IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

CP/02/KOB/2020

(Under Sections 213, 241, 242, 244, 246 read with Sections 337 and 341 of the Companies Act, 2013)

In the matter of:

M/s. Indus Motors Company Private Limited.

Memo of Parties:

1. Mr. T.P. Anilkumar,
   310 NBQ, Bank Street, Dubai. Represented by Special Power of Attorney Holder, Mrs. Rejina Vimalkumar.

2. Mr. T.P. Ajithkumar,
   310, NBQ Building, Khalid Bin Waleed Road, Dubai, UAE, Represented by Special Power of Attorney Holder, Mrs. Rejina Vimalkumar.

3. Mrs. T.P. Sarada,
   Ashirwad, Florican Road, Calicut, Represented by Special Power of Attorney Holder Mrs. Rejina Vimalkumar.

4. Mrs. Anju Madhav,
   EL-90, Electronic Zone, MIDC Mahape, Navi Mumbai 400710, Represented by Special Power of Attorney Holder Mrs. Rejina Vimalkumar.

... Petitioners

-Versus-

1. M/s Indus Motor Company Private Limited Having its registered office at Box No. 923, Indus House, Chakkorathukulam, Calicut- 673 005.

2. Mr. Pulikkal Veettil Abdul Wahab,
   Indus Motor Company Private Limited, Post Box No. 923, Indus House, Chakkorathukulam, Calicut- 673 005.

3. Mr. Jaber Abdul Wahab,
   Indus Motor Company Private Limited, Post Box No. 923, Indus House, Chakkorathukulam, Calicut- 673 005.

4. Mr. Javed Abdul Wahab,
   Indus Motor Company Private Limited, Post Box No. 923, Indus House, Chakkorathukulam, Calicut- 673 005.

5. Mr. Ajmal Abdul Wahab,
   Indus Motor Company Private Limited, Post Box No. 923, Indus House, Chakkorathukulam, Calicut- 673 005.

6. Mr. Afdhel Abdul Wahab,
   Indus Motor Company Private Limited, Post Box No. 923, Indus House, Chakkorathukulam, Calicut- 673 005.

7. Mr. Thomas Kuruvilla,
   Indus Motor Company Private Limited, Indus House, Chakkorathukulam, Calicut- 673 005.

8. Mrs. Yasmin Wahab,
   Indus Motor Company Private Limited, Post Box No. 923, Indus House, Chakkorathukulam, Calicut- 673 005.

... Respondents

Order delivered on: 03.09.2025

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SMT. MADHU SINHA

Appearances:

For the Petitioners : Mr. P.H. Aravind Pandian, Senior Adv.
Mr. Darshit Sidhabhathi, Adv
Mr. P. Binod, Adv.
Ms. Shruthy Khanijow, Adv.
Mr. Sandeep Aravind Panicker, Adv.
Mr. Medha Sachdev, Adv.

For the Respondents : Dr. U.K. Chaudhary, Senior Adv.,
Mr. Santhosh Mathew, Senior Adv.,
Mr. Alishan Naqvi, Adv.,
Mr. Rupal Bhatia, Adv
Mr. Saurav Chaudhary, Adv.
Mr. Akhil Suresh, Adv.
Ms. Priya Singh, Adv.
Mr. Mansuymer Singh

ORDER

Per: Coram.

1. The present Company Petition has been filed by Mr T P Anil Kumar, Mr T P Ajith Kumar, Mrs T P Sarada, and Mrs Anju Madhav (hereinafter collectively referred to as the "Petitioners") under Sections 213, 241, 242, 244, 246, read with Sections 337 and 341 of the Companies Act, 2013, against M/s. Indus Motors Company Private Limited and seven others (hereinafter collectively referred to as the "Respondents") are seeking the following reliefs:

a) *A direct and independent forensic audit into affairs of the Company from the FINANCIAL YEAR 2011-2012 till the FINANCIAL YEAR 2018-2019 by an independent auditor appointed by this Tribunal preferably from one of the big four auditing firms;*

b) *Direct the investigation into affairs of the Company by an inspector appointed by the Central Government;*

c) *Declare that the Executive Management of the Company has mismanaged the affairs of the Respondents No. 1 Company in a manner prejudicial to the public interest and interests of the Company and has acted oppressively;*

d) *Direct Majority Shareholders to recompensate the Company for all losses suffered by the Company along with an interest calculated thereon at the rate of 12% (twelve percent), as a consequence of the fraudulent, unlawful, and wrongful acts or omission of the Majority Shareholders, under Section 242 (2) of the Companies Act, 2013;*

e) *In the alternative, order reduction in the share capital of the Company to the extent of the shareholding of the Majority Shareholders under Section 242(2)(c) of the Companies Act, 2013;*

f) *Disqualification of Majority Shareholders as promoters of the Company and/or from voting in the Company as shareholders of the Company;*

g) *Direct recovery of undue gains made by the Executive Management of the Company, including the management fee paid to the Executive Management of the along with an interest calculated thereon at the rate of 12% (twelve percent) and payment thereof to the Company under Section 242 (2) (i) of the Companies Act,2013;*

h) *Remove Majority Shareholders as directors of the Company under Section 242 (2) (h) of the Companies Act, 2013;*

i) *Direct Respondents No. 2 to offer the 6.4% shares of the Company not purchased by Mr. P.A. Hamza and currently in the custody of Respondents No. 2 to be purchased by the other shareholders of the Company at the exercise price of Rs. 137.23/-*

j) *Direct Respondents No. 2 to transfer the amount of dividend received by him with the 6.49% equity shares of the Company not purchased by Mr. P.A. Hamza to Respondents No. 1 along with an interest calculated thereon at the rate of 12% (twelve percent).*

k) *Direct enquiry into the conduct of the Majority Shareholders and order to repay or restore the money or property or any part thereof by the said Respondents, with interest at such rate as this Bench considers just and proper, or to contribute such sum to the assets of the Respondents No. 1 by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as this Bench considers just and proper.*

l) Direct the Executive Management of the Company to make a public announcement to the effect that the Company is an independent entity and is not a part of Bridgeway/ Peeves Group.

m) Direct Respondents Nos, 2 to 8 to compensate the Company for damages incurred by it due to the unauthorised use of the registered trademark of the Company by companies belonging to the Bridgeway/ Peeves Group.

n) The Board of Directors of the Company be superseded and an Administrator and/or Special Officer be appointed to take charge of the management and affairs of the Company and of all books, papers, records and documents of the Company as well as its assets and properties; or Alternatively, a Committee be constituted by this Board consisting of the representatives of the Petitioners to function as such Administrator and/or Special Officer for management and control of the affairs of the Company on such terms and conditions as to this Bench may deem fit and proper;

o) To restrain Respondent 2 to 8 from permanently dealing with the properties of Respondents No. 1 in any manner whatsoever.

p) Declare that Respondents 2 to 8 are jointly or severally liable for all damages/losses caused to Respondents No. 1 by way of diverting and siphoning off funds through Respondents 2 to 6 and Respondents No. 8, as determined by the independent auditor appointed by this Bench.

q) To direct the Respondents to strictly comply with the Memorandum and Articles of Association of the Company and not to pass any resolution, either in a board meeting or general body meeting or by way of a circular resolution, ultra vires the Memorandum and Articles of Association of the Company.

r) Declare that the Majority Shareholders had indulged in fraudulent activities as listed out under Sections 337 to 339 of the Act and accordingly penalize the said Respondents for such fraudulent activities as provided in the sections.

Petitioners' case: -

2. The Petitioners are the minority shareholders of Indus Motors Company Private Limited (hereinafter referred to as the "Respondent No. 1 Company"), collectively holding 20% issued, subscribed, and fully paid-up equity shares of the R1 company, with Petitioner Nos. 1, 2, 3, and 4 each holding 5%. In contrast, the majority shareholders (Respondents 2-6 and 8) collectively hold 59.83% shares, with Respondent No. 2 (Managing Director and Executive Chairman) holding

59.08% and Respondents 3-6 and 8 holding 0.13% each. Respondent No. 8 is a non-executive director and the wife of Respondent No. 2, while Respondent No. 7 is the Chief Executive Officer. Respondents 2-8 are referred to as the Executive Management.

3. The Petitioners state that the Majority Shareholders of Respondent No. 1 Company have exploited their position to perpetrate fraud over the years. Despite repeated objections from the Minority Shareholders regarding poor corporate governance, the Respondents have deliberately ignored their concerns.

4. The primary allegation of the Petitioners is the gross misutilization of funds and resources, causing significant financial losses. In Financial Year 2017-2018, Respondents invested Rs. 9,98,86,800/- (Rupees Nine Crores Ninety-Eight Lakhs Eighty-Six Thousand Eight Hundred Only) of Respondents No 1 Company funds in the Initial Public Offering (IPO) of Aster DM Healthcare Limited, later selling the shares at a loss of approximately Rs. 2,37,66,000/-(Rupees Two Crores Thirty-Seven Lakhs Sixty-Six Thousand Only). Respondents No. 2 and 8, along with Respondent 2's brothers, P.V. Ali Mubarak and P.V. Muneer, collectively held 20,07,600 shares in Aster DM Healthcare at the time of its Initial Public Offering on 12.02.2018, creating a clear conflict of interest. Being aware of significant risks such as Aster DM Healthcare's financial losses, foreign ownership restrictions, legal compliance issues, and criminal proceedings against its promoter, Dr Azad Moopen, who is also a close friend of Respondent No. 2, the Majority Shareholder misused Respondent No. 1 Company funds for personal gain.

5. The Initial Public Offering of Aster DM Healthcare was highly overpriced, with a Price-to-Earnings (P/E) Ratio of 44x to 84x, significantly higher than its industry peers like Apollo Hospitals, Fortis Healthcare, and Narayana Hrudayalaya

Limited. One of the analyst broking firms, Angel Broking Private Limited, did not recommend subscribing to the Initial Public Offering, and investor response was weak, with only 25% subscription on the first day and overall failure to attract non-institutional and retail investors. To prevent this Initial Public Offering from failing and safeguard their investments, Respondents 2 and 8 misused funds, making the Respondent No. 1 Company invest Rs. 9,98,86,800/- (Rupees Nine Crores Ninety-Eight Lakhs Eighty-Six Thousand Eight Hundred Only) in a foreseeable loss-making asset.

6. Moreover, the Respondents unlawfully invested this fund against its Memorandum of Association, without informing or seeking approval from other directors, and they never served any notice to Petitioner Nos. 1 and 2 regarding the board meeting where the resolution approving the investment in the Initial Public Offering of Aster DM Healthcare was passed. Petitioners 1 and 2 only discovered this through financial statements in December 2018. The Financial Year 2017-2018 auditor's report also misrepresents the investment, indicating that the Respondents provided inaccurate information to the statutory auditors.

7. According to the Petitioners, the Respondents have falsely represented the Respondent No. 1 Company as part of the Bridgeway/Peeves Group across official websites and promotional materials, despite the Majority Shareholders owning 100% of the Bridgeway/Peeves Group. This misrepresentation aims to exploit the Respondent No. 1 Company’s goodwill to enhance the image of the Bridgeway/Peeves Group and attract investors. Additionally, the Majority Shareholders unilaterally licensed the "Indus Motor" trademark to Indus Motor Light Commercial Vehicles Private Limited without informing or obtaining consent from Petitioner Nos. 1 and 2, with no record of any royalty payments for this unauthorized use.

8. The Petitioners alleged that the Respondents wrongfully granted interest-free advances of Rs. 15,00,00,000/- (Rupees Fifteen Crores Only) to Respondent No. 2 and his relatives in the Financial Year 2013-2014, followed by an unauthorised loan of Rs. 37,90,00,000/- (Rupees Thirty-Seven Crores Ninety Lakhs Only) in the Financial Year 2014-2015, on which no interest paid until the closure of books for the Financial Year 2016-2017. These actions were also carried out without seeking proper board approval. Also, there is no board resolution approving such loans, and the loans were not part of any pre-approved company scheme.

9. Furthermore, the Respondents engaged in multiple related party transactions specifically with Respondent No. 2, his family members, and associated entities without prior board approval and without notifying the interested directors, including Petitioner. They were not informed of any board meetings where these transactions were approved.

10. Additionally, Respondent No. 2 violated Section 184 of the Companies Act, 2013, by not disclosing his interest in these transactions, while the financial statements failed to provide adequate details of related party transactions. For instance, the financial statements for the Financial Year 2017-2018 merely mention a transaction with Malabar Gold Private Limited under "Purchase" without any explanation, raising serious doubts about its legitimacy.

11. The related party expenditure, for which no board meeting notice or approval was provided to Petitioner Nos. 1 and 2, is summarized below:

Financial Year	Rent Paid to Majority Shareholders (₹ in Lakhs)	Salary Paid to Respondents Nos. 2 to 6 (₹ in Lakhs	Interest Paid to Majority Shareholders (₹ in Lakhs)	Purchase from Majority Shareholders (₹ in Lakhs)	**Total (₹ in Lakhs)**
2011-2012	694.49	155.02	122.67		972.18
2012-2013	704.41	349.24	114.58		1168.23
2013-2014	751.48	102.40	57.56		911.44
2014-2015	802.98	316.29	12.33		1131.60

2015-2016	803.38	147.40	33.27		984.05
2016-2017	890.15	628.67	3.15	144.54	1521.97
2017-2018	883.51	691.33	15.33	151.95	1589.97
Total	**5530.20**	**2390.35**	**358.89**	**296.44**	**8279.44**

12. Related party transactions concerning loans/advances/deposits:

(INR in Lakhs)

Final Summary	Advance provided for the purchase of land to the Majority Shareholders	Rent deposit given to Majority Shareholders	Loan Taken by the Majority Shareholders	Loan Given by the Majority Shareholder
FY 2011-2012	-	-	918	
FY 2012-2013	-	-	1040	176.47
FY 2013-2014	1,500	-	1000	
FY 2014-2015	3,790	-	1040	
FY 2015-2016	-	160	1049	
FY 2016-2017	-	-	1050	
FY 2017-18	-	-	1050	

13. The increase in revenue is not proportionate to the increase in the debt; instead created a negative impact on the profitability of the Company.

(Rs. Lakhs)

Year	Debt (Rs.)	Increase %	Revenue (Rs.)	Increase % (Rs.)
2014-15	19668.4	--	180998	--
2015-16	15587.3	-20.75	189911	4.92
2016-17	7858.63	-49.58	209945	10.55
2017-18	23550.2	199.67	221606	5.55
2018-19	39090.3	65.99	235658	6.34

14. These related party transactions include loans to directors in violation of Section 185 of the Companies Act, 2013. The majority shareholders have benefited from over 85% of the profits through management fees, interest, rentals, and related transactions. Even though there was an average gross revenue margin of 19.48% over the last three years, the net profit remains low at 1.12%. The Respondent No. 1 Company has advanced Rs. 37,90,00,000/- (Rupees Thirty-Seven Crores Ninety Lakhs) to relatives of Respondent No. 2 for real estate purchases without Petitioner Nos. 1 and 2's approval. Additionally, short-term borrowings increased by 65.87% and long-term borrowings by 59.71% in Financial Year 2018-19 compared to Financial Year 2017-18.

15. The Petitioners further submitted that the Respondent No. 1 Company's debt rose despite a downturn in the automobile industry and a high cash balance. In Financial Year 2017-18, the Company incurred Rs. 2,35,50,20,000/- (Rupees Two Hundred Thirty-Five Crores Fifty Lakhs Twenty Thousand) in debt, a 200% increase from Financial Year 2016-17, despite holding Rs. 87,79,74,000/-in cash. The Respondents continue to take large loans despite available cash reserves of Rs. 87,79,74,000/-(Rupees Eighty-Seven Crores Seventy-Nine Lakhs Seventy-Four Thousand) in Financial Year 2017-18.

16. The audited financial statements from Financial Year 2011-12 to 2017-18 reveal that the Respondent No. 1 Company advanced Rs. 37,90,00,000/- (Rupees Thirty-Seven Crores Ninety Lakhs) to the Majority Shareholders to purchase properties in their own names. These properties were then leased back to Respondent No. 1 Company at higher rental rates. The Majority Shareholders made Respondent No. 1 Company fund for the construction of these leasehold properties owned by them. In Financial Year 2018-19 alone, Rs. 24,35,39,000/- (Rupees Twenty-Four Crores Thirty-Five Lakhs Thirty-Nine Thousand) was spent on such construction,

with no transparency on ownership. Moreover, the timeline of these transactions indicates that these properties are purchased using the funds of the Company.

17. The Petitioners are of the view that the Respondent No. 1 Company is paying above-market rental rates for these properties. Rs. 1,50,00,000/-(Rupees One Crore Fifty Lakhs) in Financial Year 2017-18 and Rs. 15,00,00,000/- (Rupees Fifteen Crores) in Financial Year 2018-19 were given as rent deposits to Peeves Project Private Limited despite no rental expenditure.

18. The formation of the Corporate Social Responsibility (hereinafter referred to as "CSR") committee, comprising Respondents Nos. 2, 5, and 6, was never disclosed to Petitioner Nos. 1 and 2 or discussed in any board meetings. The deployment of CSR funds was also never shared with the board or shareholders, except for the family of Respondent No. 2. In Financial Year 2017-18 alone, Rs. 75,60,200/- (Rupees Seventy-Five Lakhs Sixty Thousand Two Hundred) was allocated exclusively to institutions patronized by or of personal interest to Respondent No. 2 and his family.

19. The Respondents have deliberately conducted several board meetings without notifying the Petitioner Nos. 1 and 2, who were excluded from over 78% of such meetings in previous years, violating the Respondent No. 1 Company's Articles of Association. Most meetings were attended solely by Respondents Nos. 2, 3, 4, 5, and 6. Additionally, minutes of board or committee meetings that must be circulated to all members within 15 days were not circulated for many meetings.

20. The Respondents conducted the 33rd Annual General Meeting on 30.09.2017, without notifying Financial Year the Petitioners, during which M/s. BRG & Associates was appointed as the statutory auditors. BRG is the financial adviser of Respondent No. 2 and its other companies. When Petitioner Nos. 1 and 2

objected, the Respondents ignored their concerns and reappointed BRG for the Financial Year 2017-18. BRG later resigned on 01.02.2019, citing health reasons. Additionally, the Respondent failed to serve notices for several general meetings, conduct AGMs for the Financial Year 2016-17 and 2017-18 within the statutory period, and file the annual report for the Financial Year 2017-18. The Petitioners remain uninformed about the Annual General Meetings for the Financial Year 2014-15 and 2015-16, and only came to know from the MCA website that the Financial Year 2015-16 Annual General Meeting was adjourned to an unknown date.

21. The Executive Management deliberately avoided appointing an internal auditor for the Financial Year 2015-16, 2016-17, and 2017-18 to evade accountability. The auditors of the Respondent No. 1 Company have, over the past, pointed out the deficiency in the internal controls and had commented on the following regarding the internal controls of the Company:

> *"The Company has an internal audit system, the scope, and coverage of which, in our opinion, requires to be improved, to be commensurate with the size of the Company and the nature of the business."*

22. An audit committee was also never constituted, despite pressure from the Petitioners that an internal auditor be appointed for the Financial Year 2018-19. While Petitioner Nos. 1 and 2 requested an audit from the Financial Year 2011-12 onward, the Executive Management restricted it to the Financial Year 2018-19. M/s. Varma & Varma, the erstwhile statutory auditor, reported material weaknesses in the Respondent No. 1 Company's financial controls and internal audit system in its Financial Year 2016-17 audit report. Additionally, the Respondents failed to appoint a whole-time company secretary.

23. Petitioners added that during incorporation, the shares were equally held by C.M. Zuhara Majeed and T.P. Radhakrishnan (brother-in-law of Mr. T.M. Nair). In 1994, Respondent No. 2 was introduced as an investor, altering the shareholding to 30% each for Mr T.M. Nair, Mr P.A. Ibrahim, and Mr P.V. Abdul Wahab, while Mr P.A. Hamza held 10%. In 1998, under a Memorandum of Understanding to facilitate temporary professional management, shares were transferred to Respondent No. 2, resulting in a revised structure where Mr. Nair and Mr. Ibrahim held 10.3% each, Mr. Hamza held 3.4%, and Respondent No. 2 held 76%. The Memorandum of Understanding granted a call option to repurchase shares, which Mr. Nair and Mr. Ibrahim exercised, increasing their stakes to 20% each, while Mr. Hamza failed to do so. Consequently, Respondent No. 2 retained the 6.34% shares that should have been redistributed, thereby reducing Mr. Hamza and Mrs. Fareeda Hamza's rightful shareholding from 3.14% to just 0.26%.

24. Since Financial Year 2011, under the management of Respondents Nos. 2 to 8, the Company and its Minority Shareholders have suffered ongoing oppression and mismanagement, resulting in severe financial distress. The Respondent No. 1 Company now faces liabilities exceeding Rs. 440,00,00,000/- (Rupees Four Hundred and Forty Crores) to multiple banks and NBFCs, has incurred losses of Rs. 62,88,86,800/- (Rupees Sixty-Two Crores Eighty-Eight Lakhs Eighty-Six Thousand Eight Hundred), and is burdened with loss-making investments. Despite holding significant shares and board representation, Petitioner Nos. 1 and 2 are unable to prevent or rectify these wrongful acts. The Majority Shareholders, in collusion with Respondent No. 7, have committed fraud, adversely impacting the shareholders.

25. The conduct of Respondents Nos. 2 to 8 is oppressive, wrongful, and burdensome, unfairly diminishing the value of the Minority Shareholders' investment while also harming the Respondent No. 1 Company's interests and the public at large.

Objections raised by the Respondents: -

26. The Respondents submitted that the Petitioner's claims are largely based on events that occurred several years ago, particularly around 2011-12, which, according to the Respondents, makes the Petition time-barred under Section 433 of the Companies Act, 2013. The Petitioners have also failed to come forward with clean hands, having suppressed key facts and having actively participated in the company's Annual General Meetings and the adoption of financial statements for many years. Their delayed action and lack of timely objection to past events suggest acquiescence, further undermining their current claims. The Petitioners, as directors with fiduciary duties, cannot now seek relief for issues they were complicit in for an extended period.

27. The Respondents stated that the Petition is flawed in its scope and composition. The Petitioners have selectively named certain individuals as Respondents while excluding others who also hold positions of influence within the company, such as the non-executive Vice Chairperson. By failing to include all necessary parties, the Petition suffers from non-joinder, rendering it impossible for the court to adjudicate the case effectively. The Respondents contend that the Petitioner's actions appear to be driven by ulterior motives, rather than any genuine concern for the minority shareholders, and therefore, the Petition is neither justifiable nor maintainable.

