

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
COMPANY APPEAL(AT) NO.256 OF 2017

(ARISING OUT OF JUDGEMENT AND ORDER DATED 6.2.2017 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI IN TCP NO.36/397, 398/NCLT/MB/2014).

IN THE MATTER OF:

R. Prasanth.
Flat No.202,
Sai Garden CHS Ltd,
Plot 18, Sector 5, Kharghar
Navi Mumbai 410210

Appellant

Vs

1. UBC Engineers Pvt Ltd,
Plot No.G-36, Sector 20,
Belapur, Navi Mumbai-400614.
2. Mr. K.N. Pillai,
Managing Director,
UBC Engineers Pvt Ltd,
Plot No.G-36, Sector 20,
Belapur, Navi Mumbai-400614.
3. Mr. Kailash Barde,
Director,
UBC Engineers Pvt Ltd,
Plot No.G-36, Sector 20,
Belapur, Navi Mumbai 400614.
4. Mr. Pramod N. Pillai,
Director,
UBC Engineers Pvt Ltd,
Plot No.G-36, Sector 20,
Belapur, Navi Mumbai 400614.
5. Mr. Mohammed Salim,
UBC Engineers Pvt Ltd,
Plot No.G-36, Sector 20,
Belapur, Navi Mumbai-400614.
Respondents

For Appellant: Shri Shaijan C George, Advocate.

For Respondents: Shri Krishnendu Datta, Ms Prachi Johri, Ms Prachi Wazalwar, Shri Anandh K, Ms Heena Uichare, Ms Disha Shah and Ms Shruti Iyer, Advocates.

JUDGEMENT
(9th July, 2019)

Justice A.I.S. Cheema.

The appellant-original petitioner filed Company Petition No.No.36/2014 on 15.5.2014 before the Company Law Board, now National Company Law Tribunal (NCLT in short), Mumbai Bench, Mumbai, against the respondents claiming oppression and mismanagement. During the pendency of the company petition, the respondents filed Company Petition No.1/2016 against the appellant (hereinafter referred to as 'Petitioner') and both the company petitions came to be disposed of by NCLT by the impugned order dated 6th February, 2017. NCLT found the Company Petition filed by the appellant to be not sustainable and the allegations of oppression and mismanagement made were found to be not proved. NCLT held the other Company Petition No.1/2016 filed by the respondents to have become redundant. The present appeal arises out of the dismissal of the Company Petition No.36 of 2014.

2. Briefly stated the appeal is more reproduction of the Company Petition and the reply filed by the respondents with arguments. The appellant claims that the Respondent No.1 M/s UBC Engineers Pvt Ltd (the Company) was incorporated on 20th April, 2005 and the registered office is situated at Plot No.G-36, Sector 20, Belapur, Navi Mumbai-400614. (Case put up before NCLT appears to be that Respondent No.2 was having proprietary concern "United Building Company and Appellant and Respondent No.3 were employees who joined respondent No.2 and Company was incorporated). In was incorporated to carry on business of undertaking various civil

construction contracts. The company is registered as a Government Contractor with the Military Engineer Services (MES) and is undertaking various projects of MES. The projects were being carried out at Kochi and Colaba, Mumbai. It is stated that (and not disputed) that the appellant and Respondent No.2, Mr. K.N. Pillai, and Respondent No.3, Mr. Kailash Barde were the first Directors. Mr. K.N. Pillai was allotted 52000 shares, Mr. Kailash Barde was allotted 24000 shares and the petitioner was allotted 24000 shares. Thus Mr. K.N. Pillai had 52% and the appellant and Respondent No.3 each had 24% shares. These three persons and Respondent No. 4 Mr. Parmod N. Pillai were the four directors. Mr. Parmod N. Pillai is son of Respondent No.2 and was inducted as Director on 1.2.2009. The petitioner claims that he was Director incharge of MES Project and was taking care of the same and not concerned with day to day Management of the company. Respondent No.5, Mohd. Salim is Accountant (thus Respondent No.2 to 4 are only the contesting Respondents). According to appellant-petitioner in March 2014 he had occasion to go through the statutory record of the company and found discrepancies and he looked into the record. He claims that there were serious lapses and instances of mismanagement. In short he has made the following allegations in the appeal (which were also made in the Company Petition):-

- a) Firstly, that annual returns were submitted till March, 2011 with various errors which were brought to notice of Respondent No.5 but were not rectified;
- b) Secondly annual returns for the financial year 2011-12 and 2012-13 were not filed;

c) Thirdly registered office of the company was transferred by the company to the personal name of Respondent No.2 in the financial year 2007-2008. According to appellant in that year Respondent No.2 asked him to sign a document to replace/substitute office premises which was given as security for the purpose of enlistment with MES. The office premises was substituted by land of the company at Dighodea. The appellant claims that he did not realise that the office premises was being transferred to Respondent No.2;

d) Fourthly, after fraudulently transferring the property of the company Respondent No.2 started collecting rent from the company for the premises on pretext that it was rented out to the company. There were not Board Resolutions for such actions;

e) Fifthly, from the registered office of the company four partnership firms namely (i) UBC Balaji Port Cane Works (ii) Omni Infrastructure Services (iii) Unibuild Engineers and (iv) Hepta Enterprises are functioning in which other than the appellant the other Directors have interest and the company is bearing expenses of those firms by them using the stationery, staff, salary etc;

f) Sixthly, Rs.1.50 crores were siphoned off from the company by Respondent No.2 towards material and labour of construction of his Bungalow at Plot No.144, Sector 21, Kharghar, Navi Mumbai;

g) Seventhly, Rs.15 lakhs was siphoned off by Respondent No.2 for addition and alteration work of a Bungalow at Kochi owned by his wife. Here also, manpower and construction material at the cost of the company was used;

h) Eighthly, loan of Rs.24,10,000/- was given to M/s Unibuild Engineers, a partnership firm in instalments in which Respondent No.2 to 4 are partners. Section 185 of the Companies Act, 2013 (Act in short) was violated. Loan was given although the company itself was taking various loans from Banks for its functions.

