclusion on the basis of the facts placed before it.

C. Findings and Decision

98. We have heard the learned Counsel and perused the material on record.

99. The Petitioner No. 1 has filed a Company Application CA 1007 of 2020 requiring this Tribunal to pass an Order restraining Respondent No. 2,3, and 9 from acquiring further shares of Respondent No. 1 and also restraining Respondent No. 5 to act as additional director under category of Independent Director. Since, this Petition is being disposed of on merits, we do not consider it necessary to deal with the prayers in the CA 1007 of 2020, which are rendered infructuous at this stage.

100. **Maintainability of the Petition:** After hearing the arguments and considering the submissions made by both the parties, we are of the considered view that the present petition is maintainable before this present Tribunal, for the following reasons:

(i) The captioned petition has been filed under Section 241 and 242 read with Section 244 of the Companies Act, 2013. The relevant extracts of the said provisions have been reproduced hereinbelow:

"*241. Application to Tribunal for Relief in Cases of Oppression, etc.*

(1) Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2)…

(3)…

(4)…

(5)…"

"242. Powers of Tribunal.—

(1) If, on any application made under section 241, the Tribunal is of the opinion—

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the Directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as Directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

"244. Right to Apply Under section 241.

(1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a company having a share capital, 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 any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent

in writing of the rest, may make the application on behalf and for the benefit of all of them."

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company

who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees."

(ii) The issue of maintainability has already been raised by Respondent No. 1 before this Tribunal previously by an application challenging the maintainability of the present Petition on the same grounds which have been raised during arguments of the present Petition. This Tribunal dismissed the aforesaid application vide its Order dated April 25, 2019. Respondent No. 1 challenged the aforesaid order before the Hon'ble National Company Law Appellate Tribunal by filing Company Appeal (AT) No. 149 of 2019, which was dismissed by an Order dated July 3, 2019. No appeal against the said order of NCLAT has been placed on record.

(iii)Further, respondents have contended that the Petitioners have not made a pleading of winding up or make out a case for oppression / mismanagement which triggers the just and equitable winding up of the Respondent No. 1. On the other hand, the petitioners have contended that they have made out a strong case on just and equitable grounds for winding up of the company and the facts on record establish a continuous series of acts of oppression and mismanagement, thereby justifying and establishing a case for winding up of Respondent No. 1 Company / KBL on just and equitable grounds. In our view, the Act requires that for an action to succeed under Section 241 of the Act, it is necessary to show that company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify

the making of a winding-up order on the ground that it was just and equitable that the company should be wound up. A specific pleading seeking winding up of the company is not required. In such circumstances, the Tribunal has been granted powers under Section 242(1)(b) of the Act to make orders.

Exclusive, management and control of Respondent No. 1 under the Deed of Family Settlement

(iv) In the light of the arguments advanced and documents placed on record, we are of the opinion that we do not find any clause in the DFS that gives exclusive ownership of Respondent No. 1 company to any one party and such shareholding was given to the parties to the extent mentioned in Schedule II of the DFS which includes Petitioner Nos. 2 and 3 and Respondent No. 2. The Petitioners were allocated shareholding in Respondent No. 1 company for equalization of wealth amongst different faction, accordingly, to say that Petitioner must remain invested in these shares for the benefit of Respondent No. 2 and his family shall be in contravention of the principle of wealth equalization embodied in the DFS. The shares of the Petitioners were not contemplated to be rendered piece of paper in that DFS also. The DFS expressly states the companies in respect of which exclusive ownership, management or control was to be transferred to a party such as the entire shareholding of Quadromatic Engineering Private Limited, Pressmatic Electro Stamping Private Limited, Hematic Motors Private Limited, Kirloskar Ebara Pumps Limited was entirely transferred to Respondent No. 2 to the exclusion of all other parties to the DFS. Similarly, the entire shareholding of Quadrant Communications Limited and Kirloskar Systems Limited was entirely transferred to

Vikram Kirloskar to the exclusion of all other parties to the DFS. However, this was not the case for KBL. Further, the DFS expressly sets out restrictions in respect of transferability of shares in respect of companies, such as Kirloskar Proprietary Limited. However, such a restriction on transferability of shares is not found in the DFS in respect of Respondent No. 1 company. It is pertinent to note that the shares in Respondent No. 1 company were allocated to the Petitioners to equalize the wealth of Kirloskar group amongst the family factions and such shares so received have economic value, which the petitioners are entitled to monetise in the manner they wish.