28. It is stated that Respondent No. 1 Company, a private company established in 1984 as a Maruti Suzuki dealership, was initially mismanaged by its promoters,

Mr. Haji and Mr. Nair, leading to financial losses, unpaid dues, and threats from Maruti Suzuki India (P) LTD Limited (MSIL) to terminate the dealership. Further, a criminal case was filed due to fraudulent conduct. In 1998, Respondent No. 2 stepped in to infuse funds and take control of the company's management, as outlined in the Memorandum of Understanding dated 25.10.1998. Under Respondent No. 2's leadership, the company later became the top MSIL dealer in India, a position it continues to hold. By 2003-2004, the company became profitable, and in 2007, a Memorandum of Understanding was signed between Respondent No. 2, Petitioner No. 2, Mr. Haji, and Mr. P.A. Hamza, detailing the transfer of shares and management. The table below reflects the change in shareholding in Respondent No. 1 Company over time:

Family Name	Before the 1998 MOU	After 1998 and the MOU before 2007 MOU	After the 2007 MOU
Wahab	30%	76%	59.74 (*53.4%)
Nair	30%	10.3%	20%
Haji	30%	10.3%	20%
Hamza	10%	3.4%	0.26% (*6.6%)

**As Mr. Hamza failed to exercise the call option and make payments in lieu of the shares, no transfer was made by Respondent No. 2 to Mr. Hamza.*

29. It is submitted that the Petitioners have continuously breached their obligations under the 2007 Memorandum of Understanding, specifically about providing cash and non-cash collaterals in proportion to their shareholding and furnishing personal guarantees. Despite discussions in the Board Meeting of 08.05.2018, the Petitioners have deliberately failed to contribute their share of collateral, hindering the company's operations. Respondent No. 2 and his family have been the only ones fulfilling these obligations. The Petitioner's refusal to meet their obligations has led to credit restrictions by banks, including the State Bank of India and the HDFC Bank. Their actions are a deliberate attempt to avoid their contractual duties and raise a false claim of oppression, with the real motive

being to pressure the majority shareholders into withdrawing their demands for compliance with the Memorandum of Understanding.

30. It is submitted that the Petitioners' allegations of oppression, mismanagement, and fraud are without merit and contradict the company's record. After Respondent No. 2 took control in 1998, the company became profitable, consistently declaring dividends and issuing bonus shares, benefiting the Petitioners as 20% shareholders. From 2007 onwards, the company has been recognized as the number one MSIL dealership in India, a success acknowledged by the Petitioners themselves. Given the company's positive financial track record and numerous awards, it is clear that the allegations of mismanagement are unfounded, and the Petition should be dismissed for lack of evidence.
31. The Respondents stated that Petitioner No. 1 and Petitioner No. 2, despite being shareholders and directors of Respondent No. 1 Company, have failed to actively participate in its affairs. As non-resident Indians based in Dubai, they have not contributed to the company's growth, yet have benefited from its success without sharing in its risks. They have consistently missed Annual General Meetings, despite holding 20% of the shares, reflecting their lack of interest in the company's operations.
32. The Petitioners are not entitled to any relief, including equitable relief, as they have breached the terms of the 2007 Memorandum of Understanding. As directors with shareholding proportional to their roles, they cannot claim oppression or mismanagement. Their actions suggest abuse of the legal process, indicating that the Petition was filed with ulterior motives rather than genuine grievances.
33. The Respondents have initiated arbitration proceedings against the Petitioners under the Arbitration Agreement in the 2007 Memorandum of Understanding, as the Petitioners have breached their obligations. The Petitioner's allegations of

mismanagement are time-barred, as they have failed to provide a reasonable explanation for raising these issues after such a long delay. The Petition is filled with vague and outdated claims, many of which should have been addressed at Board or General Meetings in the relevant Financial Years. The Petitioners, being part of the company's management, are also guilty of delay and acquiescence in raising these matters now.

34. According to the Respondents, the Petitioners have deliberately omitted key parties, such as Mr. PA Hamza and directors from Mr. PA Ibrahim Haji's family, to avoid objections under the Arbitration Agreement in the 2007 Memorandum of Understanding. This omission, which prevents the effective adjudication of the case, results in a fatal non-joinder of necessary parties. Despite the Petitioner's allegations, the families controlling 80% of the company's shares have no issue with the management, and the Petitioner's claims are time-barred and baseless.
35. Further, it is submitted that the petition is defective on several grounds. Firstly, the Special Power of Attorneys (SPAs) executed by Petitioners No. 2 and 4, authorizing Ms. Rejina Vimalkumar to sign on their behalf, are not duly stamped in accordance with the Kerala Stamp Act, 1959, and are liable to be impounded. Secondly, the affidavit accompanying the petition does not conform to the format prescribed under Part XVI of the NCLT Rules, 2016, rendering it fatally defective. Furthermore, the petition alleging oppression cannot be filed through a power of attorney holder lacking personal knowledge of the allegations. Therefore, the petition signed by Ms. Rejina Vimalkumar is liable to be rejected.
36. The Respondents, without prejudice to the preliminary objections on the maintainability of the Petition, submit that the allegations made by the Petitioners are largely a matter of record and are denied were unfounded. The Respondent No. 1 Company, established in 1984, remains a closely held private company, with Petitioners Nos. 1 and 2 being 5% shareholders and directors.

Respondents further clarify that Petitioners Nos. 3 and 4 are also 5% shareholders, represented by Petitioners Nos. 1 and 2 on the board.

37. The Respondents deny the validity of the Special Power of Attorneys (SPAs) issued by Petitioners Nos. 2 and 4, asserting that these are defective under the Kerala Stamp Act, 1959, and that the petition is not maintainable. The roles of the Respondents as Chairman, Managing Director, and Non-Executive Directors are explained, and it is clarified that some Respondents are minority shareholders and do not act as a single block of majority shareholders or an Executive Management team. The Respondents challenge the Petitioners' allegations of fraud, misappropriation, and malpractice, deeming them vague and unsubstantiated. They further contend that the Petitioners' claims are self-serving and aim to avoid fulfilling contractual obligations under the 2007 MOU.
38. The Respondents assert that the dispute raised is not one of oppression, and any relief should be pursued through arbitration, as per the 2007 MOU. They also argue that this Tribunal does not have jurisdiction over contraventions of the Companies Act or other offenses, and that certain allegations are time-barred due to the Petitioners' failure to act within the limitation period. Lastly, the Respondents emphasize that there is no substance to claims of unsettled past transactions or continuing effects from them.
39. The Respondents deny the allegations made in the various paragraphs, asserting that the contents are either matters of record or entirely false. They contend that the Petitioners have falsely labelled family members of Respondent No. 2 as "Executive Directors" to misrepresent the executive management structure, while others were conveniently left out of the petition. The Respondents further emphasize that Respondent No. 2 has been the majority shareholder since 1998, and the changes in shareholding and management were in line to ensure the financial success of the company, not to benefit any individual shareholder. The

Respondents deny any fraudulent conduct or mismanagement, claiming that the company's positive performance and various awards are evidence of their sound management.

40. The Respondents also refute the Petitioners' claims of unfulfilled obligations under the 2007 Memorandum of Understanding, asserting that such allegations are baseless and without evidence. They argue that the Petitioners' objections and legal notices were simply a way to avoid their responsibilities, and were made in response to a valid request for additional security made in May 2018. The Respondents further clarify that any historical legal actions or complaints, including those before the Registrar of Companies, were unrelated to the current issues and were withdrawn after the execution of the 2007 Memorandum of Understanding. They assert that the Petitioners' claims, including the allegations of a breach of fiduciary duty, are unfounded and not supported by facts.

41. Regarding the allegations of improper use of company funds, such as the investment in Aster DM Healthcare, the Respondents maintain that these decisions were made in good faith and in the best interests of the company. They also challenge the Petitioners' claims about the failure to conduct board meetings, pointing out that the Petitioners themselves failed to attend meetings or raise concerns for several years. The Respondents deny any failure in adhering to legal and corporate governance requirements, asserting that meetings were held according to the Companies Act, and the Petitioners had every opportunity to address any issues at those meetings. The Respondents have come with the defence that the Petitioners' current claims are an attempt to mislead this Tribunal and assert that the matters in dispute are trivial and unrelated to the current petition. Furthermore, they assert that any claims regarding the rights of other shareholders, specifically about a property transaction in 2013-14, are misconceived as the Petitioners are not authorized to represent them.

42. According to the Respondents, the allegations in the petition are false and misconceived. The Respondent No. 2 is the majority shareholder of Respondent No. 1 Company and exercises control over its management. The Petitioners are aware that Respondent No. 1 Company has been part of the Bridgeway and Peeves Groups since 1998, and their allegations after 21 years are surprising. The use of the trademark "Indus Motor" is approved by a Board Resolution dated May 24, 2011, and any claims regarding its use are time-barred. The words "Indus" and "Motor" are common, and no exclusive rights can be claimed. The Petitioners, being directors, are estopped from claiming ignorance of company matters. On the allegation of malafides, the Petitioners are put to strict proof; mere wild allegations are liable to be rejected as baseless.

43. The allegations of undisclosed related party transactions are denied. Firstly, these transactions were discussed and approved with transparent disclosures by the directors, who attended the meetings. Secondly, as a private company, there is no requirement to abstain from proceedings under Section 184(2) of the Companies Act 2013. Thirdly, the Respondents do not owe a special duty of disclosure towards these Petitioners. Fourthly, mere defaults in compliance cannot constitute oppression. Fifthly, transactions at arm's length and in the ordinary course of business do not require Board consent under the 2013 Act, and all transactions were duly disclosed. The Petitioners are accused of exaggerating facts by selectively presenting disclosed information, with related party transactions constituting only 2.29% of turnover over 9 years with reliable parties, and they are put to strict proof of their allegations.

44. According to the Respondents, they have no interest in Malabar Gold Private Limited, which is considered a related party due to a common director, Mr. Ibrahim Haji. The transactions with Malabar Gold involved purchasing gold coins for two purposes: as gifts for exceptional employees and for a mandatory sales

promotion scheme in 2014, where gold coins were given to vehicle buyers. These transactions were approved in the board meeting on 08.05.2018. The Respondents contest the Petitioners' claims about expenditure on related party transactions, providing board minutes and email exchanges as supporting evidence.

45. The Respondents submitted that the Petitioners' table showing loans is incorrect; the company did not disburse loans to the majority shareholders or their family members. Related party transactions were approved by the board and were done with the Petitioners' knowledge, complying with the Act. Borrowings were for business growth and expansion, reflected in the company's rising turnover and financial statements. The increase in debt is attributed to growth in assets and closing stock, not related-party transactions. The Respondent No. 1 company has been consistently recognized as the number 1 dealer of Maruti Suzuki vehicles in terms of volume and revenue. Cash reserves fluctuate daily based on trades, and the increase in debt portfolio is attributed to business growth and expansion, justified by the company's performance. This growth, rather than any questionable activities, explains the debt increase, which cannot be faulted given the company's track record.

46. The company clarifies that the advances of Rs. 15 crores and Rs. 37.90 crores were made for purchasing properties from directors that the company had already leased for years. Adequate disclosures were made in the audited accounts. Importantly, these amounts were later refunded, a fact allegedly ignored by the Petitioners. The above-mentioned advances made for purchasing properties are mentioned below: -

Name	Location	Used as	Year from which occupied by the Company
Jaber A Wahab	Kottayam	Workshop	2000-01
Jaber A Wahab	Thevara	Showroom	2003-04
Ali Mubarak	Venpalavattom	Workshop	2005-06
Ali Mubarak	Nilambur	Showroom & Workshop	2007-08
Afdhel A Wahab	Thalassery	Dealership Showroom	2013-14

47. There was a compelling reason for the decision to purchase all the properties as mentioned in the list above. FBL, bankers to the Company, had persistently requested to increase the collateral securities to be in line with the facilities extended by them.

48. The Respondents stated that the Petitioners' allegation regarding directors purchasing land with company advances and leasing it back to the company is false. And further stated that directors constructed buildings on their properties using their own funds or by taking individual term loans from banks, for which documentary evidence is available. The petition lacks specifics on alleged loans from the company to directors.

49. Respondents submitted that, firstly, there is no truth in the allegations, which are purely self-serving and imaginary. Secondly, the allegations are completely time-barred. Thirdly, the allegations are borne out of audited financial statements adopted by shareholders at annual general meetings. Fourthly, Petitioners Nos. 1 and 2, having been directors, are estopped from raising these allegations. Fifthly, for years, certain transactions have undergone scrutiny by directors, shareholders, auditors, company secretaries, and regulators; suddenly, overnight, the transactions cannot become an eyesore and fraudulent. Sixthly, the

transactions in question are not oppressive simply because some shareholders find fault with them for collateral purposes. Despite potential procedural issues, long-standing practices should not be deemed oppressive without evidence of actual harm. The allegations are time-barred and baseless, lacking merit as certain transactions have undergone scrutiny by directors, shareholders, auditors, and regulators for years. Seventhly, by stating the same transactions year after year, the Petitioners have attempted to paint an exaggerated picture. Lastly, lease terms and rentals are as per market practices.

50. The Respondents further submitted that there has been no misapplication or diversion of funds by the majority shareholder or executive management. Properties leased from related parties were purchased with personal funds, not company advances, and adequately disclosed. Out of 189 showrooms, only 8 are leased from related parties. The advance sale consideration of Rs. 37.90 crores were returned with interest (Rs. 1.21 crores). Lease terms and rentals are as per market practices, driven by business and operational factors. A proposed leasing arrangement with Peeves Projects Private Limited for a property in Centre Square Mall was explored, with security deposits paid (initially Rs. 1.50 crores and later Rs. 15 crores), but did not culminate due to disagreements, resulting in a refund of Rs. 16.50 crores with interest (Rs. 79 lakhs). The allegations of interest-free loans for property purchases are false, and Petitioners are put to strict proof.

51. It is further submitted by the Respondents that a sum of Rs. 24,35,39,000 is attributed to additions to capital work in progress in the Financial Year 2018-19. The breakdown includes Rs. 4 lakhs spent on director-owned properties, Rs. 1.70 crores on company-owned property, and Rs. 22.62 crores on properties owned

by other landlords across Kerala. These additions were modifications as per MSIL specifications.

Summary of Capital Investment in Buildings (*In Crores*)

Property Owned by	2016-17	2017-18	2018-19	2018-19 CWIP
Indus Own Property	-	2.55	2.13	1.70
Directors Property	-	0.01	1.11	0.04
Other Rented Properties	8.09	14.34	20.32	22.62
Total	**8.09**	**16.90**	**23.57**	**24.35**

52. It is stated that the Petitioners' allegations are liable to be rejected as they failed to specify the exact capital investment that went into the director's property and did not pinpoint where the capital was invested, rendering their claims baseless and lacking merit. The company asserts that during the Financial Year 2017-18, 2018-19, and 2019-2020, there were no new material related party transactions, only existing ones. Therefore, the allegations are deemed exaggerated, invalid, and untenable, and are liable to be dismissed. The Respondent No.1 Company maintains that these transactions were not oppressive or fraudulent and did not intend to grant personal benefits to any Respondents.
53. The Respondents stated that the Petitioners did not actively participate as shareholders or directors, and their claims seem motivated by malafides. The company's CSR Committee, constituted on 11.04.2015, disbursed funds to eligible institutions as per policy and law. Details of CSR expenditure and disclosures are in the Board's Report, furnished after approvals and audits. The Petitioners' allegations of CSR fund misuse are baseless and driven by malafides. The CSR funds were donated to charitable trusts, where Respondents may hold trustee positions, but none of the directors, trustees, or relatives are

beneficiaries. Instead, the public, mainly students, benefits from these donations, making the allegations of personal gain unfounded.

54. The Respondent No.1 Company denies allegations of not giving notice for board meetings, stating that meetings were conducted as per Secretarial Standards and Section 173 of the Companies Act, with notice given to all directors, including Petitioner Nos. 1 and 2, who are Non-Resident Indians based in Dubai. The Petitioners' inability to attend meetings was due to their unavailability, not lack of notice. The company also denies allegations of violating its Articles of Association and claims that minutes of board meetings were shared with all directors. The Petitioners lost their directorships due to non-attendance and, despite this, were still issued meeting notices. The Respondents accused the Petitioners of having a hidden agenda, making wild accusations, and damaging the company's reputation by going to the press after a forensic audit order, thereby forfeiting their right to relief.

55. The Respondent No.1 company denied allegations regarding Annual General Meetings, stating that all Annual General Meetings between 2017-2019 were conducted with advance notice to shareholders, including Petitioners, who failed to attend due to their own acts and omissions. The appointment of BRG and Associates as statutory auditors was done in accordance with the provisions of the Companies Act, following the end of Varma and Varma's term, and their appointment was later withdrawn due to the Petitioners' objections, leading to the appointment of MSKA and Associates as recommended by the Petitioners as the statutory auditors. The allegations raised by Petitioners are claimed to be without substance, and it is denied that the company failed to conduct Annual General Meetings in the Financial Years 2016-17 and 2017-18.

56. The Respondents No.1 Company claims to have filed its Annual Report for the Financial Year 2017-18 as per the provisions of the Companies Act, and annexed

as Annexure R-35 in the written submission. They assert that concerns raised by minority shareholders have been addressed, as evidenced by the appointment of MSKA and Associates as statutory auditors and KPMG as internal auditors, both recommended by the Petitioners. The Respondent No.1 Company denies allegations of the majority shareholders and executive management attempting to defraud minority shareholders, highlighting the appointment of auditors recommended by Petitioners as proof. The issue of M/s BRG and Associates' appointment is claimed to be closed after M/s MSKA and Associates' appointment. The Respondent No.1 Company states that Petitioners have accepted notices and adopted resolutions of Annual General Meetings held in 2018 and 2019, rendering their allegations baseless and liable to be rejected. As former directors and shareholders with a 20% stake, Petitioners are claimed to be precluded and estopped from raising allegations about the 2017 Annual General Meeting in 2020. The company clarifies that the Petitioners' claim of three general meetings in the Financial Year 2017-18 requires evidence, and one of these meetings was an adjourned Annual General Meeting on 24.03.2018, where a final dividend for the Financial Year 2016-17 was recommended and paid. Additionally, an interim dividend of Rs. 24 per equity share for the Financial Year 2017-18, approved on 17.03.2018, was promptly paid and received by Petitioners, who are now alleging non-receipt of Annual General Meeting notices.

57. The Respondent No.1 Company states that strengthening internal processes is an ongoing process, and statutory auditors have not flagged any concerns on accounts, related party transactions, or fund diversion. M/s KPMG, appointed as internal auditors on the Petitioners' recommendation, carries out internal audits within the scope decided by the board and executive management. The company denies allegations of financial malpractices, asserting that Petitioners seek a "fishing and roving enquiry" for ulterior objectives. The Respondent No.1

Company claims to have made efforts to appoint a whole-time Company Secretary but faced scarcity in Kerala, instead engaging M/s. Gopimohan Satheeshan & Associates, an external firm of Company Secretaries. The company asserts that Annual Returns adequately disclose transactions and entries, and related party transactions have been disclosed, approved, and reported in Annual Reports. The Executive Management claims to have acted with integrity, maintaining good corporate governance, as evidenced by financial statements and awards received. Monthly reports on Respondent No.1 Company affairs have been shared with shareholders, including Petitioners, via WhatsApp/emails, which they have appreciated. The Respondent No.1 Company denies Petitioners' allegations of fund diversion and accounting irregularities, attributing the Respondent No.1 Company's success to good governance practices under Respondent No. 2's leadership.

58. The Respondents denied the allegations, calling them frivolous, and point out that Mr. P.A. Hamza and Mrs. Fareeda Hamza, also shareholders, have not been made parties to the petition. The Petitioners are claimed to have no locus standi to raise issues related to Mr. and Mrs. Hamzas' shareholding. The 1998 Memorandum of Understanding is referenced, noting that it provided an option for buy-back of shares with specified timelines, which have expired. The 2007 Memorandum of Understanding is also cited, where Mr. Hamza failed to exercise a call option to buy shares from Respondent No. 2, resulting in the contemplated transfer not taking place. The Respondents assert that Petitioners cannot claim shares or dividends related to the Hamzas' shareholding and that issues arising from the 2007 Memorandum of Understanding are subject to arbitration under Clause 18. The Respondents argue that without the presence of Mr. P.A. Hamza and Mrs. Fareeda Hamza, the subject cannot be discussed, and the Petitioners' claims are not valid.

59. The Respondents denied allegations of failing to provide notice of board meetings and general meetings, and claim to have sent minutes of such meetings to Petitioners. They also deny abuse of position, asserting that related party transactions were carried out with board approval. Additionally, they deny allegations of making undue and wrongful gains to the detriment of the R1 Company, calling the allegations false and baseless, and liable to be rejected.
60. The Respondents denied allegations, stating that the R1 Company has always complied with the provisions of the Companies Act, other applicable laws, Memorandum of Association, and Articles of Association. They claim the Petitioners' contentions are repetitive and lack substance, and are unclear about how the Respondents allegedly acted against the Memorandum of Association's express terms. Essentially, the Respondents assert that the Petitioners' allegations are baseless and without merit. Further, the Respondents deny allegations, stating they are false and misconceived. They claim Petitioners failed to prove prejudice to their interests in the company, necessary for an oppression and mismanagement case. Additionally, the Respondents assert that Petitioners could not establish any instance of fraudulent business conduct, rendering their allegations baseless.
61. The Respondents denied allegations of breach of trust, stating that the Executive Management acted with due care in the R1 Company's interest. They claim that beyond the terms of the 2007 Memorandum of Understanding, the Petitioners cannot claim breach of trust. As already stated, this is a clear case falling within the scope of the resolution of disputes as per the Arbitration Agreement contained in the 2007 Memorandum of Understanding.
62. The Respondents denied allegations, calling them wild and baseless. They claim Petitioners failed to provide concrete evidence despite annexing audited financial statements, and point out contradictions and inconsistencies in the petition,

including requesting financial statements already provided. The Respondents denied allegations, stating the Petitioners' investment is valued at Rs. 1,81,90,200, which is the amount contributed towards shares. They claim Petitioners did not contribute cash and non-cash collateral as per the 2007 Memorandum of Understanding. The Respondents assert that the Petitioners' investment grew due to the company's financial success under Respondent No. 2's leadership.

63. The Respondents denied allegations, calling them false, frivolous, and time-barred since 2011. They claim Petitioners failed to act as directors and exercise due care, masking their failure by blaming the "Executive Management". The Respondents assert the company's debt portfolio grew due to business expansion, and the company has a strong relationship with banks, never defaulting on credit facilities. They allege the petition is filed to harass and tarnish the R1 Company's reputation.

64. The Respondents denied allegations, stating that the Petitioners requested Respondent No. 2 to infuse funds and take over management in 1998 when the R1 Company was struggling. Now, with the company's success under Respondent No. 2's leadership, Petitioners are allegedly raising integrity issues with ulterior motives. The Respondents alleged that the Petitioners are driven by fear of an economic slowdown in the automobile sector and are seeking an early exit. They accuse Petitioners of having a hidden agenda, citing their refusal to provide financial support and lackadaisical participation in meetings, suggesting a collateral purpose behind the petition.

65. The Respondents stated that the Petitioners failed to provide evidence of wrongdoing by Respondent No. 2 or his relatives. They argue that an investigation cannot be ordered without substantial proof beyond financial statements, and the Petitioners' plea for investigation should be rejected as they

have not proven the circumstances specified in law. The Respondents denied allegations, stating the Petitioners' rights as members were not deprived. They claim the Executive Management sought the Petitioners' active participation, but they did not engage. Moreover, Petitioners were informed via email on September 19, 2019, that they were free to inspect company records as per the provisions of the Companies Act.

66. The Respondents denied allegations, demanding strict proof of violating the Act, Memorandum of Association, or Articles of Association. They argue that the Petitioners must provide evidence of oppression of shareholder rights under Sections 241 and 242. The Respondents claim the Petitioners have not faced oppression, asserting that investigations require proof beyond mere defaults in complying with the Companies Act, 2013. They emphasize that Petitioners must furnish strict proof of acts and deeds oppressing their shareholder rights.
67. The Respondents denied allegations, asserting that despite market challenges in the automobile sector, Respondent No. 1 Company operates smoothly and successfully. They claim the balance of convenience lies in their favor and argue the Petitioners are not entitled to interim relief. The Respondents accuse the Petitioners of acting with malafides, suppressing vital facts, and not approaching the court with clean hands, thereby attempting to misuse the equitable jurisdiction of this Tribunal.
68. The Respondents stated that Respondent No. 1 Company is a closely held private business that does not prejudice public interest. They claim to have operated within the law and assert that their business should continue uninterrupted. The Respondents argue that the Petitioners are not entitled to relief and should pay exemplary costs for abusing this Tribunal's equitable jurisdiction with a view to achieving collateral objectives.