3. The appellant further claims that on 12th March, 2014 he wrote an e-mail to Accountant, Respondent No.5, that his particulars had not been shown in Form No.20B. The appellant met Respondent No.2 on 18th March, 2014 and questioned the irregularities. The Respondent No.2 made counter allegations against the appellant claiming that he was neglecting the projects. Then Respondent No.2 served letter dated 1.4.2014 withdrawing the benefits of the appellant-petitioner. His remunerations were cancelled without giving opportunity to explain. Then he was served notice of EOGM to be held on 29.4.2014. The agenda was to remove him from Board of Directors. It appears that the appellant filed letter dated 22.4.2014 making various allegations as are now being made and claimed that he did not get sufficient time. It appears that due to the Companies Act, 2013 (Act-in short) coming into force the Respondents issued fresh notice dated 3.5.2014. Board Meeting was held on 12.5.2014 and EOGM was held on 6.6.2014 removing the petitioner from Board of Directors.

4. The appellant then goes on to refer to the pleadings made by the respondent in NCLT adding arguments as to how the same were wrong and the prayer of the appeal is to grant the prayer which were made in the company petition like seeking disqualification of Respondent No.2 to 4 as Directors; appointment of Receiver-Administrator; recovery of undue gains made by

Respondent No.2 to 4; directing the Respondent No.1 Company to buy shares of Respondent No.2 and 3 etc.

5. The Respondent filed reply in the NCLT and after the pleadings were completed NCLT heard both the parties and after referring to the pleadings and arguments the findings were recorded in para 5 to 6.4. NCLT heard both the sides and dismissed the company petition of the appellant as mentioned earlier.

6. We have heard counsel for both sides. At the time of arguments the learned counsel for the appellant submitted that the appellant was director since inception having 24% shareholding. It is argued that Respondent No.4, Parmod, son of Respondent No.2 was inducted as director although he held no share in the company. The counsel referred to compilation of documents filed by the appellant after filing of the appeal. The compilation is Diary No.8649. This was filed after it was realised at the time of arguments on 27.11.2018 that both the sides had not filed copies of document on which they wanted to rely and which were part of the NCLT record. We may mention here that although the appellant made various allegations, the appeal memo did not link the allegations to any annexures so as to make the appeal clear. As such the allegations made in the appeal are general leaving it for us to search the details from various documents which have been later filed by the appellant and also the respondent. Coming back to the Arguments, Diary No.8649 compilation of documents was filed by the appellant and the Learned counsel for the appellant referred Page 57 as the letter dated 1st April, 2014 sent by Respondent No.2, Managing Director, claiming the letter to be on behalf of the Board of Directors. The arguments is that there was no authority

given to Respondent No.2 to send such letter making allegations against the appellant. Reference is then made to (Page 58) Notice dated 7th April, 2014 calling EOGM on 29.4.2014 with Explanatory Statement (Page 59). Although the appellant claims that he did not get sufficient opportunity to respond to the notice proposing to remove him as Director, his letter dated 22.4.2014 (Page 60) shows that he responded with great details including invoking the provisions of the Companies Act making various allegations which are now found in the Company Petition and the appeal. The learned counsel for the appellant referred to Page 67 of his Compilation which was addressed to Respondent No.5, the accountant, demanding inspection of documents making allegations that he was avoiding on the pretext that he needs prior permission of Respondent No.2. The Respondent No.5 appears to have replied (Page 68) that he was only an employee and had nothing to do with the disputes of the Board of Directors and that he had met the Managing Director (Respondent No.2) and the MD has asked him to inform the appellant that he may take inspection of the bills as referred, at any time. Respondent No.5 added the statement that the appellant has taken inspection of records on various occasions and he was never obstructed.

7. Learned counsel for appellant referred to the convenience compilation filed by Respondents Diary No.8679 (Pages 155 to 161) whereby the appellant was given fresh notice and EOGM came to be fixed on 6.6.2014 and the appellant came to be removed as Director for reasons recorded in the Resolution of the company. Learned counsel referred to these documents to submit that when such actions were taken/initiated against the appellant he filed company petition. Learned counsel for the appellant referred to his

compilation (Page 355) and submitted that on 9.6.2005 there was an Agreement of Sale executed by Respondent No.2 who had jointly acquired land alongwith one Mrs Hema A Chainani through tripartite agreement from City Industrial Development Corporation of Maharashtra Ltd having Plot No.G-36 at Belapur, Navi Mumbai which building was constructed and shared with Mrs Hema A Chainani. It is stated that by the Agreement Respondent No.2 decided to transfer, sell his share in the building to the company for Rs.17,50,000/- and entered into the agreement. Referring to this document it has been argued that actually it was sale and such property came into possession of the company but later on Respondent No.2 himself executed another Deed of Cancellation of agreement as MD of the company and the agreement was cancelled. The document is at Page 361 (Diary No.8649). It is argued that the respondents committed such acts on their own without consent of the appellant. The argument is that the deed of cancellation shows that there was passing of consideration when the agreement was entered into and such consideration was then showed as returned in the Deed of Cancellation. Both the Documents are signed by Respondent No.2 alone in dual capacities. It is argued that after such cancellation of the agreement in favour of the company, Respondent No.2 started taking rent from the company for the use of the premises by the company. It is also argued that the respondents were part of certain partnerships which were operating from the premises of the company and for which the appellant had filed police complaint.