(v) We are also of the opinion that Section 58(2) of the Act is not applicable in respect of shares of Respondent No. 1 company as the DFS does not have any provision that ousts any restriction on any party thereto from transferring or dealing in the shares in Respondent No. 1 Company. The Respondents have not been able to show any such provision and have suggested that such restriction is "implied". However, we cannot accept this argument and the express provision of the DFS which is a full-fledged agreement setting out detailed clauses are to be considered as mandated by law including the Indian Evidence Act. The facts and circumstances and the manner in which the DFS was taken on record by Respondent No. 1 company's Board especially the timing of the same i.e., almost 7 years after the execution thereof, makes it evident that the DFS was taken on record under Section 58(2) of the Act without taking into consideration the purport of DFS perhaps at the behest of Respondent No. 2 to ensure Respondent No. 1 company is bound by the same in furtherance of Respondent No. 2's claim of complete ownership and control thereof.

Rejection of pre-clearances

(vi) In view of the aforesaid, we are of the opinion that the rejection of pre-clearance applications by the Compliance Officer of Respondent No. 1 company under the directions of the Board of Respondent No. 1 company by relying on the DFS, while permitting Respondent Nos. 2 and 3 to increase their shareholding in Respondent No. 1 company, is contrary to the rights of Petitioner No. 2 as a shareholder of Respondent No. 1.

(vii) Further, the record reflects that the compliance officer of Respondent No. 1 company as well as the Board of Directors have acted arbitrarily in contravention of the Code of Conduct of Respondent No. 1 company and by relying on the private DFS. We feel that these instances show mismanagement in the affairs of Respondent No. 1 company. The Compliance Officer could not have withheld its consent for the extraneous reasons, more so when the DFS, which is stated to be basis for withholding such consent, itself contemplate the division of shares in various Kirloskar Group Companies, particularly in Respondent No. 1 company, in order to equalize the wealth amongst the different factions of the family.

(viii) We also observe that various allegations have been raised by Respondent Nos. 1 and 2 in respect of breach of clause 15 of the DFS. In our view, this contention is outside the scope of the present *lis* as well as the same *is sub judice* and therefore we

have not dealt with or opined on the same. Respondent Nos. 1 and 2 has also brought on record various legal proceedings initiated by Respondent No. 1 company in respect of Respondent No. 2's disputes with his family members and other Kirloskar entities. This is not the right forum to agitate these disputes and in any event these disputes are *sub judice*.

(ix) As regards the refusal to provide copies of minutes of Board meeting, we agree with the Respondent's contention that the complaint of Petitioner No. 2 is a directorial complaint and the same cannot be the subject matter of the present Petition. It is settled law that the petitioner has ample power to exercise his inherent and statutory rights invoking the relevant provisions of the Act and the Petitioner is free to explore the same. For violations, if any, of the provisions of the Act, the regulatory authority will initiate appropriate action.

(x) In view of the facts and circumstances of the matter and submissions made, it cannot be said that the affairs of Respondent No. 1 company, being a listed public company are being conducted in a completely transparent and independent manner. The affairs of Respondent No. 1 company are definitely influenced and coloured by the aspirations of Respondent No. 2 and his family members in running the affairs of Respondent No. 1 company as per their desires and without any interference as well as their interpretation of DFS and applicability to Respondent No. 1 company. This naturally has impacted the decisions of the Board of Directors of Respondent No. 1 company, its compliance officer and its participation in the legal proceedings.

(xi) The record and the submissions made by Respondent No. 1 company clearly show that Respondent No. 1 company has not remained a neutral party in the present matter, contrary to settled law. Most of the submissions made Respondent No. 1 and Respondent No. 2 are overlapping and Respondent No. 1 defended Respondent No. 2 wholeheartedly.