REJOINDER: -

69. With regard to the arguments of the Respondents, that the Petitioners' acceptance of dividends rendered the petition misconceived. The Petitioners pointed out that there is no law prohibiting a shareholder from enjoying dividends while raising concerns about a company's management. Notably, the Petitioners received dividends for only 8 out of 22 years, while Respondents 2-8 collected significant management fees, salaries, and advances annually.
70. Towards the claim of the Respondents that, the Respondent No.1 Company's positive financial track record and awards proved they had not committed financial fraud. The Petitioners countered that these factors do not determine whether the Respondents' actions were oppressive to other shareholders. The Petitioners' concerns were about financial fraud and siphoning of funds, not the Respondent No.1 Company's awards or profits.
71. The Respondents took the defence that Petitioner Nos. 1 and 2, as non-executive directors, owed the same fiduciary duty as the Respondents. The Petitioners highlighted that they had consistently raised grievances about discrepancies and irregularities in the Respondent No.1 Company's management since 2006, issuing multiple notices and seeking transparency, unlike the Respondents, who benefited personally from the company. The Petitioners had never sought loans or personal benefits from the Respondent No.1 Company.
72. The Petitioners submitted that the Respondents were accused of distorting the R1 Company records and forging documents. Specific examples included fabricated minutes of meetings on 05.05.2018 and 08.01.2018, as well as a resolution dated 24.05.2011. These documents were allegedly created for the purpose of the case and did not reflect actual decisions made by the Respondent No.1 Company. Other minority shareholders, including Mr. PA Ibrahim Haji,

corroborated the Petitioners' claims, stating that the documents were false and had not been circulated to the board.

73. It is further submitted that other minority shareholders, including Mr. PA Ibrahim Haji and Mr. Hamza, raised concerns about the Respondents' conduct and falsification of documents, contradicting the Respondents' claim that they had the support of other minority shareholders. Mr. Ibrahim Haji explicitly refuted alignment with the Respondents in an email dated 22.11.2020, criticizing the Executive Management's fabrication of documents and unilateral decisions. The minority shareholders had lost faith in the Executive Management due to financial irregularities, lack of corporate governance, and underhanded actions.

74. It is stated that other minority shareholders, Mr. P.A. Ibrahim Haji and Mr. P.A. Hamza, supported an investigation into the Respondent No.1 Company's mismanagement through written communications. Meanwhile, the Respondents employed a tactic where key functionaries would mysteriously resign whenever the Petitioners raised specific concerns. Examples included the Company Secretary, Ms. Sony Tom, resigning after Petitioner No. 1 sought clarifications on various issues. Similar resignations occurred with auditors BRG Associates after the Petitioners questioned their performance. The Respondents also restricted access to information during a board meeting on 08.12.2020, abruptly concluding the meeting.

75. According to the Petitioners, the Respondents had previously attempted to deceive this Tribunal by producing forged documents. Specifically, they misled the Advocate Commissioner appointed to authenticate the Respondent No.1 Company records and submitted altered documents to this Tribunal, deleting crucial information about financial statements and bookkeeping. This was done to frustrate the authentication process and conceal their malpractices. The Petitioners expressed concern that the Respondents might use the delay in the

forensic audit to forge and fabricate documents to justify past unauthorized transactions.

SUR-REJOINDER: -

76. The Respondents submitted that the contents of the Rejoinder are purely an afterthought with a view of making a fragile attempt to add new unwanted issues which were never raised nor pleaded nor even a whisper was made in the Company Petition, and hence the Petitioners are now debarred and estopped from raising any additional/new issues and therefore the Rejoinder does not hold good against the Respondents and is not entitled for any consideration by this Tribunal for the purpose of adjudication of the disputes between the parties.
77. The Respondents pointed out that Petitioner Nos. 1 and 2 did not attend board meetings after 08.05.2018, and questioned how the Petitioners learned about the investment through market sources, given that they claimed not to have received information about the board resolution.
78. The Respondents claimed that the Petitioners' allegation of fabrication regarding the 08.01.2018 Board Resolution was an afterthought, made three years after the fact. The Petitioners had limited attendance in board meetings and lost their directorships due to non-attendance. The Respondents argued that the Petitioners were estopped from raising baseless allegations under Section 118(7) of the Companies Act, 2013, and were put to strict proof regarding when and how they learned about the investment.
79. With regard to the Petitioners' reference to Mr. P.A. Ibrahim Haji, a minority shareholder, claiming he was unaware of the investment in Aster DM Healthcare. The Respondents questioned why Mr. Haji was not added as a party to the Company Petition and argued that making statements about him without including him as a party was unacceptable.

80. With respect to the statement relating to the description of Aster DM Healthcare as a related party, it is submitted that Aster DM Healthcare is not a related party and the mentioning of Aster DM Healthcare as a related party in Para 12 of the letter dated 09.08.2019, annexed as Annexure A-6 of the Company Petition, Pg. 94-105 Pg. 100 is only through inadvertence.

81. About the Petitioners' allegation regarding Respondent No. 7 and Respondent No. 2 of collusion, citing a letter from 17.10.2011, the Respondents countered that this allegation was mischievous, given that the Petitioners had not raised any concerns about Respondent No. 7 until 2019-2020. The Respondents also argued that the Petitioners' claim of not receiving notices for Board and Annual General Meetings was unfounded, as the information was publicly available in the Board Reports and Annual Returns.

82. As regards the Petitioners' allegation of financial fraud and siphoning of funds, the Respondents reiterate that the burden is on the Petitioners to prove their allegations instead of furnishing information picked up from the disclosures made in the financial statements of the Respondent No.1 Company over a decade. Allegations of fraud and other such allegations must be properly pleaded and proved, which has not been done by the Petitioners.

83. With regard to the Petitioners' allegation that the minutes of the meeting held on 08.05.2018 are false and fabricated. The Respondents questioned why the Petitioners did not review the minutes and raise concerns earlier, given that there was no dispute about the meeting taking place. The Respondents stated that these allegations were baseless, especially since they were made over 30 months after the meeting, and put the Petitioners to strict proof on this matter.

84. With reference to the Petitioners' allegation regarding M/s BRG Associates, which has been raised in the Rejoinder for the first time, as to what, according to them, had transpired at the meeting, the Respondents reserve the right to

examine them. The Respondents further stated that the Petitioners have no locus to add weight to their Company Petition by relying on something attributable to Mr.PA Ibrahim Haji.

85. With reference to the Petitioners' allegation that the claims of the Respondents relating to non-parties fall flat, the Respondents submitted that neither the Petitioners have any locus to speak about non-parties and try to get some strength for their hopeless petition, nor the raising of concerns on one or two matters by the non-parties would prove the allegations of the Petitioners.
86. With reference to the Petitioners' allegation on the mysterious manner of the resignation of the Company Secretary, the Respondents stated that it is solely attributable to the harassment and conduct of the Petitioners.

Appointment of Advocate Commissioner: -

87. In light of the objections raised by the minority shareholders concerning alleged corporate governance lapses, mismanagement, and fraud by majority shareholders and executive management, this Tribunal appointed an Advocate Commissioner, Mr. Sukumar Nainan Oommen, on 17. 02. 2020, to authenticate the statutory records of the Respondent No.1 Company.
88. The Learned Advocate Commissioner submitted a Report on 19.03.2020 before this Tribunal stating that he was unable to carry out the required authentication of statutory records on the ground that the Respondents refused to cooperate with him.

Respondents Counter to the reports of Advocate Commissioner: -

89. The Respondents submitted that the Advocate Commissioner met with Mr. Anas K.P. on 21.02.2020, and scheduled visits to authenticate statutory records and books of accounts. However, he exceeded his mandate by inspecting the corporate office in Kochi, which was not contemplated in this Tribunal's order

dated 17.02. 2020. The Respondents submitted that the Advocate Commissioner proceeded with the authentication exercise on 16.03.2020, despite being informed of COVID-19 concerns and office closures, and conducted unauthorized visits to Respondent No. 1 company's registered office and service centre, allowing Petitioners' advocates to take pictures and interview workers, demonstrating a lack of impartiality and exceeding his mandate. It is further submitted that the Advocate Commissioner's actions on 16.03.2020, including visiting operational showrooms and service centres, were based on cues from the Petitioners' advocate, and despite the Respondents' efforts to cooperate, the Commissioner's acts and omissions resulted in a loss of confidence in his appointment. The Respondents submitted that the Advocate Commissioner's observations were absurd and illogical, and that he acted on cues from the Petitioners' advocate, visiting operational showrooms and service centres on 16.03.2020, while the registered office in Calicut remained closed due to COVID-19 concerns, and that the showrooms were only operational to fulfil prior commitments and legal formalities.

Appointment of Forensic Auditor: -

90. The Petitioners subsequently filed an interim application seeking relief, including the appointment of an independent financial auditor and the removal of Respondents Nos. 2-8 from management, citing concerns over the destruction of records and concealment of fraudulent transactions. The Petitioners filed an Application No. 64 of 2020 before this Tribunal seeking the appointment of an independent forensic auditor to carry out a forensic audit of the Respondent No.1 Company. This Tribunal allowed the application by order dated 05.06.2020 with the following directions: -

I. *This Tribunal allows the appointment of an Independent Forensic Auditor to complete the auditing work within 60 days from the date of appointment of the auditor by this Bench.*
II. *It is also directed to constitute an audit committee consisting of two directors from the Petitioner's side and two from the Respondents' side other than Respondents No.2 for helping and co-operating in completing the independent audit.*
III. *The costs of the forensic auditor should be borne by both the parties equally. It is also directed both the parties to suggest the list of persons to perform as an Independent Forensic Auditor before 19.06.2020.*

91. The Petitioners and Respondents filed memos proposing different auditing firms for the appointment of a forensic auditor. The Petitioners proposed four firms: Ernst & Young LLP, PricewaterhouseCoopers LLP, SBP & Associates, and Mukund M Chitale & Co. The Respondents proposed two firms: KPMG and Grant Thornton. However, both parties failed to agree on a firm. With mutual consent, this Tribunal, on 03.10.2023, appointed M/s. Maharaj N.R. Suresh and Co. LLP, Chennai, to conduct the forensic audit of the Respondent No.1 Company, directing them to complete the work within 60 days.
92. Subsequently, on 25.11.2023, the Forensic Auditor shared an engagement letter with a limited scope for the forensic audit and failed to include all pivotal issues raised in the company petition for which the forensic audit was granted by this Tribunal. Thus, the Applicants/Petitioners filed an IA bearing No. 178/KOB/2023 before this Tribunal, inter alia, seeking clarification of the scope of the forensic audit to include all issues and concerns raised in the main company petition.
93. After hearing the arguments advanced by the Petitioners in its I.A. No. 178/KOB/2023, this Tribunal, vide its order dated 24.01.2024was pleased to direct the Forensic Auditor, to, expand the scope mentioned in the engagement letter, "*also cover items P (pages 43 to 46), Q (Pages 46to 50), R (Pages 50 to 56) and S (Pages 56 to 58) mentioned in CP/02/KOB/2020 and to enquire into it and to cover all the allegations alleged in the Main Company petition.*"

94. Accordingly, the Forensic Auditor filed a revised scope of audit and progress report on 14.02.2024. Due to the extensive workload, this Tribunal extended the audit completion deadline to 30.03.2024, directing an interim report. The Forensic Auditor submitted the interim report on 02.04.2024 and the final report on 24.04.2024, which were both taken on record by this Tribunal.

Objections on behalf of the Petitioners with respect to the Final Audit Report filed by the Forensic Auditor

95. It is submitted that the Final Audit Report only contains findings with respect to two heads of allegations, namely allegations contained in paragraph iv (m) and (n) of the Company Petition, and the remaining heads of allegations have been dealt with in the Interim Audit Report dated 02.04.2024.
96. Further, submitted that the Forensic Auditor has not audited other transactions of the Company, apart from the ones highlights in paragraph iv (j) to (s), where fraud may have been perpetuated by the Majority Shareholders as has been alleged in para bb at page 62 of the Company Petition and as was directed by this Tribunal by way of order dated 24.01.2024.
97. According to the Petitioners, the Forensic Auditor has not quantified losses and damages caused by Respondents Nos. 2-8, requiring inputs from a Registered Valuer for rental valuation and an Insolvency Professional specialist for trademark infringement losses. The Auditor also needs documents from Respondents, including bank statements of 59 accounts, reconciliation statements, KPMG's internal audit report for the Financial Year 2018-2019, and management representations. Directions are sought to compel Respondents to provide these pending documents to enable the Auditor to complete the report.

As stated in the Final Audit Report, the Forensic Auditor did not receive a response from the statutory auditors to the queries raised by it.

98. The Petitioners are concerned that the Forensic Auditor's reports do not mention transactions between the Company and Kurchermala Plantations Limited, despite noting related party transactions with Respondent No. 2 and associates. The Petitioners apprehend that this allegation is not covered as the Respondents may have intentionally not provided the documents to the Forensic Auditor in relation to Kurchermala Plantations Limited.

99. The Petitioners further submitted that the Forensic Auditor's report allegedly failed to address a key allegation regarding M/s BRG & Associates, the statutory auditors appointed in the Annual General Meeting for the Financial Year 2016-2017. The allegation centres around a potential conflict of interest, as M/s BRG & Associates purportedly served as personal financial advisors to Respondent No. 2, while their appointment was not disclosed to minority shareholders. This omission is significant, given that conflicts of interest can lead to legal liability, damage to reputation, and loss of credibility and trust.

100. The Petitioners emphasised that despite the aforesaid gaps identified, the Reports filed by the Forensic Auditor substantiate and buttress the allegations raised by the Petitioners, and the Petitioners accept the two reports, the Interim Audit Report, and the Final Audit Report, with the Executive Summary filed before this Tribunal, subject to the observations.

101. It is submitted by the Petitioners that the additional points/gaps identified above also require investigation by the Forensic Auditor to provide the information about the mismanagement done and loss suffered by the Respondent No.1 Company and its minority shareholders due to the wrongdoings of the Respondent Nos. 2 to 8.

Objections on behalf of the Respondents to the Interim and Final Reports read with the Executive Summary of the Forensic Auditor

102. It is submitted by the Respondents that, despite the Forensic Auditor's reports being prejudiced against them, the Auditor failed to find any illegality or irregularity regarding allegations of financial fraud and siphoning off funds made by the Petitioners in the Company Petition. The Petitioners have primarily alleged the following two financial irregularities in the captioned Company Petition:

    a. The Petitioners alleged that the Respondents received unauthorized interest-free loans of Rs. 52.90 crores for purchasing land/real estate. However, the Forensic Auditor found this allegation to be incorrect, stating that the alleged amount was not used for property purchases by related parties. The Forensic Auditor's report does not conclude that Respondent No. 1 Company suffered any loss or that the Respondents siphoned off monies. The Respondents reserve the right to provide detailed submissions on this matter during future arguments.
    b. The Petitioners alleged that Rs. 24.35 crores were spent on constructing a building on land owned by the Respondents. However, the Forensic Auditor's Final Report concluded that the expenditure did not relate to any lands owned by the majority shareholders or related parties, contradicting the Petitioners' claim.

102. The Respondents claim the Forensic Auditor's reports are biased, favouring the Petitioners. They allege the Auditor exceeded its role, drawing conclusions that prejudice the Respondents' case while ignoring key facts, including:

    a. Benefits enjoyed by Petitioners from the Respondent No. 1 company

b. Petitioners' knowledge of company operations, run by Respondents as per Memorandum of Understandings (2007 and 1998)
c. Petitioners' passive role as shareholders and directors, never objecting to the R1 Company functioning until Respondents demanded collateral and guarantees.

103. Further, Respondents narrated a few instances of the bias of the Forensic Auditor and contradictions in the Interim and Final Reports read with the Executive Summary as per examples shown below: -

a. The Forensic Auditor has failed and neglected to mention that the Petitioners have never raised the objections to the transactions which are challenged by them in the captioned Company Petition, despite 4 attending the subsequent and numbered meeting(s) of the Respondent No. 1 company.
b. The Forensic Auditor has failed and neglected to mention that the Petitioners never requested or attempted to inspect the Books of the Respondent No. 1 Company in all these years by exercising their statutory rights as shareholders and directors of the Respondent No.1 Company, clearly always indicating their knowledge and consent.
c. The Forensic Auditor has failed and neglected to mention that all records of the Respondent No. 1 Company were duly filed and available on the website of the ROC and accessible to all, including the Petitioners.
d. The Forensic Auditor has failed and neglected to mention that the Petitioners have also taken rental incomes from the Respondent No. 1 Company and thus are part of the same transactions, which are now being alleged to be the acts of oppression and mismanagement by the Petitioners.
e. The Forensic Auditor allegedly failed to mention that leave of absence was granted to Petitioners and Respondents without formal requests, a

practice similarly extended to other directors and shareholders. This informal approach reflects the R1 Company's operational dynamics, based on mutual understanding among the four family groups. The Petitioners, Respondents, and minority shareholders were aware of the business conduct, though informally, like a closely held family-run business. The Petitioners' current allegations may be a manipulative afterthought, taking advantage of these informal practices.

f. The Forensic Auditor has cleverly and intentionally not mentioned the date of the email sent by Mr. Anil Nair referred to by the Forensic Auditor in paragraph 8 of the Final Report to give a wrong impression to this Tribunal about the so-called objection of Mr. Nair to the alleged related party transactions. The said email is dated 21.11.2020, which is subsequent to the filing of the captioned Company Petition.

g. The Forensic Auditor's conclusions appear contradictory regarding the Memorandum of Understanding of 2007. Initially, the Auditor relied on the Memorandum of Understanding to conclude that Mr. P.A. Hamza failed to exercise a call option and that Respondent No. 2 should have offered shares to maintain parity among shareholders. However, in the Final Report, the Auditor contradicted this stance by stating the MoU was not accepted or signed by all parties, rendering the first conclusion unfounded.

h. The Forensic Auditor's reports have been criticized for lacking crucial insights. Specifically, the Auditor allegedly failed to investigate the Petitioners' prolonged silence regarding alleged non-receipt of notices or agendas for meetings. Given the Petitioners' business background, it's reasonable to expect they understand corporate procedures and compliance. The Auditor's omission might indicate a biased approach,

potentially ignoring evidence of the Petitioners' knowledge or consent. This could suggest the petition is based on "convenient afterthoughts" rather than legitimate grievances. Nevertheless, the above instances indicate that the Respondents claimed that the Forensic Auditor's reports are significantly biased, favouring the Petitioners and causing grave prejudice to the Respondents. Given the apparent bias, the Respondents argue that the Forensic Audit reports and Executive Summary should be rejected.

104. The Respondents have conducted a detailed analysis of the Forensic Auditor's Interim and Final Reports, along with the Executive Summary, and submitted this analysis as an annexure to their memo. Although the Respondents claim the auditor's reports are biased, favouring the Petitioners, the Auditor identified instances of the Respondents' legally compliant and good-faith conduct toward the Petitioners and minority shareholders.

105. The Respondents have come with a plea that the non-compliances and irregularities noted in the Forensic Auditor's reports do not constitute oppression and mismanagement. However, the Forensic Auditor has failed to investigate some of the allegations that form part of the scope of the audit. Hence, the Petitioners filed an application IA(C/ACT)/102/KOB/2024 before this Tribunal seeking directions for the Forensic Auditor to complete the audit of Respondents No.1 Company

106. In all aspects, file an addendum report on the findings, and have the Respondents provide necessary information and documents for the audit.

107. Accordingly, by order dated 10.12.2024 in IA(C/ACT)/102/KOB/2024, this Tribunal recorded the Forensic Auditor’s memo dated 07.12.2024 and held that, along with the earlier reports, it would be taken on record. No further directions

were issued to the Auditor, but clarifications may be sought if needed. Both parties were directed to file a detailed list of dates, events, and issue-wise charts.

MEMO OF REPLY ON BEHALF OF THE PETITIONERS TO THE MEMO OF OBJECTIONS BY THE RESPONDENTS TO THE FORENSIC AUDITORS: -

108. It is submitted that the Respondents' memo should be dismissed, as they have waived their right to object to the Forensic Auditor's reports. By not objecting earlier and accepting the reports, as per the order dated 03.05.2024, the Respondents are estopped from making claims against the audit findings.
109. This Tribunal granted both parties an opportunity to file objections to the Auditor's reports on 24.04.2024. However, on 02.05.2024, the Respondents chose not to file objections, instead stating they were ready to commence arguments based on the Auditor's report, while Petitioners sought time to file objections. Having had access to the reports and documents, the Respondents made an informed decision to accept the Audit Report without objections.
110. The Respondents' relinquishment of their right to object to the Audit Report is deemed final and cannot be reversed. By choosing not to object on two separate occasions and instead opting to argue based on the report, the Respondents have waived their right to file objections. This Tribunal should reject the Respondents' memo and objections, as they are estopped from filing such objections due to their prior actions.
111. It is further submitted that the Forensic Auditor investigated allegations of financial irregularities, including unauthorized interest-free loans of Rs. 52.90 crores to related parties, disguised as land advances. The auditor found that these transactions lacked a valid quorum, contravened the provisions of the Companies Act, and were structured to circumvent loan covenants. The funds were routed to entities belonging to Respondent No. 2's relatives and associates, indicating

misappropriation and mismanagement. The auditor also highlighted irregularities in construction on leasehold properties and depreciation of temporary structures.

112. Regarding the Respondent's claim that the Forensic Auditor's investigation into the leasehold land and construction projects is incomplete. The Petitioners stated that the auditor focused on ownership but did not scrutinize the contractor selection or examine the nature of the Capital Work-in-Progress (CWIP). The auditor found that expenditures were mostly for interior decorations and furniture, not building construction. However, evidence shows construction on leasehold properties owned by related parties amounting to Rs. 3,30,28,000/-, which requires further verification by the Forensic Auditor.

113. The Petitioners have consistently raised concerns and objections to the management of Respondents No.1 Company since 2009, including filing Registrar of Companies complaints and objecting to governance issues, auditor appointments, and financial transactions. The Company has formal processes, and the Petitioners have communicated their objections formally on several occasions. According to the Petitioners, the Respondents have misutilized Company funds, made unauthorized loans, and engaged in related-party transactions, eroding the Company's net worth and benefiting themselves at the expense of minority shareholders.

114. The Petitioners deny the allegations made in the Memo and assert that the Forensic Auditor is not biased. They argue that even if they had not raised objections to certain transactions, it would not negate the illegality of those transactions. The Company Petition aims to address oppression and mismanagement, and the forensic audit's purpose is to investigate records for evidence of mismanagement, illegality, or oppressive conduct. The Petitioners argue that non-compliant transactions cannot be justified just because they did

not object earlier. They claim the Majority Shareholders did not give them notice for several meetings, which the Forensic Auditor also confirmed. This lack of notice makes allegations about their silence frivolous and misleading.

115. The Petitioners reiterated that they were denied access to inspect the books of Respondent No.1 Company. They allege the Respondents suppressed information, denied access to documents to the court-appointed Advocate Commissioner, and refused to share official documents with the Petitioners, even when they were part of the Audit Committee for the Forensic Audit. The Petitioners specifically mentioned that they were ignored on queries about investments in Aster DM Healthcare Limited and were refused inspection of statutory records for the Financial Year 2019-2020. The Petitioners denied that all records of Respondents No.1 Company were duly filed with the ROC. The Forensic Auditor highlighted several missing documents, including proof of notice of board meetings, that were supposed to be maintained by the Company but were not made available for inspection.