8. Learned counsel for the appellant referred to his compilation (Page 218) where there is a purchase order from the letterhead of the company to one

Nirmal Agency asking for supply of various construction articles at the site of the company with the address shown as 144, Sector 21, Kharghar, Navi Mumbai. The argument is that at Kharghar the company did not have any site and this address was of the house of Respondent No.2 and this document shows articles being supplied at the site of house of Respondent No.2 and thus there was siphoning of funds of the company. Learned counsel referred to appeal Page 57 which is part of the copy of the company petition where the allegations were made in sub para (g) that more than Rs.15 lakhs were siphoned off by Respondent No.2 for addition and alteration work of the Bungalow at Kochi which was owned by wife of Respondent No.2. According to the counsel for the appellant, the respondent did not deny that amount were spent on addition and alteration work of Bungalow at Kochi. It has also been argued that the respondents gave loans of Rs.2410000/- to M/s Unibuild Engineers and even this is not denied. Thus according to the learned counsel for the appellant there was sufficient material against the respondents to have fresh audit conducted against the respondents and the company petition should have been allowed.

9. Against this the learned counsel for the Respondents submitted that respondents have filed copies of various documents as were filed in NCLT. It is argued that in NCLT the respondents had filed a convenience compilation also with index giving explanation to the various allegations and referring to the pages in the compilation. The copies of such convenience compilation has been filed before us with affidavit in Diary No.8679 and annexures as described in the convenience compilation. It would be appropriate to scan and paste the Explanation part of the convenience compilation which is as follows:

(9) B

EXPLANATION OF ALLEGATION NO. 1 & 4

Allegation No. 1 - Siphoning of assets of the company. Guilty of conversion, embezzlement and criminal breach of trust.

Allegation No. 4 - Register office of company transferred to R2 in FY 2007-08 without any board resolution.

TRANSFER OF REGISTERED OFFICE

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilation	MCLAT Diary No. 8679 Page Nos
G-36, Belapur is the property originally belonging to R2 (K N Pillai) and Hema. Two floors were given to company for a brief period of 3 years. This was given to complete the formalities of MBS registration wherein it was provided that company should have an immovable property in its own name. Once the company purchased the immovable property in its own name, it replaced the new property with R2's property and gave a new affidavit of new set of movable and immovable property. P has signed the affidavit which was required to be filed stating the movable and immovable property. He has also thereafter signed one balance sheet which was filed with Income tax.	15/04/2005	MOA of UBC - Clause III/A/1 - Object is to takeover of proprietary concern of K N Pillai.	CP/36 Pg. 25	1	- 18
	21/04/2005	Affidavit verifying movable and immovable properties. For the purpose of MBS registration Mr. K N Pillai submitted his own property.	603	2-4	- 19-21
	26/05/2005	Letter from MBS dated May 2005 - MBS required UBC Engineers to submit proof of immovable property owned by the Company and not by the Director Mr. Pillai as submitted.	223	5	- 22
	09/06/2005	K N Pillai transferred G-36 at Belapur on the name of UBC	536	7	- 23
	14/03/2008	Purchase of Dighode property on the name of Company at Uran	555	13	- 30
	03/06/2008	Deed of Cancellation of Such sale deed dated 09/06/2005. (This was an interim arrangement to show property on the name of Company for MBS purpose. Set off of Rs. 17 lakh was done.)	536	6-12	- 23
	06/03/2009	Letter from MBS Requesting Affidavit for such request of UBC for replacement of immovable property. (G-36 Belapur was replaced with Dighode Uran)	224	16	- 33
	26/03/2009	Affidavit by Pillai, Prasanth and Kailash all directors of UBC for replacement of such immovable and supplying new immovable properties of UBC. (Affidavit where Mr. Prasanth has signed and now denying of any such information of change of immovable property)	225	17-19	- 34+
	1/04/2009	UBC writing to MBS supplying Affidavit for replacement of new immovable property on the name of Company	598	20	37
	31/03/2012	Balance Sheet signed by Mr. Prasanth. In the attachments - Pg. 50-52 Property at Uran is shown as FA but property at G-36 is not there. Mr. Prasanth knows about the same transfer.	Rejoinder of CP 1/245	21-25	- 38+

(10)

C

EXPLANATION OF ALLEGATION NO. 2
NO BOARD MEETINGS HAVE BEEN CONDUCTED

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilation
These are the board meetings conducted wherein the Petitioner was present and signed. He was always in minority (2:1).	09/10/2012	Minutes of meeting evidencing presence of Mr. Prasanth.	3740-3747	26-33

- 27-48

EXPLANATION OF ALLEGATION NO. 3 & 9

Allegation 3 # Annual return for FY 2011-12 and 2012-13 not filed

Allegation 9 # Annual Return Form 20B not filed. Name of Petitioner not visible on the said form.

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilation
Petitioner Mr. Prasanth has not intimated DIN. This is the sole reason his name is not appearing.	FY 2012/13	Annual Return (20 B)	895	34-39
		Explanatory statement of not showing Mr. Prasanth name.	901	40
Annual returns and Annual reports are filed upto date.	20/08/2013	Letter from MCA to Prasanth intimating him his DIN Number - and requiring him to intimate his DIN to the Company within 30 days in form DIN - 2.	Pg. 55 of Rejoinder of CP 1/245	41

- 51 to 55

- 57

- 58

EXPLANATION OF ALLEGATION NO. 5

Rent collected for registered office property owned by Mr. K N Pillai (R2) and Kochi bungalow owned by W/o R2 - Anita Pillai

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilation
Rent collected from 2008 after the R2 was returned the property, "Room Rent to Pillai" appears as an interim in the notes of a balance sheet in related party transaction in one of the balance sheet signed by P. P has only signed balance sheet and not the rest of the attachments.	31/03/2012	Balance Sheet signed by Mr. Prasanth. In the attachments to the said at page 46 of Schedule notes it shows rent paid to Anita Pillai and Rent paid to K N Pillai. Mr. Prasanth always knew this fact which he is now disputing.	Pg. 24 of Rejoinder of CP 1/245	42-46