(xii) It is also important to note that neither the petitioners nor respondent No 2 and his family members hold a clear majority in Respondent No. 1 company, though they are the 2 largest shareholders of Respondent No. 1 company and their acts are bound to have an impact on the public shareholders.

(xiii) Therefore, in our view the Petitioners have been able to make out a case under Section 241 and 242 of the Act against the Respondents.

(xiv) Petitioner Nos. 2 and 3 and Respondent Nos. 2, 3 and 9 are members of the prestigious Kirloskar family and promoters of reputed public listed companies including Petitioner No.1 and Respondent No. 1. These companies have thousands of shareholders each. We are of the view that, as the Petitioners are entitled to sell their shares in Respondent No. 1 company without any restrictions, in compliance with the provisions of the Act and SEBI regulations, but on the other hand Respondents are adamant on retaining exclusive ownership, management and control of Respondent No. 1 company and have claimed that any shares of Respondent No. 1 to be sold by the Petitioners have to be first offered to the Respondent

No. 2 and his family. Further, the said Respondents have admittedly refused to grant pre-clearances to the petitioners to buy shares of Respondent No. 1 company.

(xv) As the Respondent No. 1 company is in business for the past over 100 years with a large number of employees and shareholders, it would not be in the interest of the said company or the shareholders to wind up the company. However, the parties before us have developed such animosity between them that it will be impracticable and impossible for them to co-exist in Respondent No. 1 company as shareholders. The company cannot function properly if these warring groups continue to hold the shares without either having a clear majority. In similar circumstances, the courts and this Tribunal on various occasions have, in the best interest of the company, held that the company can continue to function smoothly only by the exit of either the petitioners' group or the Respondents group from Respondent No. 1 company. The main object of the provisions of sections 397 and 398 of 1956 Act (now Section 241 and 242 of the Act) is that the acts complained of should be put an end to. In family companies where the shareholding is more or less equal, if the disputes arise between the two groups of shareholders, the best way of putting an end to the acts complained of is either to direct one of the groups to go out of the company on receipt of fair consideration for their shares or divide the company so that each group could manage one part of the company independently of the other. In a number of such cases, with the view to put an end to the acts complained of, this Bench had ordered that one of the groups should go out of the company

on receipt of fair value for their shares. In some cases, wherein the shareholding is more or less equal and that the possibilities of a company being divided existed, this Court had also ordered division of the company (K.N. Bhargava v. Trackparts India Ltd., [2000] 2 Comp LJ 275 : [2001] 104 Comp Cas 611) each part to be independently managed by the warring groups (Prakash Nath and Others v. Achal Nath and Others - 2002 SCC OnLine CLB 34).

(xvi) We have taken into Consideration the facts and circumstances of the matter and looking at the overall situation of two warring factions of a prestigious family and the consequent adverse effect thereof on the public shareholding in the listed companies involving more than 60,000 public shareholders and in accordance with the powers of this Tribunal under Section 242(1) of the Act. We are of considered view that in alignment with the spirit of DFS which acknowledges the control and management of Respondent No. 1 to be vested in Respondent No. 2, the shares to be sold by the Petitioners shall first be offered to Respondent No. 2 and his nominees and in case they do not offer to buy those shares within 30 days of such offer under a binding arrangement, the Petitioners shall be free to sell those shares to other persons through either off market or on market transactions. We note that since this transfer will be a transfer *inter se* amongst promoters, the same should not attract the provisions of the Substantial Acquisition of Shares and Takeovers Regulations, 2011 pertaining to open offer. Further, during the arguments before this Tribunal, it was submitted that if such a buy/sell is considered, a control premium will be required to be paid by the purchasing party.

However, considering that the Petitioners shareholding in Respondent No. 1 company is 24.93% and they do not exercise control over the Respondent Nos. 1 company, therefore, no separate control premium is required to be paid.

(xvii) No order as to costs.

(xviii) In terms of above directions, CP 193 of 2017 is disposed of as allowed.

(xix) Since, the CP 193 of 2017 is disposed of, no interim order is required to be passed in terms of MA No. 1007 of 2020. Accordingly, the MA is dismissed as infructuous and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)