116. The Forensic Auditor identified one related party transaction involving Petitioner Ms. T.P. Sarada, who received rental income from a property on Koya Road, Calicut. However, the terms of the rental agreement were below market rate and advantageous to Respondents No.1 Company. The Petitioner received a relatively small amount of rent, i.e., Rs. 2 lakhs per year, compared to the much larger amount received by the Respondents as Rs. 783 lakhs per year at inflated rates.

117. The Petitioners pointed out that the notice and agenda for a board meeting on 28.12.2018, included granting leave of absence to directors who applied for it, and the minutes recorded that Petitioners 1 and 2 had sent emails stating their inability to attend. The Respondents' claim that the company was run like a closely held family business was also denied, with the Petitioners asserting that

this was a desperate attempt to downplay the serious findings of corporate misgovernance in the Audit Report.

118. It is submitted by the Petitioners that the Companies Act, 2013, and its rules do not provide for a usual course of business, nor do they absolve the non-compliance due to familiarity and usual practices unless the right course is followed as envisaged in the Companies Act.

119. The Petitioners claimed that they raised multiple objections about related party transactions over the years. Notably, the minutes of the 08.05.2018 board meeting have not circulated to board members after the meeting. However, these minutes emerged in November 2020 as part of the Respondents' response to a company petition filed in 2018, which the Petitioners alleged were fabricated and backdated to create a defence for the Respondents. Petitioner 1 objected to these minutes on 21.11.2020, as soon as they were revealed, stating it was impossible to object to minutes they had not seen before.

120. The Petitioners submitted that the provisions of the Companies Act, 2013, took precedence over any Memorandum of Understandings, particularly regarding managerial remuneration. They pointed out that since the Articles of Association were not amended according to the Memorandum of Understandings, the Companies Act, 2013, provisions had to be followed, including those related to managerial remuneration and appointment of MDs above 70 years.

121. The Petitioners refuted the Respondents' allegations that the Forensic Auditor's conclusions were unfounded or biased. They claimed the Respondents were picking paragraphs from the Audit Report to create a false impression. The Petitioners asserted that the Forensic Auditor investigated matters as per the agreed scope and this Tribunal's directions, finding evidence of mismanagement by the Respondents despite limited documents. They denied any bias or undue

advantage given to the Petitioners and argued the Respondents had accepted the Audit Report, making their objections estopped.

122. The Petitioners further refuted that non-compliances and irregularities mentioned in the Audit Report could not form acts of oppression and mismanagement. They claimed the Forensic Auditor's evidence showed a clear pattern of mala fide intent, misutilization of assets, and abuse of positions by Respondents 2-8 to benefit themselves, oppress minority shareholders, and erode the company's value. The Petitioners argued that these non-compliances and irregularities were detrimental to the company's and minority shareholders' interests, warranting the reliefs sought in the Company Petition.

123. The Petitioners pointed out that this Tribunal ordered an independent forensic audit based on prima facie evidence and sufficient cause shown by the Petitioners. The Petitioners argued that the Forensic Audit Reports corroborated their allegations and that there was no limitation imposed on using the reports. They contended that the Respondents' contentions were misplaced and aimed at frustrating the purpose of the forensic audit.

124. Further, it is stated that the Respondents had consented to the scope of the audit as recorded in the Tribunal's order dated 24.01.2024. They claimed that the Respondents had accepted the Forensic Auditor's appointment and the audit reports, relinquishing their right to object. The Petitioners argued that the scope of the audit was settled with the consent of both parties, and the Hon’ble Supreme Court had granted liberty to challenge the report only on limited grounds, while other aspects had been finalized by the order dated 05.05.2020.

Key Allegations and Counter Responses: -

ALLEGATIONS RAISED IN THE PETITION	PETITIONERS' CONTENTIONS	RESPONDENTS' DEFENCE
1. Misutilization of Funds in Aster DM Healthcare IPO	The Respondents allegedly abused their management position to invest Rs. 9.98 crores of company funds in Aster DM Healthcare Ltd.'s IPO, a related party transaction done without proper approval, causing a loss of Rs. 2.37 crores, and benefiting themselves and their associates.	The Respondents took the defence that investing in Aster DM Healthcare Ltd.'s IPO was a legitimate business decision made in good faith, within their authority, and in the best interest of the company, and even otherwise, the Petitioners are compensated and thus do not constitute oppression or mismanagement.
2. Unauthorised use of the resources of the Company, at the cost of the Company and its Stakeholders, for the benefit of the Majority Shareholders.	The Respondents allegedly misrepresented the Respondent No.1 Company as part of the Peeves Group and unlawfully used its trademark for other companies, including Indus Motor LCV and IndusGo, without permission or agreement.	The Respondents claim that depicting Respondent No.1 company as part of the Peeves Group is legitimate due to common shareholders and that the trademark allegations are outside this Tribunal's jurisdiction and lack merit.
3. Unauthorised loans and pay-outs to Directors and Related Parties	The Respondents allegedly granted unauthorized, interest-free loans totalling Rs. 52.9 crores to themselves and their relatives, disguised as land advances, in clear violation of statutory obligations,	The Respondents deny allegations of unauthorized loans, claiming the transactions were legitimate advances for land purchases, fully disclosed, and returned with interest, causing no

	corporate governance principles, and fiduciary duties, causing significant prejudice to minority shareholders and detriment to the interest of the Company itself.	financial loss to the company.
4. The Siphoning of funds under the Garb of Corporate Social Responsibility contribution	The company's CSR committee was allegedly formed without proper procedure, and its funds were misused for institutions favoured by Respondent No. 2 and his family, raising concerns about conflict of interest and lack of transparency.	The Respondents claim that CSR funds were properly utilized, disclosed, and allocated to eligible institutions without any financial loss or misutilization, and that Petitioners' allegations of siphoning are baseless and an afterthought.
5. Non-Disclosure of Related Party Transactions	The company allegedly engaged in oppressive and mismanaged practices, including unauthorized related party transactions, misrepresentation, and financial impropriety, benefiting majority shareholders at the expense of minority shareholders and the company's financial health.	The Respondents assert that all transactions were properly disclosed, approved, and conducted at market prices, and in the ordinary course of business, with no financial loss to the company, rendering the Petitioners' allegations are baseless.
6. Conduct of Board Meetings Without Notice to all directors	The company's board meetings were allegedly held without proper notice to minority directors, lacked quorum, and featured procedural irregularities, including granting leave of absence to absent minority directors without their requests,	The Respondents claim that notices and agendas for board meetings were informally shared, Petitioners were aware of meeting schedules but chose not to attend, and allegations of improper notice are an afterthought with no

	rendering resolutions invalid.	evidence of oppression or mismanagement.
7. Conduct of Annual General Meetings Without Notice to all shareholders	The company allegedly committed serious governance failures, including improper notice for 33rd AGMs, conflicted appointment of BRG & Associates as statutory auditors despite ongoing personal engagements with majority shareholders, and persistent delays in holding AGMs, highlighting systemic non-compliance with statutory requirements.	The Respondents claim that notices for meetings were informally shared via WhatsApp, Petitioners attended meetings randomly without objections, BRG & Associates were appointed as statutory auditors for FINANCIAL YEAR 2016-17 but resigned before signing financial statements due to Petitioners' objections, and Petitioners benefited from company decisions, including accepting a dividend of Rs. 24 per equity share.
8. Non-Appointment of a Whole-Time Company Secretary	The company persistently failed to appoint a whole-time Company Secretary as mandated by law from Financial Year 2011-12 to Financial Year 2018-19, leading to operational inefficiencies and statutory non-compliance.	The Respondents claim that they advertised for a company secretary in The Hindu newspaper, and utilized the services of M/s. Gopimohan Satheeshan & Associates, a practicing Company Secretaries firm, shared monthly reports with Petitioners via WhatsApp, but could not appoint a full-time company secretary due to scarcity and limited corporate exposure in the automobile dealership.

9. Usurping of shares of Mr. P.A. Hamza and Mrs. Fareeda Hamza.	Respondent No. 2, allegedly abused his executive control by wrongfully retaining 6.34% of unexercised shares under the 1998 MOU, which was meant to be redistributed, thereby reducing Mr. PA Hamza and Mrs. Fareeda Hamza's shareholding from 3.14% to 0.26% and amplifying his own holdings to the detriment of minority shareholders.	The Respondents argue that the allegation of wrongful retention of shares is an afterthought, time-barred, and lacks locus standi, as Mr. PA Hamza and Mrs. Fareeda Hamza, who are allegedly affected, are not parties to the petition, and the forensic auditor confirmed that Mr. PA Hamza failed to exercise the call option as per the 2007 MOU.
10. Issues with Statutory Auditor resignation and subsequent appointment	The statutory auditors, M/s MKSA & Associates, resigned on 05.09.2024 due to the company's failure to provide necessary information, and the Respondents then unilaterally appointed M/s M A Moideen & Associates as new auditors, deviating from the agreed-upon decision to appoint a Big 4 firm. Despite objections raised regarding this abrupt change, the appointment was expedited and approved during the 266th Board Meeting held on 14.10.2024, raising concerns about transparency and adherence to corporate governance practices.	The Respondents claim that the Petitioners' additional allegations regarding the statutory auditor's resignation, new auditor's appointment, internal audit reports, and management fee are frivolous, lack legal and factual basis, and do not constitute oppression or mismanagement.

11. Continuation of Disqualified Directors	The Petitioners allege that Respondents Nos. 5 and 6, Mr. Ajmal Abdul Wahab and Mr. Afdhel Abdul Wahab, continue to serve as directors despite being disqualified under Section 164(2)(a) due to non-compliance in another company, and that they submitted backdated resignations to circumvent disqualification, with incomplete filings of mandatory resignation returns	The Respondents claim that the IndusGo is a division of Respondent No. 1 Company, and IndusGo Mobility and Technology (India) Private Limited (IMTIPL) was incorporated in 2020 to separate this business but remained dormant due to a status quo order; Respondents Nos. 5 and 6 resigned as directors of IMTIPL on 16.12.2022, and new directors Kunnath Sibi and Anwar Sadath Vadakengara were appointed with effect from 10.12.2022, while also arguing that any disqualification from directorship in another company is irrelevant to allegations of oppression and mismanagement in Respondent No. 1 Company.
12. Discriminatory and Unfair Practices Profiting the Majority Shareholders	The majority shareholders allegedly engaged in discriminatory and unfair practices, taking interest-free advances from the R1 Company to purchase properties in their personal names, renting them back to the company at inflated rates with high security deposits, and compelling the company to finance	The Respondents deny allegations of misusing company funds to purchase lands, construct buildings, and lease them to the company at inflated rentals, claiming the Petitioners participated in similar related-party transactions with full disclosure, and the forensic audit found no

	construction on these properties.	link between the expenditure and lands owned by majority shareholders or related parties.
13. Issues Highlighted in the Internal Audit Report by KPMG for the Financial Year 2021-22.	The internal audit report by KPMG highlighted severe deficiencies in the company's processes, including unapproved related-party payments, poor vendor management, inadequate HR practices, financial statement irregularities, and non-compliance with statutory requirements, indicating gross mismanagement and inadequate controls.	The Respondents claim that the Petitioners' additional allegations regarding the internal audit reports lack legal and factual basis, and do not constitute oppression or mismanagement.
14. Instances Highlighted with the Advocate Commissioner's report	The Respondents allegedly hindered an investigation by failing to produce books of accounts to the Advocate Commissioner on March 14, 2020, falsely claiming the Calicut office was shut due to COVID-19 on 15.03.2020, despite other company showrooms remaining operational, and submitting a forged and manipulated report, omitting essential information.	It is submitted that the Respondents had cooperated fully with the Advocate Commissioner, and the Calicut office's closure on 15.03.2020 was genuinely due to COVID-19 precautions. The company's showrooms had remained operational to fulfil prior commitments and complete legal formalities. The report submitted had not been forged or manipulated; rather, it had accurately reflected the circumstances and

		cooperation extended to the Commissioner during the investigation.
15. Manipulative Rental Practices Favoring Majority Shareholders	The Respondent No.1 Company allegedly engaged in questionable transactions with the majority shareholders, including renting properties at inflated rates with excessive security deposits, misusing company funds, and failing to comply with regulatory requirements, raising concerns about financial mismanagement and corporate governance.	It is submitted that the Petitioners failed to prove oppression and mismanagement in transactions involving properties leased from related parties at allegedly high rentals, as related party transactions were transparent, similarly engaged in by Petitioners, and the Forensic Auditor's report clarified that the disputed expenditure did not relate to lands owned by majority shareholders or related parties.

ANALYSIS AND FINDINGS

125. Heard the submissions made by the parties at length and perused the materials available on record. The present petition has been filed under Sections 213, 241, 242, 244, 246, 337, and 341 of the Companies Act, 2013, raising various allegations and seeking multifarious reliefs. The vital issue before this Tribunal is whether the allegations made in the Petition constitute oppression and mismanagement, and whether the Petitioners are entitled to the reliefs sought for.

126. The Companies Act, 2013, does not define the terms 'oppression' and 'mismanagement'. The legislature, in its wisdom, has consciously refrained from

postulating a rigid definition. The likely rationale behind this legislative choice is the inherent complexity and contextual variability of corporate conduct; there exists no straitjacket formula to determine what constitutes oppression or mismanagement conclusively. Each case must be adjudicated on its own facts, circumstances, and nuances.

127. An act that may not amount to oppression or mismanagement in one context may, under a different factual matrix, constitute a grave instance of either or both. To arrive at a just, fair, and judicious conclusion, the courts are required to examine various factors, i.e, patent or latent, upfront or concealed, visible or hidden acts and their consequences on a Company and its shareholders. The judiciary must also take into account other relevant considerations, including both the economic and non-economic impact on the Company as a whole, and further impact on majority and minority shareholders. The evolving nature of corporate governance would soon require courts also to consider psychological consequences, technological and digital vulnerabilities, such as cybersecurity failures that compromise sensitive company information, as a form of oppressive conduct and mismanagement. Furthermore, strategic mismanagement, including reckless or uninformed decisions that adversely affect the company's long-term interests, may also fall within the scope of judicial scrutiny under Sections 241 and 242 of the Companies Act, 2013.

128. By choosing not to define these terms, the legislature has stretched the scope up to the sky, thereby vesting wide discretion in judicial forums. While this ensures flexibility and fairness in adjudication, it also renders the Herculean task of determining whether a particular act qualifies as oppression or mismanagement especially complex, often involving competing narratives and divergent interpretations from opposing parties.

129. ***Shanti Prasad Jain v. Kalinga Tubes Limited*** **1965 AIR 1535, 1965 SCR (2) 720** was the initial landmark case in Indian company law where the Hon'ble Supreme Court of India judicially interpreted and discussed the concepts of oppression and mismanagement under Sections 397 and 398 of the Companies Act, 1956, akin to Sections 241-242 of the Companies Act,2013.

130. The Hon'ble Supreme Court in the ***Kalinga Tubes Limited*** **case** *(supra)* referred to several landmark English decisions that shaped the legal understanding of oppression and mismanagement in corporate law. One of the foundational cases cited was ***Elder v. Elder and Watson***, which laid down that oppression must be a continuing act and not a one-time event. Similarly, in ***Scottish Cooperative Wholesale Society Ltd. v. Meyer***, the House of Lords held that exclusion of a shareholder from management without justification can amount to oppressive conduct. The case of ***Re H.R. Harmer Ltd.*** further clarified that long-term disregard of minority interests and unilateral decision-making by the majority can violate principles of fair play and justify relief under oppression provisions.

131. At this stage, it would be appropriate to reproduce Section 241 (1) (a) of the Companies Act, 2013, which reads as under: -

> (*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*

132. Section 397(1) of the Companies Act, 1956 is read as under: -

> *397. APPLICATION TO [TRIBUNAL] FOR RELIEF IN CASES OF OPPRESSION*
> *(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the [Tribunal] for an order under this*

section, provided such members have a right so to apply in virtue of section 399.

133. Both parties have placed reliance on the distinction and substantive differences between the provisions under the erstwhile Companies Act, 1956, and the current Companies Act, 2013. The Petitioners contend that the amended provisions permit a challenge to both past and continuing acts of oppression in a company petition. Conversely, the Counsel for the Respondents submits that acts which have been conclusively completed cannot be subjected to adjudication under the present regime.

134. The legislature deliberately incorporated the phrase "have been" in Section 241(1)(a) to encompass past acts alongside continuing acts of oppression. The amendment was thus introduced to enable the consideration of oppressive conduct irrespective of its temporal occurrence. It is not the isolated act per se that determines the maintainability of an application under Section 241; rather, the focus is on the consequences of such acts. If the consequences are oppressive, the oppression itself assumes primacy over the chronological timing of the acts. We further place reliance on the judgment dated **02.09.2025** of the Hon'ble Supreme Court of India in ***Mrs. Shailja Krishna vs. Satori Global Limited & Ors.*****, Civil Appeal Nos. 6377–6378 of 2023,** wherein the Hon'ble Apex Court was pleased to pass the following order:

> *30. The aforesaid decisions confirm the view that the NCLT/CLB possess a wide jurisdiction to decide all such matters that are incidental and/or integral to the complaint alleging oppression and mismanagement. Such power is, however, subject to any other legislative enactment specifically debarring the NCLT/CLB from exercising its powers in this respect.*

The Hon'ble Supreme Court thus affirmed that the National Company Law Tribunal possesses the jurisdiction to adjudicate allegations of fraud, coercion,

and manipulation when such allegations are integral to claims of oppression and mismanagement under the Companies Act, 2013. The Hon'ble Court further clarified that if, upon examination, the NCLT concludes that oppression and mismanagement have indeed occurred, it is empowered to pass effective and comprehensive orders, including those incidental to the reliefs specifically sought. Such orders may be aimed at addressing the root causes of the dispute and ensuring a just and equitable resolution between the parties.

135. Accordingly, where a series of acts cumulatively results in oppression, even if such acts were concluded in the past, the aggrieved party is entitled to seek relief under Section 241 of the Companies Act, 2013. While a solitary act may or may not be challengeable after its completion, a succession of acts producing a continuous or cumulative oppressive effect may warrant judicial scrutiny despite the acts being historically concluded.

136. Four petitioners have filed this petition, each holding 5% shareholding, thereby collectively holding 20% of the total shareholding. As per the statutory requirement under Section 244, a minimum of 10% shareholding is required for maintainability, either individually or collectively. The respondents have raised objections regarding the maintainability of the petition, contending that the Special Power of Attorney is not duly stamped under the Kerala Stamp Act, 1959. For the limited purpose of maintainability, even a petition filed by two Petitioners would be maintainable. The Respondents failed to raise this issue during the final hearing; therefore, the objection is deemed waived. Although some procedural issues were raised earlier in the pleadings by Respondents, they were not pressed during the final arguments.

Limitation

137. The Respondents have raised the defence of limitation in response to multiple allegations made by the Petitioners, contending that these claims are barred by the law of limitation and hence not maintainable. This defence has been specifically invoked concerning allegations such as the misrepresentation of the Company as part of the Bridgeway/Peeves Group, unauthorized use of the Company's logo and trademark, irregularities in the conduct of Board and General Meetings without proper notice to all directors and shareholders, siphoning of funds under the guise of Corporate Social Responsibility, misapplication and diversion of Company funds, unauthorized interest-free loans during the financial years 2013–2014 and 2014–2015, related party transactions undertaken without prior Board approval or notice, and the alleged usurpation of shares belonging to Mr. P.A. Hamza and Ms. Fareeda Hamza.

138. However, it is well-established that the provisions of the Companies Act, 2013, particularly Sections 241 and 242, adopt a broader and more equitable framework. This framework rejects a rigid application of procedural bars, such as limitation to the inquiry of oppressive or mismanaged conduct. Proceedings under these Sections are designed to protect the interests of the Company and the minority shareholders from unfair prejudice and oppression. Thus, such matters demand a purposive interpretation that transcends the mere technicalities of limitation, ensuring justice and fairness to prevail.

139. The Petitioner relied upon ***Surinder Singh Bindra v. Hindustan Fasteners (P) Ltd.*, AIR 1990 Delhi 32**, where Hon'ble High Court of Delhi held that to contend that past events predating three years from the date of filing the petition under Sections 397 and 398 of the Companies Act, 1956, can still be considered,

provided they form part of a continuous course of oppressive or prejudicial conduct. The Hon'ble High Court further held that while Article 137 of the Limitation Act, 1963 applies to such petitions, acts older than three years are not barred from consideration if they are part of a continuing series of acts or a single transaction that continues to have oppressive or prejudicial effects up to the date of the petition. It is also emphasized that the concept of a "continuing cause of action" is applicable, and whether the alleged acts constitute continuous oppression or mismanagement is a matter of factual determination. Accordingly, the objection to the petition on the ground of limitation was overruled.

140. The Respondents relied upon **Kuldeep Singh v. Sainis Cold Retreaders Private Limited,** vide order dated 21.01.2019 in Company Petition/185/Chd/Pb/2018, to argue that the present petition is barred by limitation. The NCLT Chandigarh dismissed the petition on the ground of delay and laches, holding that the petitioner had slept on his rights for nine years and sought to challenge a concluded act that had no continuing effect or ongoing prejudice and further stated that stale claims without any element of continuity or persisting oppression are not maintainable under Sections 241 and 242 of the Companies Act, 2013.

141. It is pertinent to note that company affairs, especially where allegations of oppression and mismanagement arise, can be comparable to matrimonial disputes in their nature. Shareholders, like parties in matrimonial matters, typically do not resort to litigation for every act or grievance; rather, they endure ongoing conduct unless it becomes unbearable or continuous. Only when a pattern of persistent oppression or mismanagement emerges do aggrieved shareholders seek the intervention of this Tribunal. Accordingly, it

becomes essential for this Tribunal to examine not only isolated incidents but also the historical conduct and cumulative acts of the Company to arrive at a just and fair adjudication. Further, while the Doctrine of Laches may apply to personal rights and individual grievances, it is not appropriate to dismiss allegations that impact the company as a whole or involve financial matters merely on technical grounds.

142. Therefore, the Respondents cannot in equity or law invoke the defence of limitation selectively to shield themselves from scrutiny of acts forming part of an ongoing and continuing scheme of mismanagement, exclusion, and oppression. If such acts exist, a holistic examination of the entire sequence of events is indispensable for this Tribunal to uphold the principles of justice, and for the protection of minority shareholders' rights in the true spirit of the Companies Act. However, for the purpose of restitution, the law of limitation would have some effect, though subject to all just and fair exceptions.

143. Having considered the aspect of limitation, it is our considered opinion that a litigant may forfeit their right because of delay in invoking the jurisdiction of the court within the prescribed time. However, where the acts complained of have occasioned loss not merely to an individual shareholder but to the company as a whole and its general body of shareholders, and such shareholders ultimately invoke the jurisdiction of this Tribunal for redressal of oppression and mismanagement, both scenarios are not to be equated.

144. In the latter situation, where fraudulent transactions, gross mismanagement, misappropriation of funds, or flagrant violations of the statutory provisions governing board and general meetings have occurred, and where the directors have acted without requisite legal authority in the management of the company,

the question of limitation ought not to be a bar to the grant of effective relief under the Companies Act. This Tribunal, while exercising its discretion in granting restitution, especially in cases not involving purely financial transactions, recognizes that financial improprieties and mismanagement have a lasting and continuing detrimental impact on the financial health of the company, notwithstanding that the offending acts may have been committed years prior.