- 59 to 62

(11) D

EXPLANATION OF ALLEGATION NO. 6

Four Partnership Firms running out of Building where Registered Office of Company is situated

Event	Date	Particulars	Page No. Pleadings	Pg. Reference No. Completion
UBC Balaji Port Cranes	25/03/2009	Service tax registration showing office address as shop no. 1 G-36, Belapur	228	47 - 64
Omni Infrastructure Services	30/08/2010	Service tax registration showing office address as Survey no. 3, plot no. 1 Uran (Personal property of Mr. Kalish Barde)	229	48 - 65
Unibuild Engineers	22/01/2014	Service tax registration showing office address as shop no. 2 ground floor G-36.	232	51 - 68
Hepta Enterprises		Service tax registration ground floor G-36	233	52 - 69

UBC Engineers occupy Second Floor of G-36, Belapur. Mr. Prasanth is merely attempting to mislead the fact that all partnership firms are running out of same premises.

Prasanth is placing reliance on some evidences taken before Police in a criminal case. The criminal case is initiated by P after process of removing him was initiated on same set of allegations. The trial of the said criminal cases is going on. One of the lady who gave evidence against UBC claiming that she was working for other firms has written an affidavit in Marathi claiming otherwise but the same is not a part of the record before CLB.

EXPLANATION OF ALLEGATION NO. 7 (A)

Syphoning of 1.5 Cr to be used by Mr. K N Pillai for personal Bungalow at Kharghar

Event	Date	Particulars	Page No. Pleadings	Pg. Reference No. Completion
Kharghar was used as a store house of materials which were required for an office that we were planning to establish if the Terex Norell's JNPT project worked out - Terex Norell project for JNPT did not work out at that time and instead they gave us a project at Pipava - we have received more than 1 crore from Terex in the new projects (proof attached in additional docs). Architect has given us a certificate that property is constructed and the 3 storied structure was completed in Dec 2013 itself - Neither Airport at Navi Mumbai nor our deal with Terex took off. Payments made to various vendors as alleged by the Petitioner is absolutely fraudulent as we have	May 2012 to April 2014	Various Email exchanged between Terex Noell and UBC for future business association.	234-246	53-65 70-82
	02/07/2013	Letter from Terex Noell (A Shipping Giant of China) to UBC showing interest of having UBC as their distribution representative. They also requested to find a suitable location near JNPT and New Airport at Navi Mumbai.	247	66 83
		MOU - UBC with Owner with respect of Shop no. 23, Bhoomi Towers, Plot 28 sector 4, Kharghar. The same was authorized by Terex officials.	129-131	67-69 84-86
	26/03/2014	UBC and Terex entered into distributorship agreement. Under such agreement it was decided that UBC shall arrange a distributor office near JNPT and Navi Mumbai Airport.	248	70-72 87-89
	03/11/2010	K N Pillai gets lease hold rights with respect to Plot no. 144 Sector 21 in Kharghar for amount of 84 Lacs.	610-612	73-75 90-92
	30/06/2011	Commencement Certificate from CIDCO	619	77 93
	30/06/2011	Assessment of construction by CIDCO. Gross build up area 364 Sq Mts. Estimated cost of	623	81 97

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E

been dealing with the same vendors for last several years and Petitioner has deliberately suppressed that fact making it a case of first time vendors supplying materials at Kharghar for the purpose of bungalow.		construction is 36 lac 45 thousand.			
	31/12/2013	Certificate of Architect declaring completion of construction of the said Bungalow.	1060	82	98
	21/06/2014	Board meeting held wherein one of the resolution was to allow the Petitioner to take inspection of expenses details of Bungalow.	1053	83-89	99
	09/09/2014	Occupancy Certificate received from CIDCO	624	90-91	106
	29/09/2014	Valuation report by architect evaluating cost of construction at Rs. 56 lac and total valuation including cost of land comes to 1.41 Crore. 207 Sq mts constructed area.	628-630	92-94	108
	Oct 2010 to Jan 2011	Bank statement of federal bank	774-778	95-99	111
<p>Petitioner claims that we have lied.</p> <ol style="list-style-type: none"> 1. There is no office at Bhoomi Towers of the Company – Answer: we never said leave and license agreement was executed – we said we were in talks (MOU) and thus material was kept at one of the R2's house and not at the location 2. He states that in the Interim reply we claimed that building is constructed but P claims that it is not and seeks to use Commissioners Report. Architect has given us a certificate that property is constructed and the 3 storied structure was completed in Dec 2013 itself – in photos 3 stores are visible – 3. We have filed an application for neutral commissioner as commissioner inspected Bhoomi Towers premises without the Respondents in contravention to directions of court order – thus we find him to be biased – affidavit of person at site on Bhoomi towers attached to application for appointment of neutral commissioner filed by us – This application is pending - 					

EXPLANATION OF ALLEGATION NO. 7 (B)

15 Lacs from UBC's account used to renovate personal property at Kochi

Bungalow of Ms. Anita Pillai

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilation	
<u>Kochi Bungalow</u> Kochi bungalow is an area which is used a regional office of the company and is also used as accommodation of directors who go to Kochi (accommodation averment specified in reply to application for appointment of commissioner)- most of the regional meetings are held at the bungalow – a portion has been converted to office and another as a rest house –	03/10/2012	VAT Registration of UBC at Shree Niket, Kochi (Regional Office)	958	100	116
		Picture displaying UBC Engineers and proof of the premises being used as RO of UBC at Kochi.	960	101	117
	02/03/2016	Communication of MES to UBC to RO Shree Niket	961	102	118+119
	09/11/2013	Prasanth has annexed various Minutes of Project review meeting wherein he was never present but the same were held at RO, Kochi	Pg. 87 to 96 of C. P/36		
	14/01/2013	Letter from MES to UBC at its regional office address – Shree Niket (Ernakulam Kochi)	904	103	119
	10/01/2014	Email wherein Prasanth has been a party. In the said email	907-912	104	120

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F

Prasanth was privy to the information of renovation of regional office at Kochi, Shree Niket. The developments of the said work was sent to him by emails. All such emails are annexed at 134 to 181 in Additional documents. At pg no. 152 of the said document it is clearly mentioned at para III (1) 'There has to be a programme for completion of balance work at Shree Niket and KN Pillai emphasis work must be completed by this month.' It is further stated that separate electricity connection should be taken for commercial usages. It was also used as director's accommodation. Mr. Prasanth claims that he was MES in charge and used to visit sites frequently. When he was visiting Kochi for Companies work where was he staying?		renovation work at Shree Niket has been discussed.		
Prasanth claims that he was not aware of any work to be carried out for renovation at Kochi. All emails were referred to him in his personal emails.	Oct 2013 to Jan 2014	Emails referring to requirement of cash at Kochi for renovation/repair work were intimated to Prasanth as he was copied to in all emails.	1132 - 1147	110 -115

126-131

EXPLANATION OF ALLEGATION NO. 8

Loan given to Unibuild Engineers in violation to Sec 185

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilati on
Mr. Prasanth has deliberately attached entries till 23/04/14 and suppressed entries of 25 th and 26 th April 2014. Mr. Prasanth had complete bank statement for the month and thus it constitutes suppression of vital facts.	February/2014 to 3/04/2014	Mr. Prasanth has annexed Bank Statement wherein a payment of 24 Lacs approx is made to Unibuild Engineers	62-65	116 119
	25/04/2014	15 lac returned _ ledger entry showing cheque number	Pg. 158 of Rejoinder to CP 1/245	120
	26/04/2014	9.54 lac returned	Pg. 159 of Rejoinder to CP 1/245	121

132-135

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G

EXPLANATION OF ALLEGATION NO. 11

Compliance under Companies Act, 2013 followed while removing Petitioner

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilation	
From October 2013 Petitioner was asked not to visit site at Kochi and instead to attend office (verbal but can be seen from project review meeting that he was not at site for site review meeting after October 2013). Petitioner was not attending office and it was found that he had caused enormous losses to the company. Thus, he was sent a notice of removal. In the reply he claimed that it was not as per the newly notified companies act, 2013. So again a notice was issued and the proper procedure was followed. After sending the second notice of removal, he immediately filed a criminal case on or about 8 th May 2014.	01/04/2014	Companies Act, 2013 was notified with respect to holding board meetings and EOGM/General Meetings.			
	07/04/2014	Notice of EOGM Removing Petitioner to be held on -29/4/14	68 and 69	122-123	139-140
	22/04/2014	Reply of Notice dated 07/04/2014 from Petitioner	70	124-130	141-147
	29/04/2014	No general meeting was held as proper steps were taken to hold the same in accordance with the new act.			
	03/05/2014	Notice sent to all directors for convening Board meeting. Requisition for holding EOGM on 12/05/2014 for removal of Petitioner as Director	259 & 265	131-	148-154
	12/05/2014	Board meeting held for deciding date of EOGM. Mr. Prasanth present.	17		
	12/05/2014	Notice of EOGM Removing Petitioner to be held on 06/06/2014	101 to 103	138-140	155-157
	06/06/2014	Minutes of EOGM	2557 to 2560	141-144	158-161

EXPLANATION OF ALLEGATION NO. 12 — 162

R2 introduced Mr. Pramod Narayan arbitrarily as director

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilation	
Pramod was introduced as director in 2009 and P never raised that issue and has in fact signed numerous document wherein Pramod has signed as director. MES has to be intimated when composition of directors change. He has signed the same.	01/02/2009	Mr. Pramod Narayan becomes a Director of UBC	773	145	163
	03/12/2010	Letter written to MES informing about change in constitution of board of UBC and inclusion of Mr. Pramod Narayan signed by Mr. Prasanth	1128	146-149	164-167

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H

EXPLANATION OF ALLEGATION NO. 13

LOSSES CAUSED AT KOCHI PROJECTS

Event	Date	Particulars	Page No. Pleadings	Pg. No. Reference Compilation
1. The Petitioner claims that as soon Petitioner was removed in June 2014 UBC has been suffering losses.	2006-2013 (October)	Petitioner was director in charge of MES and was involved in execution of the projects at Kochi	Pg. 5 Para VI (ii) in CP-36	
2. The Petitioner further claims that the losses shown may be an attempt to dilute value of his shareholding.		MES issued show cause notices to UBC asking for slow progress and threatening that the project will go at risk and cost.	149 to 156	150
3. The petitioner was running a competitive business through SAP Enterprises and his project at Kochi was doing well and as he was not paying attention on the UBC's projects the same were running in losses.		MES list of projects undertaken by Petitioner. Sr. no. 15 description of Ezimala project under Chief Engineer Kochi.	1087	158
4. Petitioner never attended any project review meetings as he was not interested in UBC's work.	01/04/2014	Letter cancelling director's remuneration benefits for not attending to the Kochi projects and having a competitive business.	67	
5. Petitioner was asked by Mr. K N Pillai to step down from charge of MES in Nov/2013 and hence the same post that period was taken care by R2.		P&L account of Kochi showing losses caused in Kochi are equivalent to losses caused that FY to the UBC.	157-158	159-160
6. As on today out of 5 projects taken by UBC 4 are completed and one is pending due to MES change of plans.		Once KN Pillai took charge of Kochi Nov/2013 onwards the losses mitigated.	159-160	161-162
7. No losses in the company after Kochi.		Letter showing successful completion of Kochi projects by UBC engineers.	781 to 790	163-166
8. Post removal of Petitioner UBC has been appreciated by MES to complete all projects.				