Duomatic Principle

145. The petitioners have raised multiple grounds in their petition filed under Sections 241 and 242 of the Companies Act, 2013, alleging oppression and mismanagement. These allegations pertain to various financial and procedural irregularities. In response, the respondents, apart from availing themselves of other defences, have sought to invoke the doctrine commonly referred to as the Duomatic Principle.

146. The Duomatic Principle, rooted in English company law, posits that if all shareholders of a company give their unanimous and informed consent, either expressly or impliedly, to a particular act, such consent may validate actions taken by the directors or shareholders even if such actions were not formally approved in accordance with the Companies Act or the Company's Articles of Association. In essence, it allows certain deviations from procedural requirements, provided the shareholders unanimously agree and the action is not otherwise illegal or ultra vires.

147. To successfully invoke this principle, the party relying on it must establish three essential elements: (i) unanimous consent of all shareholders; (ii) that such consent was informed and genuine; and (iii) that the act in question has a binding effect upon the company. However, it is equally well-settled that the Duomatic

Principle cannot be used as a shield where the impugned actions are tainted by fraud, are ultra vires the company's constitution or statutory provisions, lack full and frank disclosure, or adversely affect the rights of creditors or other stakeholders.

148. In ***Mahima Datla v. Renuka Datla*, (2022) 10 SCC 258**, the Hon'ble Supreme Court reaffirmed that the Duomatic Principle applies only to bona fide transactions and is inapplicable in cases involving fraud or dishonesty. The Petitioners emphasized that the principle cannot be invoked where fraud is alleged, which holds that transactions must be honest and intra vires to qualify under the Duomatic Principle or the Doctrine of Indoor Management. Conversely, the Respondents also relied on the same judgment to argue that in closely held family companies, informal decision-making channels, and consensus, as recognized under the Duomatic Principle, are valid. They contended that procedural lapses alone do not amount to oppression or mismanagement, especially where the company remains profitable and there is no evidence of prejudice or fraud. Further, the respondents submitted that the petitioners' continued participation in the company, along with acceptance of dividends and board decisions, amounted to acquiescence, and that informal communications or approvals should be deemed sufficient for validating corporate actions. Thus, while the petitioners insist on the fraud exception to deny the applicability of the Duomatic Principle where dishonesty is present, the respondents rely on the principle's application to uphold informal consensual decisions in the absence of proven fraud or prejudice.

149. Moreover, in cases where the allegations involve oppression or mismanagement under Sections 241 and 242, the application of the Duomatic Principle must be applied with caution. The mere fact that the company is closely held does not

justify bypassing statutory requirements or the company's internal governance framework. The parties, having operated under the structure and benefits of a duly incorporated company, cannot selectively disregard the corporate form to equate it with a partnership solely to avail the Duomatic defence.

150. Therefore, the applicability of the Duomatic Principle must be assessed in the context of the specific facts and circumstances of the present case. It remains to be seen whether the essential conditions for invoking the principle are met, and whether such reliance is tenable in light of the allegations made by the petitioners. Having considered the gravity of the allegations and the nature of the defence taken, we are of the opinion that this principle would not be applicable in the present case.

Forensic Audit

151. In the present matter, the Respondents have sought to challenge the maintainability and relevance of the Forensic Audit Report on multiple grounds. The Respondents contend that the said Report ought not to be considered, and that the adjudication of the petition should be confined strictly to the pleadings and allegations as set out therein. Furthermore, the Respondents have contended that the Petitioners are impermissibly attempting to extract and rely upon selective findings from the Forensic Audit Report in support of their case.

152. The Petitioner relied upon ***Archer Power System Pvt. Ltd. v. Cascade Energy Pvt. Ltd. and Ors.*, 2020 SCC OnLine NCLAT 1020**, where the Hon'ble NCLAT held that the Tribunal has the power to pass interim orders it deems fit to regulate the conduct of a company's affairs under Sections 241 and 242 of the Companies Act, 2013. In view of allegations such as siphoning of funds, breach of agreements, and improper maintenance of accounts, the Hon'ble Appellate

Tribunal observed that ordering a forensic audit by an independent auditor was necessary to aid the Tribunal in objectively assessing the case. It emphasized that such an audit would ensure a fair adjudication respecting the rights and obligations of all parties. Additionally, the direction to maintain the *status quo* as of the date of the petition was upheld as a legitimate measure to prevent either party from gaining an undue advantage during the pendency of the proceedings and to protect the company's affairs from being altered to the detriment of any party.

153. Having perused the record and duly considered the submissions advanced by both parties, it is evident that an Advocate Commissioner was appointed by this Tribunal at the instance of the Petitioners to ensure the authentication of the documents and records of Respondent No.1 Company and to prevent any potential manipulation thereof, thereby upholding the principles of transparency and fairness in the course of final adjudication. However, the Advocate Commissioner, in his report, recorded that the Respondents failed to extend the requisite cooperation during the process.

154. Consequently, upon the request of the Petitioners, and following procedural deliberations, this Tribunal directed the appointment of a Forensic Auditor. Although certain initial objections were raised, the record reflects that there was eventual consensus between the parties regarding the appointment, and the Names of the Auditors were called from both sides. The scope of the forensic audit was confined to the specific allegations delineated in the petition, allegations that were within the knowledge of both parties, and in respect of which each side was allowed to present their respective positions during the audit proceedings.

155. While the Respondents have raised objections to certain findings recorded in the Forensic Audit Report, it is equally apparent that they have sought to rely upon portions of the report that are favourable to them. The Respondents, therefore, cannot be permitted to approbate and reprobate simultaneously, or to blow hot and cold in the same breath.

156. We can place reliance on the judgment of the Hon'ble Supreme Court of India in ***Rajasthan State Industrial Development and Investment Corporation Ltd. & Anr. vs Diamond & Gem Development Corporation Ltd. & Anr.*, 2013(5) SCC 470**, wherein it was held as follows:

> *I. Approbate and Reprobate*
> *9.* ***A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself****. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience.*

157. The forensic auditors have pointed out various procedural irregularities, which have remained unaddressed, except for the respondents' reliance on the Duomatic principle and the alleged delay on the part of the minority shareholders. As for the financial withdrawals, the funds have already been returned, on some occasions, returned with interest. However, such a defence is untenable, particularly when it is the mandatory duty of the executive management to ensure strict compliance with all applicable secretarial norms and statutory requirements.

158. It is clarified that the Forensic Audit Report, though not to be treated as conclusive or determinative of the issues under adjudication under Sections 241 and 242 of the Companies Act, 2013, nonetheless possesses its own evidentiary

value. It may be considered for the limited purpose of corroborating the respective allegations and defences of the parties, and for any other ancillary purpose necessary for ensuring a fair and just adjudication of the present proceedings.

Notice of meetings

159. The Petitioners submit that the Respondents have failed to provide any proof of service of notice for crucial Board and General Meetings where significant, self-serving decisions were taken. Although the Respondents claim that notices were served, no documentary evidence has been produced to substantiate this claim. The WhatsApp chats filed belatedly are irrelevant and do not mention any of the meetings where important resolutions were passed, such as the approval for purchase and sale of Aster shares, payments concerning Aster losses, approvals regarding the Peeves project, formation of the CSR committee, or other investments. Mere informal exchanges, including social messages or sales updates, do not satisfy the statutory requirements under the Companies Act, 2013, and Secretarial Standards, which mandate the issuance of proper notice, circulation of agenda and minutes, and maintaining quorum.

160. The Petitioners further contend that there has been a clear violation of Section 173(3) of the Companies Act, 2013, and Secretarial Standard-1. Specifically, agendas and notes were not circulated at least seven days in advance, draft minutes were not shared within 15 days, and the few minutes that were eventually shared did not accurately capture developments, particularly objections raised by minority directors. This constitutes a statutory breach and amounts to acts of oppression, as recognized by judicial precedents such as ***Sunil M. Thakkar v. Venus Petrochemicals (Bombay) Pvt. Ltd., CP No. 12/MB/2019***.

The argument made by the Respondents that such violations were "mere irregularities" is misconceived; statutory mandates are not procedural irregularities but binding obligations, and non-service of proper notice renders a meeting invalid.

161. The Petitioners submit that the Respondents' claim that notices were sent via WhatsApp is unsubstantiated. Annexure 32 of the Respondents' own counter states that from 2017–2019, all notices were sent by email or post, and a message dated 09.07.2015 clarifies that the WhatsApp group was intended merely for updates, not for formal communication regarding meetings. Moreover, the issue of non-service of notices was categorically raised by the Petitioners in their correspondence dated 17.07.2018 and 09.05.2019, yet the Respondents did not produce any WhatsApp messages in response, either in their pleadings or before the Forensic Auditor. In fact, when queried by the Auditor, the Respondents responded that "notices are not traceable", and did not claim that WhatsApp notices had been sent.

162. In response, the Respondents contend that the Respondent No. 1 Company is a closely held family-run business, comprising four family groups who have long-standing personal relationships. Accordingly, they argue that Board and General Meetings were often conducted in an informal manner, and that notices and agendas were communicated both formally and informally, including via WhatsApp messages.

163. The Respondents submit that the WhatsApp group used for communication included all relevant stakeholders, including Petitioners, and that details regarding venue, date, and time of meetings were discussed on this platform in a manner convenient to all directors, including the NRIs, Petitioner No. 1 and

Petitioner No. 2, based in Dubai. They further state that the Petitioners never objected to such informal communications, failed to seek inspection of company records, and voluntarily chose not to attend several meetings, thereby exhibiting a pattern of voluntary ignorance. The Respondents also argue that the Petitioners have failed to produce any contemporaneous document demanding formal notice or agenda, and their current objections are an afterthought.

164. It is observed that while the Respondents claim that meeting-related information was communicated through a WhatsApp group, the group in question was created for general commercial communication and included a broad range of participants, such as employees and marketing team members. The group was not limited to directors, nor was it constituted as a formal platform for statutory compliance.

165. Therefore, the said WhatsApp group cannot be regarded as an appropriate or lawful substitute for the statutory requirements prescribed under the Companies Act, 2013. Communications made via WhatsApp, by their very nature, are informal and non-verifiable and do not meet the criteria for valid notice of Board or General Meetings, especially in a legal or compliance context.

166. Section 173(3) of the Companies Act, 2013 is as follow:

> ***Section 173. Meetings of Board***
> ***(3) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:***
> *Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director , if any, shall be present at the meeting:*
> *Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any*

167. While the Act permits notice to be served via electronic means, such as email, the method must be capable of establishing clear, direct, and traceable delivery to each director at their registered email address. This statutory flexibility is intended to facilitate efficient communication, not to dilute procedural safeguards. The use of informal messaging applications, such as WhatsApp, particularly when the group includes non-directors or does not maintain audit trails, cannot be equated with compliance under the Act. The Respondents have also failed to produce any message that could be considered as a valid and lawful notice issued to any director to convene a meeting.

168. The Petitioners relied on ***Parmeshwari Prasad Gupta v. Union of India*, (1973) 2 SCC 543,** where the Hon'ble Supreme Court held that proper notice to all directors is essential for the validity of any board meeting and the resolutions passed therein. The Hon'ble Court emphasised that if it is reasonably possible to summon a director and such notice is not given, the meeting is not duly convened and any business transacted therein is invalid, regardless of whether the omission was accidental or consented to. The resolution terminating the plaintiff's services, passed at a board meeting held without proper notice, was therefore held to be inoperative and void.

169. Furthermore, the Respondents themselves served formal notices in some instances via email or post. In that case, their attempt to justify WhatsApp communication in other instances exposes inconsistency and undermines their own position. If indeed there existed an understanding amongst the directors that WhatsApp communications would suffice as notice, the Respondents have not explained why, in certain instances, formal notices were issued strictly in accordance with the statutory provisions. This selective adherence to statutory procedure reinforces the Petitioners' contention that the WhatsApp notice

argument is a post-facto defence aimed at regularising non-compliant conduct. Notably, unless explicitly permitted by the company's bylaws or authorised by statute, service of notice through WhatsApp may not fulfil the legal requirements. For instance, in ***Mathai M.V. v. The Senior Enforcement Officer***, **WA NO. 973 OF 2025,** the Hon'ble High Court of Kerala decided that service of notice through WhatsApp does not meet the standards laid out under the Central Goods and Services Tax Act, 2017. This precedent further weakens the Respondents' reliance on WhatsApp as a valid mode of statutory communication.

170. The WhatsApp chats relied upon by the Respondents are inadmissible due to a want of authentication and failure to meet statutory requirements. Under Section 173(3) of the Companies Act, 2013, notices must be served through traceable means such as email or post. The chats produced are informal, lack references to the specific meetings in question, and were shared in a group that included non-directors. They neither satisfy the statutory mandate nor constitute valid notice, and their late production further undermines their credibility.

171. The majority shareholders managed the company according to their own whims, which ultimately resulted in various acts complained of in the present petition. Mere production of resolutions is not sufficient. The persons in active control of the affairs of the company are required to establish that the meetings were convened by following the due procedure prescribed under the Companies Act, that the requisite quorum was present, and that the resolutions were duly passed in compliance with the applicable secretarial standards, laws, and rules. The Respondents have failed to demonstrate such compliance and appear to have taken advantage of the delay in approaching this Tribunal. Accordingly, the conduct complained of falls squarely within the ambit of mismanagement of the affairs of the Respondent No.1 Company. Furthermore, the fact that the

attendance register has been maintained in a spiral-bound form without proper pagination raises serious doubts about its authenticity and reliability.

FINANCIAL ALLEGATIONS

Aster DM Healthcare

172. The Petitioners have alleged serious financial mismanagement and fraud by the Executive Management and Majority Shareholders, specifically alleging an unapproved investment of Rs. 9,98,86,800 made by the Respondent No.1 Company in the Initial Public Offering of Aster DM Healthcare Limited during the Financial Year 2017–2018, which allegedly resulted in a loss of Rs. 2,37,66,000. The Petitioners contend that the investment was made solely for the personal gain of Respondent No. 2, his spouse, Respondent No. 8, and his brothers, who collectively held 20,07,600 shares in Aster DM Healthcare at that time, thereby creating a clear conflict of interest. They argue that the decision was taken without informing or seeking approval from other directors, in violation of the provisions of the Companies Act, 2013, the Memorandum of Association of the Company, and principles of corporate governance. The Initial Public Offering was allegedly overvalued and financially unsound, and the Petitioners claim it was subscribed using Respondent No.1 Company funds to protect the Respondents' personal investments.

173. The Respondents have categorically denied the allegations as false, frivolous, and misleading, asserting that all Company actions complied with the Companies Act, 2013, and accounting standards, with proper financial disclosures made in the audited statements. They argued that Aster DM Healthcare Limited was not a related party, and that Clauses 8 and 19 of the Respondent No.1 Company's Memorandum of Association expressly empower the Company to invest surplus

funds and acquire shares in other companies. They argued that the Petitioners have no legal standing to raise certain issues, especially those concerning third parties not impleaded in the petition, and contend that related matters are governed by a 2007 Memorandum of Understanding, which includes an arbitration clause.

174. At this juncture, it is pertinent to reproduce the relevant portions of the Memorandum of Association of Respondent No. 1 Company annexed as Annexure A3 with the Petition, which are as follows:

> *III. (a) The Main objects to be pursued by the Company on its incorporation are:*
> *To carry on the business of motor dealers, hirers, repairers, manufacturers, cleaners and storers (whether in bonded condition or otherwise) exporters, importers retail or wholesale dealers of motor cars, motor vehicles, cycles, motors cycles, motor boats, motor launches, motor ships, motor lorries, motor vans, rollers, omni buses, motor caps, tri-cycles velocipeds balloons, carriage or other vehicles, or conveyances of all description, whether fitted with or propelled or assisted by means of oil, gas, petrol, steam, electrical, magnetio, mechanical, atomic, animal or other powers, manufacturing and dealing in motor sparo parts, suppliers in petrol, gas, electricity or any other motor fuel and to provide allied services like selling and servicing of insurance products including add ons, subject to necessary approvals from Insurance Regulatory and Development Authority and other appropriate authorities as may be required."*
> *(b)The objects incidental or ancillary to the above main objects are:*
> *1. To purchase or otherwise acquire and undertake the whole or any part of the business, property and liabilities of a person firm or company carrying on any business, which the company is authorized to carry on, or possessed of property suitable for the purpose of the company……..*
> *8. To take or otherwise acquire and hold shares in any other company having object similar to those of this company or carrying any on business capable of being conducted so as directly or indirectly to benefit to the company……..*
> *19. To invest and deal with moneys of the company not immediately required in such manner as may from time to time be determined……*
> *(C) The other objects for which the company is established are;……*
> *7. To carry on the business of iron founders, mechanical engineers, mechinists, manufacturers, dealers, Importers and exporters of all kind of implement, tool generators, engine tyres, rubber goods tubes, bodies, chassis, carburetors, magnets, silencers, radiators, sparking plugs, paraffin*

vaporizers, speedometers, self starters, gears, wheels, parts and accessories of all kind may be expected for or conducive to the carrying on of the business of the company.

175. We observe that the core grievance is not merely the financial loss claimed by the Petitioners, but the fundamental question regarding the validity of the investment itself. The principal business objects relate to motor vehicles and allied services, with incidental objects confined to businesses closely connected to or in support of the main objects. The investment in a healthcare Initial Public Offering, which is unrelated to the Company's core business activities, cannot be considered as falling within the ambit of these objects. We further note that Clauses 8 and 19 of the Memorandum of Association, relied upon by the Respondents to justify the investment, do not expressly authorize speculative investments outside the Respondent No.1 Company's business scope. Even Clause 19, which permits dealing with surplus funds, must be interpreted harmoniously with the main objects of the Respondent No.1 Company, and cannot be construed to permit acts that are contrary to or inconsistent with the stated objects in the Memorandum of Association. The investment made by Respondent No.1 Company in the Initial Public Offering of Aster DM Healthcare Limited appears to be ultra vires the main objects of the Company as delineated in its Memorandum of Association. Therefore, this Tribunal is inclined to view the investment as a clear *ultra vires* act, and not merely a business decision.

176. In ***National Textile Workers' Union v. P.R. Ramakrishnan*, AIR 1983 SC 75,** the Hon'ble Supreme Court of India held that the Memorandum of Association is a fundamental constitutional document of a company. It defines the company's objectives and scope of activities, forming the basis of its legal existence. Certain provisions of the memorandum are essential to the company's identity and can only be altered through a prescribed legal procedure. All actions of the company

must conform to the memorandum; otherwise, they may be considered ultra vires, which helps protect the interests of investors and creditors.

177. We would place further reliance on ***Dr. A. Lakshmanaswami Mudaliar v. Life Insurance Corporation,*** **AIR 1963 SC 1185,** wherein the Hon'ble Supreme Court of India held that a company must operate strictly within the scope of its Memorandum of Association and its stated objects, which must be interpreted reasonably but not expansively. However, in that case, the Hon'ble Apex Court found that the resolution to donate funds was ultra vires, rendering it void and incapable of ratification, even with shareholder approval. It is also directed that the directors responsible for such actions were held personally liable and required to reimburse the company.

178. A close examination of the timeline surrounding the impugned investment further accentuates the Petitioners' concerns and raises serious doubts about the genuineness and integrity of the corporate decision-making process. The resolution authorizing the investment was passed by the Board of Directors of Respondent No.1 Company on 08.01.2018, while the Initial Public Offering of Aster DM Healthcare Limited opened on 12.02.2018 and closed on 15.02.2018. The actual investment was made by the Respondent No.1 Company only on 22.02.2018, after the Initial Public Offering had closed. Further, the decision to divest was taken in a subsequent Board Meeting held on 28.02.2018, and the shares were sold shortly thereafter on 14.03.2018. This compressed and uncharacteristically hasty timeline, marked by investment after Initial Public Offering closure and divestment within days, casts serious doubt on the legitimacy of the transaction and suggests it was not a genuine corporate investment, but possibly one orchestrated to serve undisclosed interests. The absence of contemporaneous reasoning, coupled with the lack of transparency

and deviation from standard investment protocols, renders the transaction highly questionable and inconsistent with principles of sound governance and fiduciary responsibility.

179. It is also noted that, by way of an additional and subsequent submission, the Respondents have stated that Respondent No. 3, acting in good faith, has already compensated the other minority shareholders and specifically the Petitioners in Dubai for the alleged loss relating to the investment and divestment in Aster DM Healthcare. A sum of Rs. 47,53,200/-, equivalent to United Arab Emirates dirham 277,143/- at the conversion rate of Rs. 17.15 per United Arab Emirates dirham, was paid by cheque number 000105 dated 26.04.2018, drawn on ADC Bank, and the amount was credited to the account of Mr. Tharoor Ajit Kumar on 29.04.2018.

180. We now proceed to set forth the relevant portion of the legal notice dated 09.05.2019 issued by the Petitioners concerning the alleged violations of the Companies Act, 2013, in relation to the investment in Aster DM Healthcare Limited, as below:

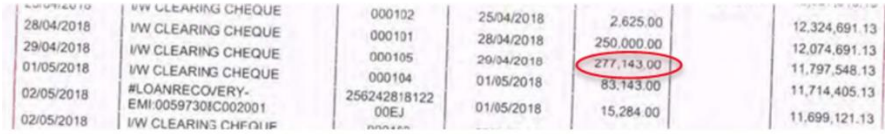
> *12. Similarly, in absolute violation of the provisions of the applicable laws, the management of the Company, Invested the money of the Company in the initial pubilc offering of Aster DM Healthcare Limited.*

181. Subsequently, we set forth the Respondents' reply through G.V. Anand Bhushan, dated 09.08.2019, addressing the allegations made in the legal notice, specifically responding to the purported contraventions of the Companies Act, 2013, concerning the Aster DM Healthcare investment, is as under:

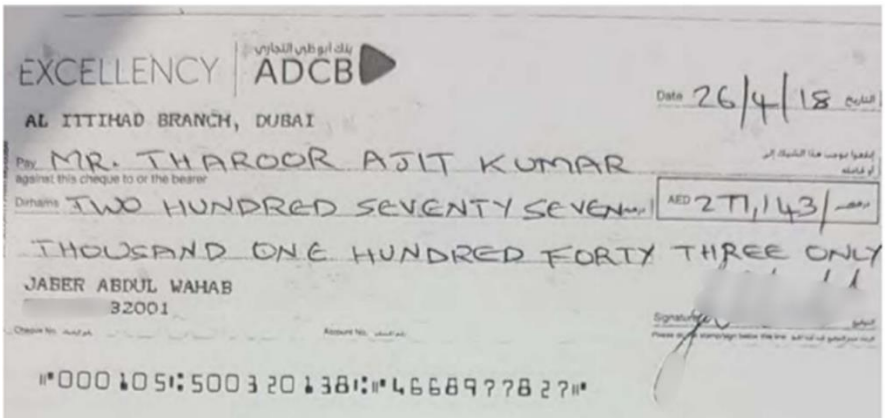
> *12.In response to paragraph 12, it is stated that the investment in Aster DM Healthcare Lim-ited was made after due compliance with Section 188 of the Companies Act, 2013, the pro-visions permit a company to enter into a contract or arrangement with a related party with the consent of the Board of Directors passed by a resolution at a meeting of the Board. It is submitted that the investment in Aster DM Healthcare Limited was done in good faith, as it was considered a profitable investment for the Company. It is pertinent to note that there is no provision under the Act which prevents the duly elected directors of the Company in making an investment which is*

considered prudent by Its Board. Further, the investment was done in due compliance with the relevant Accounting Standards, this was also disclosed in the Annual Report of the relevant year and duly accepted by all directors including your clients.