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PETITIONERS ANTI COMPANY ACTIVITIES

Date	Petitioners Acts	Pg. No at Pleadings	Pg. No of Reference Compilation	
12.03.2010	Petitioner requested UBC to provide Affidavit in support of SAP Enterprises (A Partnership Firm of Petitioner and his wife) to get registered at DGNP (Vishakhapatnam) where UBC has no interest.	2639	167	185
2010 - 2014	Through SAP enterprises petitioner bagged more than 15 projects keeping UBC in dark. UBC's Goa and Ezimala bids were cancelled due to SAP bidding for same behind our back.	2637	174	192, 188
	Petitioner was Director MES in charge of UBC as admitted by him. He was supposed to work for UBC but he was working in favour of SAP and against UBC	CP-36 Para 2 (iii)		
31.06.12-22.08.13	Show cause notices were issued by MES due to negligence of Petitioner towards UBC's Kochi projects wherein SAP's Kochi projects were in progress.	2783-2789	150 179-181	197-199
1.04.13	Petitioner being MES in charge - when P&L account of UBC/Kochi was drawn out loss of 50 lacs approx. shown.	2790	159-160 182-183	200-201
14.09.2013	Petitioner incorporated a new Company SAP Marine Infra Pvt Ltd to carry on competitive business.		168	186
9.11.13-April, 2015	When MD Res no. 2 saw losses he stepped in to mitigate losses of the Kochi project and personally monitors the completion of the 5 Kochi projects.	2210-2223	161-162 184-185	202-203
April 2013 to March 2014	R2 mitigated the losses in Kochi project and brought them down from approx. 52 lacs. to approx. 27 lacs.	2792-2793	184-185	202-203
09.01.14	SAP behind the back participated in a MES tender worth 12 crores. Anti-company activity of petitioners cost UBC a big project as our tender was denied by MES	2602 & 2590	175	193-194
22.04.14	Before this date Petitioner had no problems with working of UBC as his anti-company activities were not revealed. - Clearly reveals an act of vengeance of petitioner	CP-36 Pg. 70-76		
April 2014	Meeting proposed for removal of Petitioner, but could not go through as the new Companies Act, 2013 became applicable.	2515		
3.05.14	Notice for board meeting to be held on 12 th May, 2014 for holding EOGM for Petitioners removal.	2515		
8.05.14	As a counter attack the Petitioner filed a police complaint in NRI Sagri Police Station.	2515		
12.05.14	Board meeting held wherein it was decided to hold EOGM on 6 th June, 2014.	2515		
15.05.14	Company Petition was filed in vengeance for staying EOGM			
02.06.14	CLB ordered that the said EOGM can be held but decision of removal shall be implemented only after approval of CLB.			
06.06.14	Petitioner removed with 76% majority for reasons set out in the minutes.	2557	186-189	204-207
09.06.14	Had CLB Mumbai allowed the implementation of the EOGM the UBC would have got a chance to participate in Goa and Ezimala tenders.	2589		
01.08.14 25.08.14	Misuse letter head of UBC writing bank asking account statements where he has been in competitive business.	2773 - 2774	190-191	208-209
21.11.14	AGM was proposed to be held wherein Petitioner filed an application seeking stay on the same. All the cash registers were produced before Hon'ble CLB. We informed the board that we do not intend to show the same to Petitioner as he is in competing business which the board allowed.	2471		
06.12.14	Affidavit of Chandan Bhingarde stating that the Petitioner has tried to manipulate him for giving false statement against the board and the company.	2472		

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22.11.14	Board meeting was held wherein the financial difficulties of company due to short of funds for running kochi projects were transpired among the board and financial help at personal level was demanded.	3023	192-193	210-211
2014-15	As per aforesaid meeting Pramod Narayan contributed-10 lacs, Hepta - 33 Lac and omni - 1 crore. Wherein there was no contribution of R. Prasanth. Mr. K N pillai at the inception of the Company contributed 45 lacs already. Aforesaid is reflected in the petitioners CA page no.	3031	194	212
02.02.15	Invoice of 1.5 cr was submitted before DGNP Mumbai for CDG projects.			
10.02.15	Petitioner wrote to DGNP Mumbai to stop payment against aforesaid invoice.	2724	195-198	213@215
12.02.15	Despite aforesaid order dated 21 st Nov, 14 petitioner misused UBC's letter head to obtain bank statements of UBC to check whether his scheme to put the company in financial trouble succeeded.	2775	199	217
17.03.15	Against mal practices of petitioner Hon'ble board advised the Petitioner not to involve in anti-company activities and or make correspondence to third parties.	2776	205-206	223-224
30.03.2015	In the board meeting the company was falling short of funds due to projects of kochi and UBC was in need of short term finance. Everyone except the Petitioner contributed.	3025 - 3030	200-204	218-222 +225
15.05.15	Notice was sent to Petitioner. The UBC's renewal of enlistment with DGNP was pending and hence we held a board meeting to inform and comply with formalities regarding the same.			
19.05.15	Petitioner filed CA before CLB, Mumbai. Prayer stalling the aforesaid meeting and all further board meeting. This clearly shows the malice of the petitioner. MES contributes main stream business and non-renewal would have caused great and irreparable harm to the respondent.			
25.06.15	The petitioner refused to sign MES renewal documents. Only after the respondent moved an application to CLB and the said application was placed before CLB before the last date of signing and submission of the said renewal document the petitioner signed the same.	2468	208	226
	After we stopped giving inside information to Petitioner, it seems that SAP Enterprises went into slow progress	3142	209-211	227 + 228@229
	We moved an application in September was removing the status of SAP Enterprises as sister concern to prevent the slow progress and incompetency of SAP Enterprises from affect UBC		212-214	230-232
	In vengeance, the Petitioner filed another application for appointment of administrator in November 2015			
	IN Board Meeting it was discussed that company needs to comply with formalities for getting the bank overdraft facilities			
	Petitioner refused to provide his IT returns			
17/12/2015	R1 had to approach the CLB at New Delhi for getting IT returns from Petitioner.		215-217	233 -235
	Petitioner now refusing to sign MES affidavit for up-gradation of class of contractor from A class to a superior class namely "S" Class for giving flimsy excuses -			
	Application filed with NCLT for directing the Petitioner to sign the documents			
	Now SAP Enterprise project at Ezimala was retendered -	3143-3144		
	We did not get the project at Petitioner is a director of SAP Enterprises	CP-1/245 EX-A	177	195

In the above chart on the extreme right by hand page numbers as before NCLAT have been added as in appeal, Convenience Compilation. Learned counsel for the respondents has made his submissions and arguments based on the explanations as given above. The particulars given as Event are defence and explanation of Respondents supported by Documents. According to the learned counsel for the Respondents after the explanation to the allegations as made by Appellant in NCLT, the list shows summary of the anti company activities of the petitioner-appellant which were pointed out to the Learned NCLT and cognisance of which was taken by the NCLT so as to reject the claims being made by the appellant.

10. We have heard counsel for both sides and perused the record. It has been argued by Learned Counsel for the appellant that the document dated 9th June, 2005 was actually a Sale Deed which was titled as Agreement to Sale and the properties concerned were of the Company but subsequently the Respondents executed Deed of Cancellation of Agreement dated 19th June, 2008 without Board Resolution and appellant was kept in the dark with regard to such Cancellation of Agreement. At the time of argument although the Learned Counsel for the appellant tried to say that there was a Sale Deed on 9th June, 2005, we had noticed that the contents were in the nature of Agreement of Sale. Even regarding consideration the contents mentioned say that the Builder agreed to sell and the purchasers agreed to purchase (para 3) at total construction (should be consideration) of Rs.17,50,000/-. As parties, this document had signatures only of the Respondent No.2 one in his individual capacity and second as Managing Director of the Company. The reverse document of Deed of Cancellation also has signatures only of the

Respondent No.2 in two capacities. This time, of course, it was mentioned that the purchaser had earlier paid Rs.17,50,000/- by way of full and final payment in the Agreement for Sale dated 9th June, 2005 which were now being returned as it is and the receipt was recorded for having received said refund of advance payment made to the purchaser. Ordinarily if the Company has received possession even under an Agreement, we would expect the Directors to protect the possession. However, here it would be necessary to refer to the facts of the matter to consider if we should interfere. Counsel for Respondents referred to his convenience Compilation Page 22 to argue that the Company was mainly having business from being contractor of MES and in May 2005 MES had written letter informing that the immovable property shown by the Company was personal property of one of the Directors and could not be taken as the property of the Company and so document showing the properties, assets and liabilities of the firm should be submitted. The defence of the respondents is that because of such requirement of MES, the property which was of the Respondent No.2 was shown as property of the Company by executing Agreement to Sale and subsequently the Company was able to purchase property at Dighode and so reverse document was executed. A copy of the document of purchase of property at Dighode has been pointed out by the Respondents at Page 30 of their Compilation. We are not entering into analysing the nature of Agreement to Sale and Deed of Cancellation any further as the Respondents have shown that in 2009 itself, after the Deed of Cancellation the Respondent Company had informed Chief Engineer, Navi Mumbai regarding replacement of immovable property, copy of the letter is at Page 37 of convenience compilation of respondents. This is dated 1st April,

2009. It enclosed new affidavit incorporating the particulars of movable and immovable property belonging to the Company. The affidavit dated 26th March, 2009 which is also signed by the appellant shows that the appellant and Respondent No.2 and 3 by this notarised affidavit stated details as to the movable and immovable properties of the company. One list is of movable properties. The other list is of immovable properties which now included only reference to the property at Dighode. We find substance in the argument of Learned Counsel for Respondents that these documents as well as Balance Sheet for period ending 31st March, 2012, copies of which have been filed at Page 38 to 42 with the convenience compilation and which also bear signatures of the appellant did not show the property of G-36, Belapur, Navi Mumbai as the property of the Company and the appellant was aware of it and true purpose why the Agreement to Sale and Cancellation Deed were executed. As in the affidavit of 26th March, 2009 itself the property G-36, Belapur, Navi Mumbai was not included and the appellant never raised objections till respondents initiated action against him, such stale claims made by the appellant in Company Petition filed on 15th May, 2014 may have to be ignored. Thus we reject the allegations made by the appellant with regard to transfer of registered office of the company; his grievance regarding substitution of the same with MES as well as the allegations regarding agreement to sale and the deed of cancellation. We will not look into such stale claim in the face of conduct of the appellant himself. The appellant earlier never had difficulty when such documents were executed and belated grievances made are rejected. There is no substance in the excuse that he was looking after projects only and did not know what was happening in the Company affairs.

11. It is the grievance of appellant that after Deed of Cancellation, respondent No.2 started taking rent for the premises of G-36, Belapur, Navi Mumbai from where the company was functioning. Learned counsel for the Respondents referred to this grievance as Allegation No.5 in the Convenience Compilation and referred to copies of documents filed at Page 59-62 and submitted that the records of the company in the shaper of Balance Sheet as on 31st March, 2012 which shoed the appellant also to be one of the signatories as Director did show room rent being paid to the Respondent No.2 and thus the appellant had knowledge of the affairs and did not raise disputes till 2014 when Respondents started taking action against the appellant. Considering the submissions and records pointed out by the Respondents, we discard the allegations made on this count by the appellant and will not interfere in the internal management of the Company.