182. The Respondents in the final written submission dated 01.07.2025 have produced a proof of cheque and submitted that Respondent No. 3 has compensated the Petitioners in Dubai for the alleged losses. The copy of the cheque and transaction details is given as under:



28/04/2018	I/W CLEARING CHEQUE	000102	25/04/2018	2,625.00	12,324,691.13
29/04/2018	I/W CLEARING CHEQUE	000101	28/04/2018	250,000.00	12,074,691.13
01/05/2018	I/W CLEARING CHEQUE	000105	29/04/2018	277,143.00	11,797,548.13
02/05/2018	#LOANRECOVERY-EMI:0059730IC002001	000104 25624281812200EJ	01/05/2018	83,143.00	11,714,405.13
02/05/2018	I/W CLEARING CHEQUE		01/05/2018	15,284.00	11,699,121.13



*The signature and account number have been masked for reasons of cybersecurity and confidentiality.

183. The Respondents have alleged that Respondent No. 3 compensated the Petitioners by payment in Dubai through a cheque dated 26.04.2018, which was encashed on 29.04.2018. It is manifestly significant that neither the Reply to the Legal Notice dated 09.08.2019 nor the Reply to the Petition, filed well after these dates, makes any reference to this purported payment or compensation. The Respondents' failure to disclose or raise this material fact at the appropriate and relevant stages of the proceedings amounts to a grave omission and an attempt to mislead this Tribunal. We find such after-the-fact assertions unacceptable in the absence of contemporaneous records or pleadings and view this as a serious

cover-up exercise. Further, we have serious doubts as to whether the said payment relates to the investment in Aster DM Healthcare Limited, as the Respondents have failed to provide any credible explanation or documentary evidence linking the payment to the alleged loss or dispute. Such ambiguity and lack of clarity further cast a shadow on the genuineness of the claim.

184. It is not disputed that a payment was made through negotiable instruments; therefore, the fact of payment itself stands established. However, despite a direct and specific query posed by this Tribunal, learned counsel for the Petitioners has failed to furnish any cogent explanation regarding the precise nature, legal basis, and purpose of such remittance. The circumstances under which the payment was made, specifically, in Dubai, in relation to a company incorporated and operating in India, and between individual directors, raise serious and material concerns regarding its legitimacy, propriety, and relevance to the issues at hand. The transaction, being offshore and lacking contemporaneous documentary evidence linking it to the alleged loss or the investment in question, gives rise to multiple legal and factual ambiguities. Such opacity undermines the credibility of both groups and necessitates closer judicial scrutiny. In the absence of a clear, satisfactory, and legally tenable justification, this Tribunal is constrained to view the payment as suspect, lacking transparency, and indicative of potential procedural and fiduciary impropriety.

185. Any loss sustained by the Company in consequence of unlawful or unauthorized acts must be made good to the Company itself and not to any individual director, shareholder, or third party. The principles of corporate law and the doctrine of separate legal entity, as enshrined in the Companies Act, 2013, mandate that the Company alone is the proper claimant for recovery of damages or compensation. Personal restitution to directors or shareholders, who are distinct legal persons,

cannot and does not substitute the Company's right to redress. Therefore, any purported payment made by Respondent No. 3 or any other party in favor of an individual shareholder or director is wholly irrelevant and does not satisfy the Company's entitlement to compensation for losses caused to its assets. However, the Respondents' alleged defence clearly amounts to an admission that the investment in question was not made in accordance with company policy. Furthermore, if it had been, there would have been no requirement for any compensation. Thus, this contradictory defence ultimately amounts to a self-defeating argument. The Company's property and interests must be protected, restored, and compensated strictly through appropriate corporate mechanisms, failing which the fiduciaries responsible remain liable to the Company and its stakeholders.

186. This Tribunal is convinced that the investment made by Respondent No.1 Company in the Initial Public Offering of Aster DM Healthcare Limited was ultra vires the main objects of the Company as outlined in its Memorandum of Association. The investment falls outside the authorized scope of business activities and therefore constitutes an unauthorized act. Furthermore, the alleged payment made by Respondent No. 3 to the Petitioners individually, in Dubai, fails to satisfy the Company's right to compensation for the loss sustained. The principles of corporate law and the doctrine of separate legal entity firmly establish that any loss caused to the Company must be redressed directly to the Company itself and not to individual directors or shareholders. The Respondents have neither demonstrated nor substantiated any legitimate basis for such payment to substitute the Company's entitlement. The transaction was not undertaken in good faith, and the Respondents have failed to demonstrate that it was carried out in the best interest of the Company. The allegation and defences

as taken constitute sufficient ground for a further probe into the entire accounting system of the Respondent No. 1 Company.

Diversification of Funds to IndusGo Mobility and Technology (India) Private Limited

187. The Petitioners allege that Respondent No. 1 Company has made critical investments amounting to approximately Rs. 100 Crores into IndusGo Mobility and Technology (India) Private Limited, without observing statutory requirements or corporate governance procedures. According to them, this investment was carried out in a manner intended to harm the parent company and its minority shareholders financially. They rely on a news article dated 22.03.2023, which publicly states that Respondent No. 1 Company had invested in IndusGo Mobility and Technology (India) Private Limited, and they argue that such a significant financial transaction ought to have been disclosed transparently to the shareholders and regulatory authorities.

188. In reply, the respondents deny that any such investment was made into IndusGo Mobility and Technology (India) Private Limited. They clarify that the entity referred to in the article, "IndusGo," is not the subsidiary company but a business vertical operating within Respondent No. 1 Company. They state that the cited article was part of a marketing strategy jointly agreed upon with the petitioners themselves and did not relate to any actual capital infusion into the subsidiary company. The respondents claim that no investment, either by Respondent No. 1 Company or by any third party, was made into IndusGo Mobility and Technology (India) Private Limited and that the petitioners are deliberately misrepresenting facts to create a baseless allegation of fraud and misuse of funds.

189. The petitioners rejected the explanation provided by the respondents and maintain that public disclosures and media reports, including the one cited, specifically refer to the investment as having been made into IndusGo Mobility and Technology (India) Private Limited. They argued that characterizing such disclosures as a marketing strategy is both misleading and irresponsible, particularly when such statements are likely to influence shareholder expectations and regulatory scrutiny. The petitioners further contend that the respondents have failed to produce any corporate or statutory records to confirm the alleged structure of IndusGo as merely an internal business division and not a separate legal entity. They assert that this misrepresentation of the entity structure and suppression of relevant financial disclosures point to a larger pattern of corporate governance violations and improper diversion of funds, which require closer scrutiny.

190. Although the Petitioners raised objections during the course of arguments, they have not taken any steps to amend the main Company Petition to incorporate these allegations formally. Even assuming, for the sake of argument, that the said allegations are to be considered as part of the existing pleadings of diversion of funds, we are of the considered view that no judicial cognizance can be taken solely on the basis of media reports or newspaper articles, in the absence of any corroborative documentary evidence on record. Courts of law require credible and admissible material to support allegations of financial misconduct or diversion of funds. Accordingly, in the absence of any verifiable statutory filings, board resolutions, or audited financial statements substantiating the claim of investment into IndusGo Mobility and Technology (India) Private Limited, the allegations made by the Petitioners do not merit further judicial scrutiny at this stage.

The Siphoning of funds under the Corporate Social Responsibility contribution

191. The Petitioners allege serious procedural lapses and governance failures in the constitution and functioning of the CSR Committee of the company. They claim that Petitioner Nos. 1 and 2 were never informed about the formation of the CSR Committee, nor was the matter brought before any board meeting for discussion. The Committee, which included Respondent Nos. 2, 5, and 6, was allegedly formed without transparency or compliance with statutory requirements. It was kept undisclosed to the full board and shareholders, save for the family of Respondent No. 2. The Interim Forensic Audit supports these allegations by noting the absence of board meeting notices, agendas, explanatory notes, or minutes for the CSR Committee's formation. Furthermore, the audit indicates that the minority directors were excluded from the relevant meetings, which undermines the validity of the CSR Committee.

192. Additionally, the Petitioners raise concerns about the actual disbursement of CSR funds. They allege that a total of Rs. 75,60,200/- was disbursed during FY 2017-18 to institutions personally affiliated with Respondent No. 2 and his family. Some of these institutions, such as Amal College and Nilambur Yatheem Khana, allegedly received payments even before formal board approvals were secured. The process, according to the Petitioners, involved retrospective ratification rather than genuine due diligence. The Petitioners also highlight the lack of formal requisitions from recipient institutions, the absence of serially numbered receipts, and non-compliance with record-keeping norms, all of which raise serious concerns about the legitimacy and transparency of the CSR transactions.

193. The Petitioners further allege that the CSR policy approval process lacked procedural integrity, as meetings were conducted without proper notice to all directors, including the minority. There is no record of draft minutes or dissenting opinions, and minority directors were marked absent without having requested leave. These cumulative facts, the Petitioners argue, demonstrate an orchestrated effort by the Respondent group to misuse CSR funds, bypass governance standards, and marginalize minority shareholders.

194. The Respondents denied all allegations of procedural irregularities or misuse of CSR funds. They assert that the CSR Committee was duly constituted as early as 01.04.2014 during the 186th board meeting, and all CSR expenditures have been annually disclosed in the Board's Reports from Financial Year 2014-15 onwards. Respondents emphasize that these disclosures form part of the company's public records. They maintain that all CSR contributions were made in compliance with the Companies Act, and were directed to institutions eligible under Sections 12A and 80G of the Income Tax Act,1961.

195. In response to the specific allegations regarding Financial Year 2017-18, the Respondents provided a detailed list of beneficiaries, including Amal College and Nilambur Yatheem Khana, along with other entities such as the Chief Minister's Distress Relief Fund, Goonj, and the Indian Institute of Science. They argue that CSR funds were not restricted to entities favored by Respondent No. 2 but were distributed across various charitable organizations. From Financial Year 2021-22 onwards, CSR spending was done on an equitable basis, with each shareholder group, including the Petitioners, exercising proportional control over the allocation of funds. The Respondents presented data showing that Petitioners themselves recommended contributions to several institutions, including the Indian Institute of Science and MMA India.

196. Furthermore, the Respondents highlight that board resolutions from meetings held on 09.02.2024, the 262nd meeting, and 26.12.2024, the 268th meeting, confirm that 60% of CSR spending was directed through the Peevees Charitable Trust, while the remaining 40% was allocated based on proposals from different shareholder families, including the Petitioners. These resolutions were passed unanimously, with no dissent from any director, including the Petitioners. They argue that this shows not only participation but active assent from the Petitioners in the decision-making process.

197. The Respondents invoke the Duomatic Principle, arguing that the Petitioners, having approved and participated in CSR allocations in recent years, including to the very same entities they now object to, are estopped from raising these claims. WhatsApp messages and other communications show the Petitioners providing bank details and recommendations for CSR fund disbursal. Therefore, the Respondents claim that there has been consensual, proportionate, and transparent handling of CSR expenditures, and the Petitioners' current allegations are inconsistent with their conduct.

198. The purpose of CSR is rooted in the broader philosophy that a corporate entity bears an obligation not only to its shareholders but also to society at large, including its employees, customers, the environment, and the underprivileged. CSR, as envisaged under the Companies Act, 2013, is a statutory mechanism designed to ensure that companies actively contribute to the social and environmental welfare of the nation. It obligates eligible companies to formulate a clear CSR policy, identify appropriate beneficiaries or sectors, and allocate funds in a manner that ensures meaningful and effective utilization. Collaboration with qualified non-governmental organizations and subject matter experts is encouraged to ensure expertise-driven implementation. CSR is, in essence, a

noble legislative initiative to institutionalize corporate accountability towards society and the nation.

199. The Indian judicial system has consistently underscored that CSR is not merely a statutory obligation or a formality, but an essential aspect of ethical and responsible business conduct. The courts have recognized that CSR plays a vital role in promoting transparency, accountability, and sustainability in corporate governance. A significant judicial affirmation of this principle can be found in the case of ***Tata Power Co. Ltd. v. Maharashtra Electricity Regulatory Commission (2008)*.** In this case, it was acknowledged that CSR is an indispensable element of corporate governance, emphasizing that corporations must balance their profit-making objectives with their broader responsibilities toward society and the environment. The judgment highlighted that while businesses operate for economic gain, they also carry a social duty to contribute meaningfully to the welfare of the communities in which they operate.

200. In the present case, allegations have been raised concerning the disproportionate allocation of CSR funds to institutions allegedly affiliated with Respondent No. 2. In response, the Respondents have stated that, from Financial Year 2021–22 onwards, the method of CSR allocation was modified to reflect a proportionate distribution based on shareholding among the different shareholder groups, including the Petitioners. However, this Tribunal finds that such an approach, allocating based on shareholding proportion, fundamentally misconstrues the spirit and object of CSR under the law. CSR funds are not intended to serve the internal interests of shareholder groups or to be divided as per ownership stakes. Rather, they are meant to serve genuine public causes in a non-discriminatory and impact-driven manner, without regard to caste, creed, community, or familial affiliations. Having regard to the specific nature and statutory character of CSR

obligations, and considering that the expenditures in question pertain to past financial years and are already completed, this Tribunal is of the opinion that it would not be judicious to interfere retrospectively. However, these observations would not serve as a barrier for the investigation, if ordered, to ensure and use of these funds.

Loans and payouts to Directors and Related Parties

201. The Petitioners alleged that Respondent No. 1 Company, under the control of Respondent No. 2 and his relatives, had disbursed interest-free sums amounting to Rs. 15 crores in Financial Year 2013-14 and Rs. 37.90 crores in Financial Year 2014-15, under the guise of "advances for land purchase", which were unsecured loans given in violation of Section 185 of the Companies Act, 2013. They claim these transactions lacked proper board approvals, as the resolutions were allegedly passed in board meetings that did not meet quorum requirements and were held without informing the Petitioner-Directors. It is further alleged that the transactions were not genuine land purchases as no supporting documentation was provided, valuation reports were absent, and some sale agreements were unilaterally cancelled and later re-approved without board sanction. The Forensic Auditor, according to the Petitioners, concluded that the advances were structured intentionally to avoid the statutory requirement of charging interest on loans to directors and to bypass loan covenants. The transactions, they argue, caused significant financial prejudice to the company and its minority shareholders, particularly since there was no actual increase in land assets despite the large sums paid, and instead, the funds were invested in leasehold properties from which Respondent-related parties continued to earn rent.

202. In response, the Respondents contend that the amounts in question were bona fide advances towards the purchase of immovable properties already leased to the company and not loans. They assert that both amounts, Rs. 15 crores and Rs. 37.90 crores, were fully refunded within the same financial years in which they were paid, with Rs. 37.90 crores returned along with Rs. 1.20 crores as interest, even though such interest was not legally required in property advance transactions. They further argue that the allegations are barred by limitation under Section 433 of the Companies Act, 2013, since the Petition was filed in late 2019 and the transactions occurred in 2013 and 2014. The Respondents also emphasize that these were past and concluded transactions and cannot form the basis of a claim of oppression and mismanagement. They claim that full disclosures of these transactions were made in the company's annual reports, and the Petitioners deliberately concealed those documents to mislead this Tribunal. Invoking the Duomatic principle, the Respondents argued that the Petitioners were aware of these transactions through regular communications and board documents and cannot now challenge them. They assert that the transactions were commercial decisions made to secure properties already pledged as collateral for company loans, and no loss was caused to the company since the amounts were returned. The Respondents also provide specific timelines and documentation regarding the acquisition, lease, and construction of properties such as the Thalassery dealership to show that ownership existed prior to the advances and leases, thereby disproving any misuse.

203. Section 185 of the Companies Act, 2013 is as follows:

> *Section 185. Loan to directors, etc*
> *185. Loans to directors, etc.-- (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,--*

(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
(b) any firm in which any such director or relative is a partner.
(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that--
(a) a special resolution is passed by the company in general meeting:
Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and
(b) the loans are utilised by the borrowing company for its principal business activities.
Explanation.-- For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means--
(a) any private company of which any such director is a director or member;
(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
(3) Nothing contained in sub-sections (1) and (2) shall apply to--
(a) the giving of any loan to a managing or whole-time director--
(i) as a part of the conditions of service extended by the company to all its employees; or
(ii) pursuant to any scheme approved by the members by a special resolution; or
(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:
Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.
(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,--

> *(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;*
> *(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and*
> *(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both*

204. The Petitioners have raised serious and credible allegations regarding the advances made in Financial Years 2013–14 and 2014–15 for the purported purchase of the same property. The record reveals that no satisfactory explanation has been offered by the Respondents as to (i) why agreements for the sale of such property were initially executed; (ii) why those agreements were subsequently cancelled; and (iii) what necessitated the company to re-enter into agreements for the same property in the next financial year. The Respondents' simple defence, that the money was returned to the company with interest, is insufficient to address the allegations of financial mismanagement and oppression. The amounts were allegedly taken out of the company improperly, and this act undermines the very progress and operations of the company. Had these funds been properly utilised by the company, they would have been multiplied manyfold. Therefore, mere payment of interest does not constitute adequate compensation.

205. It is further noted that the Respondent No.3, Respondent No.6, and Ali Mubarak took advance payments from the company and used those funds for their own benefit. They ultimately arranged for the cancellation of the sale agreements, which raises further suspicion. The forensic auditor has detailed this in tabular form as follows:

10. The details of the Land advance given to directors with survey numbers are as under:

Survey No.	Party	Sale consideration as per agreement for sale Rs. In Lakhs	Date of agreement for sale	Date of deed of cancellation	Date of advance	Advance given Rs. In Lakhs	Advance percentage	Stamp paper date	Whether leased to company	Lease Advance (Rs.in Lakhs)	Lease Rent (Monthly) Rs. In Lakhs
304	Afdhel Abdul Wahab	1000	29-10-13	25-03-14	29-10-13	500	**50**	23-03-12	Yes	125	5.00
1767 & 1772	Ali Mubarak	2000	29-01-14	25-03-14	29-01-14	500	**25**	13-02-12	Yes	-	10.35
92/271/8	Ali Mubarak	500	29-10-13	25-03-14	29-10-13	200	**40**	23-03-12	Yes	10	2.30
1052/3 & 1052/2	Jaber Abdul Wahab	1000	29-10-13	25-03-14	29-10-13	300	**30**	23-03-12	Yes	-	7.48
477/4 & 477/5	Jaber Abdul Wahab										

14. The fair value of land as per Kerala Stamp Act, 1959 is considered to arrive the fair value. The comparative fair value and consideration is given below: (Book B Pages 243 – 260)

Survey No.	Party	Fair value	Sale consideration as per agreement for sale	Excess of sale consideration over fair value in Percentage
304	Afdhel Abdul Wahab	93,82,500	10,00,00,000	**1066%**
1767 & 1772	Ali Mubarak	3,44,00,000	20,00,00,000	**581%**
92/271/8	Ali Mubarak	34,40,800	5,00,00,000	**1453%**
1052/3 & 1052/2	Jaber Abdul Wahab	57,60,563	10,00,00,000	**1330%**
477/4 & 477/5	Jaber Abdul Wahab	17,57,250		

18. Advance payment and refunded details:

Survey No.	Party	Sale consideration as per agreement for sale Rs. In Crores	Date of agreement for sale	Date of deed of cancellation	Date of advance Payment	Date of advance refunded	Days from date of advance to refund	Advance given Rs in crore
304	Afdhel Abdul Wahab	10	29-10-13	25-03-14	29-10-13	25-03-14	147	5
1767 & 1772	Ali Mubarak	20	29-01-14	25-03-14	29-01-14	25-03-14	55	5
92/271/8	Ali Mubarak	5	29-10-13	25-03-14	29-10-13	25-03-14	147	2
1052/3 & 1052/2	Jaber Abdul Wahab	10	29-10-13	25-03-14	29-10-13	25-03-14	147	3
477/4 & 477/5	Jaber Abdul Wahab							

206. The unilateral cancellation of the sale agreements by the CEO on 25.03.2014 raises serious concerns regarding corporate propriety and governance. This action not only undermines the sanctity of corporate decision-making but also casts doubt on the bona fides of the entire transaction, particularly as the company, the intended purchaser, had advanced substantial funds, while its majority shareholders, acting as sellers, ultimately benefited. The absence of any explanation for the cancellation suggests a lack of genuine intent to transfer the property to the company, further evidenced by repeated, questionable transactions involving the same property, including huge additional payments made by the company even for constructions in the same property.

207. In the case of ***Space Enterprises v. M/s. Srivivasa Enterprises Ltd*.**, **1998 III AD (Delhi) 185,** the Hon'ble Delhi High Court held that directors of a company can be held personally liable in cases involving misappropriation of company funds or other acts of misfeasance. However, the Court clarified that directors are not personally liable for the company's ordinary contractual obligations. This judgment reinforces the principle that while directors have fiduciary duties and can be held accountable for misconduct.

208. The funds were withdrawn from the corpus of Respondent No. 1 Company and subsequently redeposited into the Company. It is the case of the Respondent that the said funds were returned along with interest. The Petitioners have now sought relief under prayer clauses (o) and (p). Upon consideration of the gravity of the allegations, the defence raised, and the material facts on record, it appears that certain majority shareholders have, in one way or another, withdrawn funds from the company in each financial year without disclosing any valid reason or purpose that would benefit the company. Under the Companies Act and the Income Tax Act, such unauthorized transfers of funds are not permissible. The payment of interest by the majority shareholders does not amount to a lawful or adequate compensation to Respondent No. 1 Company. Had the funds not been withdrawn, they could have been utilized for the development and growth of the company. To ensure the proper utilization of funds and in light of the allegations of mismanagement and possible misuse of company assets, a detailed and proper investigation is necessary. Only upon such investigation by the appropriate authority, we will be able to ascertain the scope, extent, and nature of the relief to which Respondent No. 1 Company may be entitled.

Related Party Transactions

209. The Petitioners stated that the Respondent No.1 Company engaged in numerous undisclosed and unauthorized related party transactions with Respondent No. 2, his family, and associated entities like Malabar Gold Private Limited and Malabar Diamond Gallery Private Limited. These transactions were executed without Board approval or disclosure to non-interested directors, violating Section 184 of the Companies Act and related rules. The deals were not conducted at arm's length, allowing siphoning of company funds for personal gain. The Respondents argued that since the Respondent No.1 Company is a private entity, related

parties can participate in decision-making after disclosing their interests and can count towards quorum, as per legal provisions and government notifications. All related party transactions were repetitive, disclosed publicly in company records, and consented to by Petitioners through meeting attendance. The transactions fell under "ordinary course of business" and were conducted on an arm's length basis with annual board approvals. The Petitioners were present for disclosures and approvals, so the allegations of nondisclosure and unauthorized transactions are baseless.

210. The Petitioners submitted that the Majority shareholders benefited disproportionately, receiving over 85% of the company's profits through inflated management fees, interest on loans, rental deposits, and excessive rent payments without proper justification or approvals. Advances amounting to Rs. 37.90 crores were given to relatives of Respondent No. 2 as land purchase advances but were misused, lacked government approvals, and functioned as interest-free loans. The Respondents contend that management fees were agreed upon in a 2007 Memorandum of Understanding, specifying percentages of net profit before tax as fees payable to them. Being a private company, the provisions of the Companies Act relating to managerial remuneration do not apply. The fees were consistently disclosed in financial statements, and Petitioners raised no objections until filing the Company Petition. Regarding advances, the Respondents state that incremental rents were modest and below market value, validated by an independent rental valuation. Loans were unsecured and subordinated to external bank credit facilities. The Petitioners misclassified rental deposits as loans and are barred by limitation from raising these issues now. There has been no undue gain or loss, and prior knowledge of all transactions negates claims of oppression.