12. The appellant has made allegation that from the property of the company at G-36 Belapur there were other partnership firms belonging to the respondents conducting business for which the stationery and staff of the company was being used. We have seen the Company Petition, it does not give any particulars in details regarding the portions of the building in G-36, Belapur which were in possession of the company. The Agreement to Sale which is on record, if that was to be considered it shows that there was a building with various floors and some parts of it were subject matter in the Agreement to Sale. In a situation where it appears from record that the building had various floors and portions, without Appellant clearly spelling out which portions, floors of the building were in possession of the company, it appears difficult to consider this allegation of the appellant. The

respondents in their compilation while dealing with the Explanation of Allegation No.6 in NCLT, on this count brought on record Service Tax, registrations of the four companies and added that the Respondent No.1 company was operating from 2nd floor of G-36, Belapur and the four partnerships referred were in other portions. It appears to us that the appellant failed to clearly bring on record the details to show that unconnected partnerships were operating from the premises in possession of the company. There have to be documents more than, service tax registration to show that other partnership firms were actually operating from premises of the company. Referring to merely "G-36" by the appellant cannot be said to be sufficient.

13. The other allegation of the appellant is that the Respondent No.2 had personal bungalow at Kharghar and for that bungalow material and labour at the cost of Respondent No.1 company was used. We have referred supra to a document at Page 218 of the Compilation filed by the Appellant, pointed out on this count by the Learned Counsel for the appellant. Learned counsel for the respondents referred to this allegation of the appellant as Allegation No.7(A) which was made before NCLT and regarding which explanation is given in the Convenience Compilation read with pleadings and documents. Learned counsel pointed out the pleadings of respondents in this regard submitted in NCLT (Convenience Compilation Page 84) and submitted that Respondent No.2 had not siphoned any money for the construction of his Bungalow at Plot No.144, Sector 21, Kharghar. According to the Respondents there was audit of the accounts of the company in 2011-12 and 2012-13 and no objections on this count were raised. Referring to the invoices being relied on by the appellant the defence is that in 2012 a Company by name Terex Noell, a US

based company, proposed respondent company for grant of distributorship and representative agreement. It is stated that negotiations took place in 2012 and 2013 and one of the condition put by the US based company was that the respondent company should have a godown and distributorship office somewhere near JLNP and upcoming Navi Mumbai airport. Respondent company was locating premises and the premises at Shop No.23, Plot No.28, Sector 4, Kharghar, Navi Mumbai was located which was approved by the US based company and a Memorandum of Understanding with respect to the said office at Kharghar was entered into by the respondent company with the owner for the purpose of renovating the same as per requisite conditions of the US based company. Respondents claim that for this purpose some expenses were incurred. The invoices pointed out have no connection with Respondent No.2. Respondents claim that Respondent No.2 has a bungalow at Kharghar and the argument is that some articles were stored at the premises of Respondent No.2 at Kharghar for such purpose. According to the counsel for Respondent the invoices shown are of hardly Rs.1 lakh. The plan of distributorship at JNLPT did not work out and the American Company instead gave the project to respondent company at Pipava. It is claimed that Respondent company got business of more than Rs.1 crore from the said American Company. Learned counsel pointed out to the email and other documents in this context which are referred with the Explanation of Allegation No.7(A) of the Convenience Compilation. It is argued that regarding the bungalow of Respondent No.2 at Kharghar it was already completed in 2013 and there is also occupation certificate. The Learned Counsel for the Respondents took us through the documents and pleadings in this regard with the Explanation of Allegation

No.7 (A) referred in the compilation of the respondents which was filed before NCLT.

14. Even regarding Allegation of Company resources being used for renovation of property at Kochi belonging to Ms Anita Pillai, wife of Respondent No.2, the Respondents have shown documents with the Explanation of Allegation 7(B) which indicate that the company was using that premises for use of the company. It appears that part of the property was converted into office of the company for holding meetings. The address of the bungalow was recorded in Vat Registration form and MES authorities also made correspondence on that address.

15. Then there is allegation of the appellant that the Respondent Company which had itself taken loans from the Banks gave loan of Rs.24 lakhs to Uni Build Engineers which was related company of the Respondent No.2. The Learned Counsel for the Respondents referred to the documents in this connection given with Explanation of Allegation No.8 in NCLT, to demonstrate that if the loan was given, it was returned with interest within three weeks. This also happened before the Company Petition was filed. It would not be appropriate for us to give undue weightage to this instance. We do not find substance in the various allegations made by the Appellant to be such so as to treat the same as oppression or mismanagement.

16. Record shows that the Respondents initiated action against the appellant to remove him as Director. The respondents have given various instances of misconduct to claim that the appellant indulged in anti-company activities. When the appellant stood on technicalities regarding time the respondents appear to have sent fresh notice dated 3.5.2014 and EOGM came

to be held on 6.6.2014. Before this the appellant had filed the Company Petition on 15.5.2014. The NCLT looked into this aspect and did not find fault with the removal of the appellant from the post of Director. We do not find any reason to disagree with the NCLT. In fact, we have gone through the other finding also which have been recorded by the NCLT with regard to the various allegations made by the appellant and those allegations did not find favour with the NCLT. We agree with the NCLT regarding its findings regarding the various allegations. In fact, it is interesting to see that the appellant even pushed through a Criminal Complaint in the Court of Judicial Magistrate, 1st Class at Belapur in Regular Criminal Case No.766/2014 making some allegations as in this Company Petition and the Judicial Magistrate 1st Class considered the matter under Section 403, 406, 420, 506(2) read with Section 120(b) of the IPC and after analysing evidence of the various witnesses found the Respondent No.2 to 5 not guilty. Reference may be made to para 26 of that judgement where referring to the witnesses, the Magistrate recorded that none of the employees deposed that they were working for those other companies. Clearly, the allegation of misuse of staff for other partnerships did not find favour with the JMFC. Copy of the judgement has been filed with Diary No.7511.

17. For the above reasons, we do not find any substance in this appeal so as to interfere with the impugned judgement and order passed by the NCLT.

18. The appeal is rejected. The appellant shall pay each of the five respondents cost of this appeal which shall be Rs.50,000/- each (Total Rs.2,50,000/-).

(Justice A.I.S.Cheema)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

New Delhi
Bm