211. The Petitioners further submitted that the company's borrowings sharply increased, long-term borrowings by nearly 60% and short-term borrowings by over 65% in 2018-19, reflecting growing external debt reliance while funds were diverted to related parties. Board meetings approving these transactions often lacked a quorum, invalidating approvals. The management deliberately withheld critical documents such as scheme details, performance reports, and stock registers linked to gold coin purchases and incentive schemes. Respondents argued that the increase in borrowings was proportional to asset growth, revenue, and profits, reflecting sound business decisions amid an industry downturn. The Petitioners selectively presented data to mislead, ignoring that company performance remained healthy and growth-oriented. Borrowings were used for funding growth, not for mismanagement or oppression. Board meetings had a proper quorum since interested directors disclosed their interests and were allowed to participate. The Petitioners had full access to all records, meetings, and updates, and no prior objections were raised, applying the Duomatic principle, which negates the allegations.

212. It is stated by the Petitioners that the financial statements failed to comply with Accounting Standards, omitting or partially disclosing related party transactions with Malabar Gold Private Limited and Malabar Diamond Gallery Private Limited. Transactions with Malabar Gold were undisclosed in 2013-14 and partially disclosed in 2017-18; purchases from Malabar Diamond Gallery in 2011-12 and 2012-13 were not reported. The Respondents clarify that Malabar Gold Private Limited is not a related party of the Respondent shareholders but is linked to the Haji family. Transactions with Malabar Gold, including gold coin purchases for employee and customer rewards totaling Rs. 76.15 lakhs, were approved in board meetings attended by Petitioners and fall within ordinary business activities conducted at arm's length. The Petitioners failed to object at any time,

and all transactions were disclosed within approved limits. Thus, there was no omission or misrepresentation in financial disclosures, and these do not constitute oppression or mismanagement.

213. It is stated that the capital expenditure on leasehold properties owned by majority shareholders was claimed to be Rs. 24.35 crores in 2018-19, but the expenditure was allegedly disguised and unjustified. The Respondents refuted this by showing that total expenditure on related parties' properties between 2013-14 and 2018-19 was only Rs. 4.09 crores out of total leasehold property expenditure. Specifically, in 2018-19, only 4.48% of capital expenditure on leasehold properties was on related parties' lands, contradicting Petitioners' claims. The capital expenditure was duly disclosed in public filings with the Registrar of Companies, and Petitioners raised no objections until filing the petition, thus having "unclean hands." No personal gain accrued to Respondents since leasehold properties are not owned by them, and the expenditure caused no loss to the company.

214. The allegations were raised by the Petitioners about the board meetings approving the related party transactions often lacked quorum, making approvals invalid under Section 184 of the Companies Act. The Respondents clarify that for private companies, subsequent government notifications allow interested directors to participate in voting and be counted for quorum after disclosure. From the financial year 2014-15 onwards, interested directors regularly disclosed interests, and Petitioners were present during approvals, making the meetings valid. The Petitioners' argument ignores the specific exemptions applicable to private companies and is therefore misplaced.

215. The petitioners stated that the Rent paid to related parties and interest on loans were inflated and unjustified, resulting in undue benefits to the majority shareholders. Whereas Respondents argued the rent increases were modest and determined on an arm's length basis, supported by an independent valuation by JLL Property Consultants showing rent paid was below market value. Renting from directors or shareholders is legally permitted and ensures business continuity. Loans provided by Respondent No. 2 were unsecured and subordinated, while Petitioners provided no financial support. It is the case of the Respondents that allegations about misclassification of rental deposits as loans are incorrect, and Petitioners had full knowledge of all transactions with no timely objection. And these claims are barred by limitation and do not show undue gain or loss.

216. The Petitioners accuse the Respondents of deliberately withholding critical documents related to gold coin purchases, incentive schemes, and other business activities. Respondents deny withholding any critical documents, stating all records, including scheme details, performance reports, and stock registers, were available and accessible to Petitioners. Any delay or issues were due to operational challenges and not intentional concealment. The Petitioners had full access to company records, reinforcing the absence of any deliberate nondisclosure.

217. The Petitioners pointed out that the forensic audit revealed undisclosed fraud involving company funds. Advances purportedly for land purchases were diverted for political favors, including a substantial payment of Rs. 33.50 crores to Mr. E.T. Firoz, during course of arguments it is alleged by the Learned Counsel for Petitioners that the said E.T. Firoz is the son of a leading member of a political party, where the Respondent No. 2 is also associated, of which only Rs. 13 crores

were repaid. Additional payments were made to entities connected to Respondent No. 3's family, with no evidence that these transactions were approved or disclosed to the Board or Petitioners. This misuse of company funds appears aimed at supporting political interests and personal gain.

218. The Respondents stated that the allegations made by the Petitioners regarding the utilization or transfer of these funds by the Respondents to third parties, including Mr. E.T. Firoz, Peeves Projects, Bridgeway Motors, or other related entities, are irrelevant and without merit insofar as the maintainability of the present Company Petition is concerned.

219. The relevant excerpt from the Forensic Audit report is as follows:

Summary of Outflow and Inflow of Advance for the Land Purchases

OUTFLOW	
PAID TO ET FIROZ	33,50,00,000
PEEKAY FLOOR MILLS	4,60,00,000
AHEMED FLOOR MILLS	6,00,00,000
PEEVEES PROJECTS	4,00,00,000
BRIDGEWAY MOTORS	3,00,000
PEEVESS HOLDINGS	2,0 ,000
RETURN TO INDUS BY ALI MUBARAK	3,50,0 ,000
AJMAL	1,00,00,000
RETAINED BY P V ABDUL WAHAB	25,00,000
TOTAL	52,90,00,000

INFLOW	
ET FIROZ	13,00,00,000
PEEKAY ROLLING MILLS P LTD	2,00,00,000
AHAMMED FLOOR MILLS	6,00,00,000
PEEKAY ROLLER FLOOR MILLS	7,00,00,000
PV ABDUL WAHAB	18,40,00,000
M VARUN	3,00,00,000
PV ALI MUBARAK	3,50,00,000
TOTAL	52,90,00,000

i. The inflow and outflow charts presented in the forensic audit report reveal that an amount of Rs. 33,50,00,000/- was paid to Mr. E.T. Firoz, of which only Rs. 13,00,00,000/- was returned. Similarly, Peekay Floor Mills received Rs. 4,60,00,000/-, but returned only Rs. 2,00,00,000/-. Peeves Projects, Bridgeway Motors, or Peeves Holdings returned no amount. Additionally, a sum of Rs. 1,00,00,000/- was paid to an individual named

Ajmal, without any corresponding inflow recorded. The chart also reflects a payment of Rs. 18,40,00,000/- by Mr. P.V. Abdul Wahab, but the circumstances and reasons behind this transaction remain unclear. Taken together, the chart is sufficient to demonstrate the manner and modes of financial transactions carried out using the funds of Respondent No.1 Company.

ii. The identity of Mr. E.T. Firoz is irrelevant; the fact remains that, according to the account books, he did not return the full amount. No action has been taken by the company or the executive board in this regard.

iii. It speaks volumes about the management of the company's affairs. The corresponding entry against the name of Respondent No. 2 in the table above makes the issue more serious and indicates that everything occurred with his concurrence and involvement.

iv. Such incidents serve as a reminder to minority shareholders of their vulnerable position in the company. It is an unsung story of oppression and financial mismanagement. At the cost of repetition, it can be recorded that one of the minority shareholders, Mr. P.A. Hamza, could have been given such liberty once his cheque was dishonoured.

v. One might argue that there was no loss to the Company, but such financial accommodations, if detected by tax authorities, could tarnish the reputation of the Company and negatively impact other shareholders as well.

220. The Forensic Audit Report reveals that, under the alleged Memorandum of Understanding, Respondent No. 2 offered shares to Mr. P.A. Hamza; however, the

cheque issued as consideration for the buy-back clause was dishonoured. On record, there is ample evidence that the company advanced substantial amounts to the families of the majority shareholders, often for purposes such as land acquisition. Similar treatment ought to have been extended to Mr. P.A. Hamza as well. Such disparities in treatment may constitute grounds for oppression.

221. There is no evidence that Malabar Gold Private Limited is a related party, nor is there any evidence that the transactions were not conducted at arm's length. Therefore, the allegation was found to have no merit.

222. Most of the allegations in this section relate to issues such as disproportionate profit sharing, borrowings from the Company, leasehold land dealings, quorum irregularities in meetings, rent payments to related parties, and payments made to political and other connected entities. Notably, many of these allegations pertain to a period of three years prior to the filing of the Company Petition.

223. It is also noted that Clause 11 of the 2007 Memorandum of Understanding stipulates the management fee payable to the Respondent shareholders, including Respondent No. 2. This fee is linked to the Company's profitability and is payable in the event of profits, in recognition of their contributions to the business and growth of the Company. The relevant clause reads as follows:

> *11. Management Fee: The Shareholders have agreed to a management fee (an expense charged to the Company) based on the net profit before tax (and before charging such fees), payable to AW as follows:*
> *Net profit before tax up to ₹10 crores – 15% of the net profit*
> *Net profit before tax above ₹10 crores – 20% of the net profit*
> *A reasonable amount may be drawn monthly towards the management fee.*
> *A separate account shall be maintained in the Company's books to reflect the same.*

224. The Respondents contend that the amounts in question have already been repaid, along with interest. Having considered such a defence**,** however, if these transactions were genuine and failed to materialize due to unavoidable circumstances, it raises a question as to why any interest was paid. If one party withdrew unlawfully from the transaction, the Company should have pursued legal recourse. Conversely, if the Company itself withdrew, it is unclear why the other party did not take legal action. The circumstances under which the funds were returned with interest remain unexplained. Given that these transactions have a bearing on the financial health of the Company over several years, the true intent and destination of the funds should be ascertained only through a thorough investigation. Accordingly, no effective order can be passed at this stage until such investigation is completed. However, suppose those transactions were indeed genuine and could not materialize due to unavoidable circumstances. In that case, it raises the question as to why any interest was paid to the other party at all. If the transactions were legitimate and one party withdrew illegally from the sale process, the company ought to have taken legal action. Conversely, if the company itself had withdrawn, it is unclear why the other party did not initiate any action. The circumstances under which the money was returned with interest remain unexplained.

225. Since these transactions impact the financial health of the Company over several years, the real motive behind them and the ultimate destination of the funds and their end use should be determined only after a thorough investigation if ordered under Section 213 of the Companies Act, 2013. Therefore, at this stage, no effective relief can be granted.

NON-FINANCIAL ALLEGATIONS

Bridgeway and Peeves Group

226. The Petitioners submitted that the Executive Management had unauthorizedly licensed the company's registered trademark, "Indus Motor," to entities within the Bridgeway and Peeves Group without consent or royalty payments, causing financial loss and harming minority shareholders. They misrepresented the company as part of the Bridgeway/Peeves Group in promotional materials and on websites, falsely associating it to boost the majority shareholders' image and misleading the public, damaging the company's independent reputation.

227. The Petitioners claim that the Respondents misrepresented the company as a part of the Bridgeway/Peeves Group in promotional materials to boost the majority shareholders' image. Respondents refute this, explaining that co-branding and marketing activities with entities like Malabar Gold were conducted with transparency and approval. There was no misrepresentation of the company's identity to the public, and the company maintained its independent reputation. The Petitioners' allegations are unsubstantiated and contradict the documented approvals and disclosures.

228. Regarding the Peeves Project Private Limited, the Respondents explain that the company entered into a license agreement in 2015 for office space, paid deposits, and advance rent, but faced operational delays due to regulatory issues. The license was later cancelled, and advances recovered with interest, causing no loss. The Respondents assert that commercial decisions do not amount to oppression or mismanagement, supported by multiple legal precedents. The Respondents deny unauthorized use of trademarks or misrepresentation, emphasizing transparency and prudent handling of agreements.

229. Having considered rival submissions, although Respondent No. 2 was inducted as a director and shareholder, at no point did the promoters consent to being part of the Peeves Group. The photograph produced by the Respondent, showing a public event bearing the insignia of both the Indus and Peeves Groups, appears to relate to a joint venture or collaborative event. However, this cannot be construed as evidence of an amalgamation between two distinct companies with separate shareholders. While some majority shareholders may hold stakes in both groups, this alone does not establish a merger or unification of the entities. It is also a matter of record that the Peeves Group has, for a long time, been claiming that Indus forms a part of its group. If any directors or shareholders had objections to such a representation, they ought to have raised these concerns before the Board of Directors. A claim made by a third party does not, by itself, fall within the scope of oppression and mismanagement under Sections 241 and 242 of the Companies Act. With respect to the use of insignia or trademarks by other companies, such matters may be appropriately addressed by the Board. The company may choose to restrain others from using its trademark or may seek royalties for its usage. However, there is no evidence on record that any minority shareholder raised this issue at a Board meeting. Therefore, the matter *prima facie* does not fall within the ambit of oppression and mismanagement. It is further clarified that nothing stated in this paragraph shall be construed as granting a third party any of the right to continue such practices. But in the absence of any formal contract or scheme of amalgamation, certain directions are warranted.

Disqualification of directors

230. The petitioners allege that Mr. Ajmal Abdul Wahab, Respondent No. 5, and Mr. Afdhel Abdul Wahab, Respondent No. 6, continue to function as directors of

Respondent No. 1 Company, despite being disqualified under Sections 164(2)(a) and 167(1)(a) of the Companies Act, 2013. According to the petitioners, the basis for the disqualification is the prolonged non-compliance of IndusGo Mobility and Technology (India) Private Limited, a wholly owned subsidiary of Respondent No. 1, in which both individuals serve as the sole directors. The Petitioners stated that the subsidiary failed to file its annual returns and financial statements for a continuous period exceeding three financial years. Such non-compliance, the Petitioners asserted, automatically disqualifies the said individuals from continuing as directors in any company. Notwithstanding the disqualification, both individuals are alleged to have continued participating in the board meetings and corporate decision-making of Respondent No. 1, thereby exposing the company to significant legal and regulatory risks.

231. In response, the respondents deny that Respondent No. 5 and Respondent No. 6 continue as directors of IndusGo Mobility and Technology Private Limited. They asserted that the petitioners have filed outdated and misleading company data, specifically the Master Data as of 29.10.2024, to create an erroneous impression before this Tribunal. According to the respondents, the updated Master Data as of 12.11.2024 reflects that both Respondent No. 5 and Respondent No. 6 had ceased to be directors of the said company. The respondents claim that the petitioners have selectively omitted this updated information with the deliberate intention to mislead this Tribunal and prejudice the legal position of Respondent No. 5 and Respondent No. 6.

232. The petitioners, however, maintain that the disqualification remains valid and contend that the resignations claimed by the respondents are not supported by statutory filings such as DIR-11 and DIR-12, which are mandatory under the Companies Act,2013, to evidence a valid cessation of directorship. The

petitioners also point out that the DIR-8 forms filed by the respondents for the financial years 2022–23 and 2023–24 continue to reflect them as directors of IndusGo Mobility and Technology Private Limited. They argued that the attempt to claim resignation retrospectively is an afterthought and amounts to the fabrication of records. Furthermore, they asserted that the so-called dormancy of the subsidiary does not exempt it from statutory compliance and that no MSC-2 certificate has been provided by the respondents to establish the company's dormant status.

233. We proceed to consider the provisions of Section 164(2) of the Companies Act, 2013, which are reproduced below for clarity:

> *Section 164. Disqualifications for appointment of director*
> ***(2) No person who is or has been a director of a company which—***
> ***(a) has not filed financial statements or annual returns for any continuous period of three financial years*** *; or*
> *(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debenture on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,* ***shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so****.*
> *Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment*

234. Similarly, we also refer to the relevant provisions of Section 167(1) of the Companies Act, 2013, as set out below:

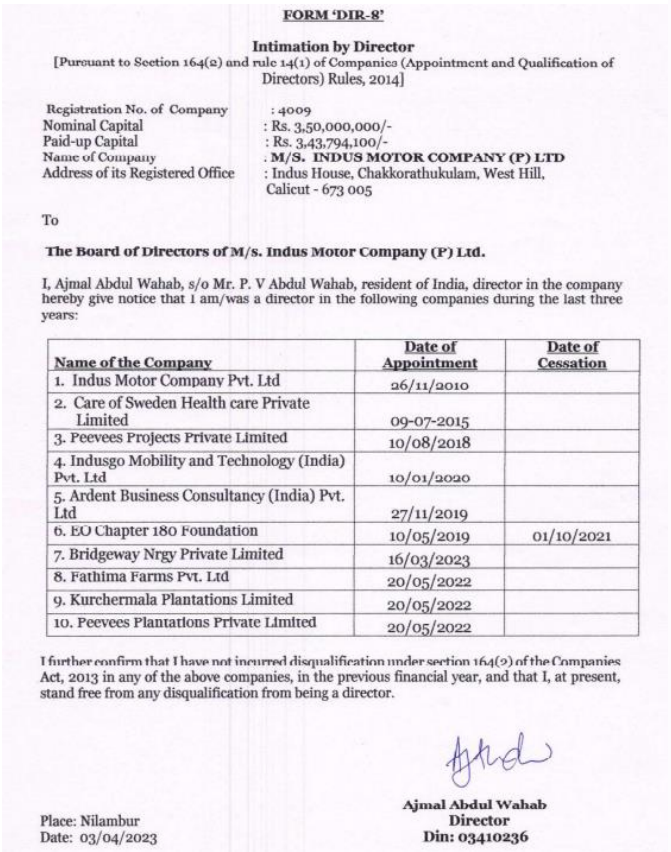
> *Section 167. Vacation of office of director*
> ***(1) The office of a director shall become vacant in case—***
> ***(a) he incurs any of the disqualifications specified in section 164;***
> ***Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.***

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
(e) he becomes disqualified by an order of a court or the Tribunal;
(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:
Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—
(i) for thirty days from the date of conviction or order of disqualification;
(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.
(g) he is removed in pursuance of the provisions of this Act;
(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary company, associate company, ceases to hold such office or other employment in that company.

235. It is clear from the provisions of Sections 164(2)(a) and 167(1)(a) of the Companies Act, 2013, that any person who has been a director of a company which fails to file its financial statements or annual returns continuously for three financial years shall be disqualified from being appointed or continuing as a director in any other company for a period of five years from the date of such default. This disqualification is automatic and mandates that the office of the director shall become vacant in all other companies where the individual holds directorship. The law is explicit in ensuring strict compliance with statutory filings to uphold corporate governance and accountability.

236. In the present case, the respondents contend that Respondent No. 5 and Respondent No. 6 resigned from their directorship of IndusGo Mobility and Technology Private Limited during the year 2022. However, the petitioners have challenged the genuineness of such resignations by producing documentary evidence for examination. The petitioners have submitted crucial documents aimed at scrutinizing whether the resignations have been validly and effectively communicated and recorded as per the requirements of the Companies Act, 2013.

237. The documents placed on record by the petitioners include statutory filings, such as Form DIR-8, for the financial years 2022-23 and 2023-24. At this juncture, it is necessary to reproduce the documents, which are as follows:



FORM 'DIR-8'

Intimation by Director
[Pursuant to Section 164(2) and rule 14(1) of Companies (Appointment and Qualification of Directors) Rules, 2014]

Registration No. of Company : 4009
Nominal Capital : Rs. 3,50,000,000/-
Paid-up Capital : Rs. 3,43,794,100/-
Name of Company : **M/S. INDUS MOTOR COMPANY (P) LTD**
Address of its Registered Office : Indus House, Chakkorathukulam, West Hill, Calicut - 673 005

To

The Board of Directors of M/s. Indus Motor Company (P) Ltd.

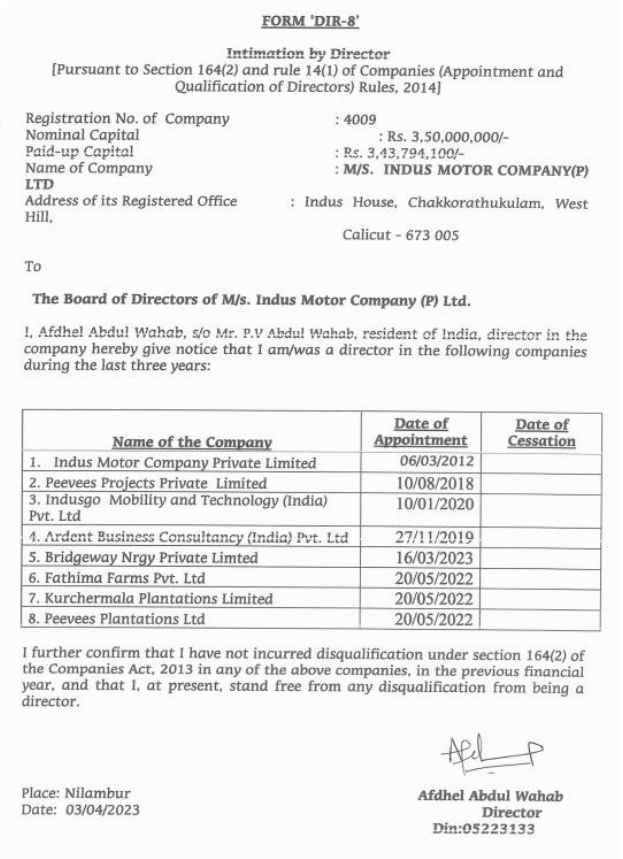
I, Ajmal Abdul Wahab, s/o Mr. P. V Abdul Wahab, resident of India, director in the company hereby give notice that I am/was a director in the following companies during the last three years:

Name of the Company	Date of Appointment	Date of Cessation
1. Indus Motor Company Pvt. Ltd	26/11/2010	
2. Care of Sweden Health care Private Limited	09-07-2015	
3. Peevees Projects Private Limited	10/08/2018	
4. Indusgo Mobility and Technology (India) Pvt. Ltd	10/01/2020	
5. Ardent Business Consultancy (India) Pvt. Ltd	27/11/2019	
6. EO Chapter 180 Foundation	10/05/2019	01/10/2021
7. Bridgeway Nrgy Private Limited	16/03/2023	
8. Fathima Farms Pvt. Ltd	20/05/2022	
9. Kurchermala Plantations Limited	20/05/2022	
10. Peevees Plantations Private Limited	20/05/2022	

I further confirm that I have not incurred disqualification under section 164(2) of the Companies Act, 2013 in any of the above companies, in the previous financial year, and that I, at present, stand free from any disqualification from being a director.

Place: Nilambur
Date: 03/04/2023

Ajmal Abdul Wahab
Director
Din: 03410236



FORM 'DIR-8'

Intimation by Director
[Pursuant to Section 164(2) and rule 14(1) of Companies (Appointment and Qualification of Directors) Rules, 2014]

Registration No. of Company : 4009
Nominal Capital : Rs. 3,50,000,000/-
Paid-up Capital : Rs. 3,43,794,100/-
Name of Company : **M/S. INDUS MOTOR COMPANY(P) LTD**
Address of its Registered Office : Indus House, Chakkorathukulam, West Hill,
Calicut - 673 005

To

The Board of Directors of M/s. Indus Motor Company (P) Ltd.

I, Afdhel Abdul Wahab, s/o Mr. P.V Abdul Wahab, resident of India, director in the company hereby give notice that I am/was a director in the following companies during the last three years:

Name of the Company	Date of Appointment	Date of Cessation
1. Indus Motor Company Private Limited	06/03/2012	
2. Peevees Projects Private Limited	10/08/2018	
3. Indusgo Mobility and Technology (India) Pvt. Ltd	10/01/2020	
4. Ardent Business Consultancy (India) Pvt. Ltd	27/11/2019	
5. Bridgeway Nrgy Private Limted	16/03/2023	
6. Fathima Farms Pvt. Ltd	20/05/2022	
7. Kurchermala Plantations Limited	20/05/2022	
8. Peevees Plantations Ltd	20/05/2022	

I further confirm that I have not incurred disqualification under section 164(2) of the Companies Act, 2013 in any of the above companies, in the previous financial year, and that I, at present, stand free from any disqualification from being a director.

Place: Nilambur
Date: 03/04/2023

Afdhel Abdul Wahab
Director
Din:05223133

FORM 'DIR-8'

Intimation by Director
[Pursuant to Section 164(2) and rule 14(1) of Companies (Appointment and Qualification of Directors) Rules, 2014]

Registration No. of Company : 004009
Nominal Capital : Rs. 3,50,000,000/-
Paid-up Capital : Rs. 3,43,794,100/-
Name of Company : **M/S. INDUS MOTOR COMPANY (P) LTD**
Address of its Registered Office : Indus House, Chakkorathukulam, West Hill, Calicut - 673 005

To

The Board of Directors of M/s. Indus Motor Company (P) Ltd.

I, AJMAL ABDUL WAHAB, S/o Mr. P. V ABDUL WAHAB, resident of India, director in the company hereby give notice that I am/was a director in the following companies during the last three years:

Name of the Company	Date of Appointment	Date of Cessation
1. BRIDGEWAY NRGY PRIVATE LIMITED	16/03/2023	
2. PEEVEES PROJECTS PRIVATE LIMITED	10/08/2018	
3. ARDENT BUSINESS CONSULTANCY (INDIA) PRIVATE LIMITED	27/11/2019	
4. INDUSGO MOBILITY AND TECHNOLOGY (INDIA) PRIVATE LIMITED	10/01/2020	
5. INDUS MOTOR COMPANY PRIVATE LIMITED	21/05/2013	
6. DCOS HEALTHCARE PRIVATE LIMITED	09/07/2015	
7. FATHIMA FARMS PRIVATE LIMITED	20/05/2022	
8. KURCHERMALA PLANTATIONS LTD	20/05/2022	
9. SKYLINE PEEVEES PROPERTIES PVT LTD	21/02/2024	
10. PEE VEE HOLDINGS AND PROPERTY DEVELOPERS LIMITED	28/03/2023	

I further confirm that I have not incurred disqualification under section 164(2) of the Companies Act, 2013 in any of the above companies, in the previous financial year, and that I, at present, stand free from any disqualification from being a director.

Place: Nilambur
Date: 14/05/2024

AJMAL ABDUL WAHAB
Director
Din: 03410236

FORM 'DIR-8'

Intimation by Director
[Pursuant to Section 164(2) and rule 14(1) of Companies (Appointment and Qualification of Directors) Rules, 2014]

Registration No. of Company : 004009
Nominal Capital : Rs. 3,50,000,000/-
Paid-up Capital : Rs. 3,43,794,100/-
Name of Company : **M/S. INDUS MOTOR COMPANY(P) LTD**
Address of its Registered Office : Indus House, Chakkorathukulam, West Hill, Calicut - 673 005

To

The Board of Directors of M/s. Indus Motor Company (P) Ltd.

I, AFDHEL ABDUL WAHAB, s/o Mr. P.V ABDUL WAHAB, resident of India, director in the company hereby give notice that I am/was a director in the following companies during the last three years:

Name of the Company	Date of Appointment	Date of Cessation
1. BRIDGEWAY NRGY PRIVATE LIMITED	16/03/2023	
2. PEEVEES PROJECTS PRIVATE LIMITED	10/08/2018	
3. INDUS MOTOR COMPANY PRIVATE LIMITED	21/05/2013	
4. INDUSGO MOBILITY AND TECHNOLOGY (INDIA) PRIVATE LIMITED	10/01/2020	
5. ARDENT BUSINESS CONSULTANCY (INDIA) PRIVATE LIMITED	27/11/2019	
6. KURCHERMALA PLANTATIONS LTD	20/05/2022	
7. FATHIMA FARMS PRIVATE LIMITED	20/05/2022	
8. PEE VEE HOLDINGS AND PROPERTY DEVELOPERS LIMITED	28/03/2023	
9.PEEVEES PLANTATIONS PRIVATE LIMITED	20/05/2022	28/03/2023

I further confirm that I have not incurred disqualification under section 164(2) of the Companies Act, 2013 in any of the above companies, in the previous financial year, and that I, at present, stand free from any disqualification from being a director.

Place: Nilambur
Date: 14/05/2024

AFDHEL ABDUL WAHAB
Director
Din:05223133

238. Upon careful perusal, statutory provisions, and documentary evidence placed on record, particularly the DIR-8 forms dated 03.04.2023 and 14.05.2024, it unequivocally emerges that Respondent No. 5 and Respondent No. 6 have themselves declared their continuing status as directors of IndusGo Mobility and Technology (India) Private Limited for the financial years 2022–23 and 2023–24. These declarations, being statutory filings under their own signatures, carry a presumption of correctness under law unless rebutted with cogent and credible evidence, which has not been done in the present case.

239. Accordingly, this Tribunal is compelled to record that the purported resignations tendered by Respondent No. 5 and Respondent No. 6 are, on the face of the record, ante-dated, and appear to be a belated and strategic attempt to circumvent the statutory consequences of disqualification under the Companies Act. No valid and contemporaneous filings under Form DIR-11 or

DIR-12 evidencing cessation of directorship at the material time have been produced. The argument of retrospective resignation, unsupported by statutory compliance, cannot be sustained and is hereby rejected.

240. The Hon'ble Delhi High Court in ***Anjali Bhargava and Another v. Union of India and Another*, 2021 SCC OnLine Del 195**, held that under Sections 164 and 167 of the Companies Act, 2013, disqualification of a director in one defaulting company ordinarily results in the vacation of their office in all other companies. This interpretation affirms that, under Section 164(2) read with Section 167(1)(a), a director disqualified in one defaulting company is required to vacate their position in all other companies. However, if the disqualification occurred before 07.05.2018, the proviso to Section 167(1)(a) does not apply, and the director is not required to vacate such positions in other companies.

241. In the case of ***Mukut Pathak & Ors. v. Union of India & Anr*., AIR Online 2019 Del 1723**, the Hon'ble Delhi High Court examined the implications of the Companies (Amendment) Act, 2018, on the disqualification of directors. The Hon'ble Court held that the scheme of Section 164(2) and Section 167(1)(a) of the Companies Act, 2013 was materially altered by the introduction of provisos to both sections, which came into effect on 07.05.2018. As per the amended provisions, any director who incurs disqualification under Section 164(2) after this date would also cease to hold the office of director in companies other than the defaulting company.

242. In light of the above, and in strict application of Section 164(2)(a) read with Section 167(1)(a) of the Companies Act, 2013, this Tribunal holds that Respondent No. 5 and Respondent No. 6 stand disqualified from being re-appointed or continuing as directors in any company, other than the defaulting

company, for a period of five years from the date the default in statutory filings by IndusGo Mobility and Technology (India) Private Limited commenced. Consequently, their continuation as directors in Respondent No. 1 Company is rendered illegal and unsustainable in the eyes of the law, and their offices stand vacated by operation of statute.

Office of the Managing Director

243. The Petitioners submitted that Respondent No. 2 became statutorily disqualified from continuing as Managing Director upon attaining the age of 70 years on 01.07.2020, in terms of Section 196(3) of the Companies Act, 2013, which mandates cessation from such position unless the shareholders pass a special resolution. Despite this, the management took no steps to inform the shareholders of this statutory bar or to ensure compliance with the law.

244. In response, the Respondents submitted that Respondent No. 2's last five-year term as Managing Director was approved by the 237th Board of Directors meeting held on 18.03.2019, prior to him attaining the age of 70. It was contended that the disqualification was first identified in the Forensic Auditor's report, and that the Petitioners had not raised any objections regarding his continuation prior to the said report. Upon being informed of the issue, Respondent No. 2 resigned on 25.07.2024, purportedly in good faith, to facilitate a fresh appointment in accordance with the law. An Extraordinary General Meeting was called to consider his reappointment by special resolution as required under Section 196(3); however, the Extraordinary General Meeting was deferred in light of the Hon'ble High Court of Kerala's order dated 04.03.2025, owing to the pendency of the final hearing in the Company Petition.

245. It is further submitted by the Petitioners that Respondent No. 2 illegally continued to occupy the position for over four years, and even after submitting his resignation, the same was not reflected in the records of the Ministry of Corporate Affairs, where he continues to be shown as Managing Director.

246. Section 196(3)of the Companies Act, 2013 is as follows:

> *Section 196. Appointment of managing director, whole-time director or manager*
> ***(3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —***
> ***(a) is below the age of twenty-one years or has attained the age of seventy years:***
> *Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;*
> *Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.*
> *(b) is an undischarged insolvent or has at any time been adjudged as an insolvent;*
> *(c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or*
> *(d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.*

247. Section 196(3)(a) of the Companies Act, 2013, explicitly provides that no individual who has attained the age of 70 years shall be appointed or continue as Managing Director unless a special resolution is passed by the company, and such resolution must specify the justification for the continued appointment. In the absence of such a resolution, the continuation in office becomes invalid and is in direct contravention of the statutory mandate. In the present case, no

special resolution was passed by the shareholders either before or subsequent to Respondent No. 2 attaining the age of 70 years on 01.07.2020. As such, his continuation in the position of Managing Director beyond this date was unauthorized and contrary to the law.

248. The Hon'ble High Court of Bombay, in the case of ***Sridhar Sundararajan vs Ultramarine & Pigments Limited***, **AIR 2016 (NOC) 335 (BOM.)** ruled that Managing Directors and Whole-time Directors will be considered to have lost their executive positions if they exceed the age of 70 during their appointment tenure. It is also pointed out that unlike the earlier Companies Act, 1956, the current Companies Act, 2013, under Section 196(3)(a) explicitly states that a company shall neither appoint nor continue the employment of any person as managing director, whole-time director, or manager who is under 21 years or has reached 70 years of age. However, the proviso to Section 196(3)(a) allows for an exception where such a person can be appointed if a special resolution is passed, accompanied by an explanatory statement justifying the appointment.

249. The requirement under Section 196(3)(a) is not procedural but substantive and mandatory, intended to place a check on extended tenures of senior managerial personnel beyond the age threshold. The failure to obtain shareholder approval through a special resolution, with recorded reasons for such continuation, renders the post held by Respondent No. 2 legally untenable from 01.07.2020 onwards.

<u>Cash Collateral and Personal Guarantees</u>

250. A corporate body is recognized as a separate legal entity, and its liability is limited to its assets. Similarly, the liability of a director in a company is limited to the extent of their shareholding. A director cannot automatically be held

personally liable for the actions or debts of the company. Financial institutions, however, may require a personal guarantee from a director as a means of securing repayment and ensuring that the director has a vested interest in the success of the company. The rationale is that if the director's assets are at risk, they would manage the company's affairs with greater diligence to avoid default.

251. When a bank seeks cash collateral or a personal guarantee from directors, it does so to secure the repayment of its dues and the financial stability of the company. A personal guarantee provides the creditor with the legal right to proceed directly against the guarantor in the event of a default.

252. Under the Companies Act, 2013, no director can be compelled to furnish a personal guarantee unless they voluntarily agree to do so. Providing a personal guarantee is a personal and voluntary act, not a statutory obligation. While directors are obligated to act in the best interest of the company, they cannot be personally held liable for its debts unless they have expressly agreed to assume such liability. A director's refusal to put personal assets at risk by furnishing a guarantee falls within their lawful rights.

253. The purpose of seeking a personal guarantee from a director by a creditor is to ensure the due performance of the company's obligations, particularly where the director exercises executive functions and is involved in the day-to-day management of the company's affairs. Such guarantees are typically insisted upon where directors hold executive positions, as a means of securing the creditors' interests and promoting accountability. In the present case, the petitioners are directors but do not hold any executive positions within the company. Therefore, on this ground as well, it would not be appropriate to insist that the petitioners or other minority shareholders or non-executive directors

furnish personal guarantees. However, in circumstances where a director subsequently assumes executive responsibilities, the question of requiring a personal guarantee may be revisited in accordance with law and established corporate practices.

254. At this juncture, no director can be compelled to provide a personal guarantee or cash collateral unless he or she voluntarily agrees to do so. The Memorandum of Understanding, which allegedly contains such a clause, is presently under challenge before the Hon'ble Supreme Court of India. Therefore, it would not be appropriate for this Tribunal to pass any direction in this regard at this stage. Furthermore, the shareholding pattern alone cannot serve as the sole criterion for requiring personal guarantees from directors. Any such requirement must be proportionate to the nature and extent of executive powers and responsibilities exercised by the concerned directors. In the present case, considering the findings on financial irregularities and the existence of ongoing disputes, no order can be issued at this juncture to compel any minority director to furnish a personal guarantee. However, once the affairs of the company are stabilized and normalcy is restored, the Board of Directors may, through mutual consultation and consensus, revisit the matter and take an appropriate decision in accordance with law, including the possibility of seeking personal guarantees that are proportionate to the executive authority and responsibilities vested in a particular director.

Whole-Time Company Secretary and Internal Auditor

255. The roles of a whole-time Company Secretary and an independent Internal Auditor are critical for ensuring sound governance, compliance, and transparency in the management of a company. The prolonged non-appointment

of individuals to these key positions raises serious concerns, particularly considering the findings revealed through the forensic audit.

256. The absence of a qualified Company Secretary and Internal Auditor during a significant period indicates a lack of internal checks and balances, which could have otherwise detected and prevented the irregularities identified in secretarial and financial management. These deficiencies could have been addressed at an early stage, thereby avoiding the escalation of issues and ensuring better corporate governance.

257. The explanations provided by the major stakeholders for the non-appointment or delayed appointment of these crucial positions appear inadequate and reflect a concerning lack of commitment towards maintaining transparency and good corporate governance. In a company with substantial infrastructure and extensive business operations, the need for a robust, well-monitored internal control system becomes even more imperative.

258. In the case of ***Puthenpurakal Properties Private Ltd. v. Union of India,*** **AIR Online 2021 Ker 612**, the Hon'ble High Court of Kerala addressed the issue relating to the filing of e-form ACTIVE (INC-22A) by companies without the appointment of a whole-time Company Secretary. The Hon'ble Court observed that, as an interim measure, the petitioners were permitted to file the said form provisionally, without insisting on the appointment of a whole-time Company Secretary. The Hon'ble Court further referred to Section 203(5) of the Companies Act, 2013, which stipulates that if a company defaults in complying with the provisions of Section 203, relating to the appointment of Key Managerial Personnel, the company shall be liable to a penalty of Rs. 5,00,000, every director and Key Managerial Personnel who is in default shall be liable to a penalty of Rs.

50,000, and in case of a continuing default, an additional penalty of Rs. 1,000 for each day after the first, subject to a maximum of Rs. 5,00,000. The Hon'ble Court held that the petitioner companies had failed to comply with the provisions of Section 203, and the respondents were well within their rights to initiate proceedings against the petitioner companies in accordance with the law.

259. Failure to fill such critical posts promptly indicates serious lapses in governance and oversight. Such omissions can reasonably be categorized as mismanagement, as they compromise the integrity of operations and weaken the framework meant to uphold accountability and compliance. Therefore, timely appointment and active functioning of a whole-time Company Secretary and an independent Internal Auditor are not merely statutory requirements but essential pillars in safeguarding the interests of the company, its stakeholders, and the regulatory framework within which it operates.

Appointment of Valuer and Proposal of Exit as Initiated by Respondents

260. The Respondents have submitted that, for the smooth functioning of Respondent No.1 Company, the Petitioners should exit the Company. They have further stated that they are willing to purchase the Petitioners' shares at market value. In support of this, the Respondents have filed an application IA(C/ACT)/159/KOB/2024 seeking the appointment of a valuer to determine the fair value of the shares.

261. We have duly considered this submission. However, it is evident that the Respondents, under the guise of promoting smooth operations of the Company, are in effect attempting to consolidate their control by acquiring additional shareholding. At this stage, it is pertinent to refer to the prayers made in the Company Petitions. The Petitioners have sought several forms of relief of varying

degrees, but notably, there is no prayer for the winding up of the Company. This indicates the Petitioners' intention to continue as directors and their interest in the life, longevity, and continued operations of the corporate entity.

262. From the findings or observations discussed above, it is clear that acts of oppression and mismanagement have occurred at multiple levels and in various forms. If the contentions of the Respondents are accepted, it would set a dangerous precedent, disincentivizing and demotivating genuine litigants from seeking judicial redress. Forcing the Petitioners to exit the Company against their will would send the wrong message and cannot be justified merely on the ground that the Respondents hold a majority stake. Majority status, by itself, is not sufficient to demand or enforce the exit of minority shareholders.

263. As pointed out in the Forensic Audit Report, the initial allotment of shares to the Respondent No.2 was made in lieu of unsecured loans. The relevant exact of the Forensic Audit Report is as under:

> ***Our Findings***
>
> 1. *The share capital as on 31st March 1997 was Rs. 24 lakhs divided into 24,000 equity shares of Rs. 100/- each.*
> 2. ***Thereafter, 46000 shares were allotted @ Rs 100 per share to Mr. P V Abdul Wahab by conversion of unsecured loan into equity share capital.***
> 3. *Consequently, the share holding of Mr. T M Nair, Mr. P A Ibrahim and Mr. P.A. Hamza got diluted due to further shares allotment to Mr. P.V. Abdul Wahab. (Book B Pages 857 – 880)*
> 4. *In July 2007, the Petitioner Mr. T.M. Nair Group and Mr. P.A. Ibrahim exercised their call option under the MOU and bought 9.7 % each of equity from Mr. P.V. Abdul Wahab based on agreed valuation. (Book B Pages 841 – 852)*

Though this is noted discreetly, it reflects a broader narrative, how creditors eventually acquired majority control of the Company, leading to the present circumstances in which the original promoters were compelled to file this

Petition under Sections 241–242 of the Companies Act, 2013. The Petitioners allege that approximately 85% of the Company's profits have been diverted to the families of the majority shareholders through various mechanisms. It is a settled principle that oppressors cannot be allowed to benefit from their oppressive conduct. The Respondents themselves have relied on the judgment in ***Re Adbhut Vincom Private Limited v. Hotel Birsa Private Limited,*** **Company Appeal (AT)No.162 of 2017**, wherein the Hon'ble NCLAT held in similar circumstances that such actions cannot be sustained.

264. Furthermore, permitting the Respondents to purchase the shares of the Petitioners would also prejudice the rights and interests of other minority shareholders who are not parties to this Petition. Such a move would effectively render their shareholding meaningless, particularly when they hold a marginal percentage in the Company's equity. Therefore, the contention of the Respondents cannot be accepted on this ground as well.

265. The Respondents have claimed that they were instrumental in building the Company. However, it is an admitted position that, apart from drawing huge remuneration, the Respondents have consistently appropriated a premium share of the Company's profits as management fees. They have thus already been adequately compensated for their contributions, if any. On the other hand, the Petitioners and other minority shareholders, being the original promoters and having faced sustained acts of oppression, would, in equity, be entitled to a preferential right to purchase the shares.

266. If the only solution proposed by the Respondents is an exit, then it is the Respondents who should step down and sell their shares to the Petitioners and other minority shareholders at the fair market value, as determined by a

Registered Valuer appointed by this Tribunal or any other person authorized by this Tribunal. The first right of purchase shall vest with the minority shareholders to acquire the shares of the majority shareholders; and in the event the minority shareholders refuse or are unable to purchase the said shares, the majority shareholders shall have the right to purchase the shares held by the minority shareholders.

267. Even otherwise, under general principles of fairness, when a party proposes a commercial arrangement involving exit or transfer of shares, the first right of refusal or preference should vest with the counterparty. It is worth reminding ourselves that in this case Respondents have suggested an exit. In the present case, the overall conduct of the Respondents and the prevailing circumstances indicate that the preference must rightfully be given to the minority shareholders to decide whether they wish to continue or exit.

Case Laws

268. Apart from the above-cited laws, both the Petitioners and Respondents have relied on numerous other case laws in their submissions. However, given the volume, it is neither practical nor necessary to address each one individually. Therefore, only the few relevant and significant judgments are examined and discussed here to maintain clarity and focus on the issues before this Tribunal.

269. Petitioners cited ***V.S. Krishnan v. Westfort Hi-Tech Hospital Ltd.*, (2008) 3 SCC 363**, wherein the Hon'ble Supreme Court revisited the scope of Sections 397 and 398 of the Companies Act, 1956, currently Sections 241 and 242 of the Companies Act, 2013, , and referred to several earlier landmark judgments on the subject, including ***Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* (1981) 3 SCC 333, *M.S. Madhusoodhanan v.***

Kerala Kaumudi (P) Ltd. **(2004) 9 SCC 204,** ***Dale and Carrington Investment (P) Ltd. v. P.K. Prathapan*** **(2005) 1 SCC 212,** ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*** **(2005) 11 SCC 314, and** ***Kamal Kumar Dutta v. Ruby General Hospital Ltd.*** **(2006) 7 SCC 613**. The Hon'ble Court summarized that **oppression may be established where the conduct is harsh, burdensome, wrongful, mala fide, or aimed at a collateral purpose, even if the acts are legally permissible.** It clarified that actions may still amount to oppression if they go against probity, good corporate conduct, or fairness, particularly where they result in unfair advantage to some shareholders at the expense of others. Importantly, the Hon'ble Apex Court observed that whether a particular act constitutes oppression is primarily a question of fact, and once such conduct is established, the Tribunal has wide discretionary powers to grant appropriate relief.

270. The Petitioners further relied on ***Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*****, (1981) 3 SCC 333**, **where the Hon'ble Supreme Court held that a company's profitability does not prevent winding up if it is equitable to do so.** It is also clarified that mere unwise or careless conduct by directors does not justify relief under Section 397 of the 1956 Act. Instead, the complainant must prove unfair conduct, lack of probity, and cause prejudice to their legal or proprietary rights as a shareholder. The Hon'ble Court also noted that, unlike English law, India has not broadened the scope from "oppression" to "unfairly prejudicial" conduct. The Respondents also relied on the same judgment to contend that not every illegality or technical contravention of law amounts to "oppression" under Sections 397-398 of the 1956 Act. They emphasized that for relief to be granted, the petitioner must demonstrate a continuous course of conduct that is "burdensome, harsh and

wrongful," involving a lack of probity or fair dealing, and resulting in actual prejudice to the proprietary rights of the shareholder.

271. Respondents placed reliance on ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, (2005) 11 SCC 314**, wherein the Hon'ble Supreme Court emphasized that in proceedings alleging oppression and mismanagement, the petitioners must plead and establish specific acts of oppression or mismanagement with clarity and precision. The respondents rely on this judgment to argue that relief under Sections 397 and 398 of the Companies Act, 1956, is warranted only in exceptional circumstances where there is clear, continuous, and proven prejudice to the minority shareholders, and not for vague, generalized, or isolated grievances. They contend that the petitioners' allegations in the present case are broad, repetitive, and lack the necessary specificity or evidentiary support, thereby failing to meet the threshold set out by the Hon'ble Apex Court. Consequently, the respondents submit that in the absence of sufficiently clear and substantiated pleadings, the petition is liable to be dismissed.

272. The Respondents also relied upon ***Mohanlal Ganpatram and Another v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. and Others,* (1964) 5 GLR 804**, where the Hon'ble High Court of Gujarat held that it has no jurisdiction under Sections 397 and 398 of the Companies Act, 1956 to set aside completed transfers of property made by a company in favor of third parties, except in cases covered under Section 402(f). The court clarified that these provisions are meant to address ongoing oppressive conduct and not to undo past transactions that are already concluded. It further observed that allowing the setting aside of such completed transactions would create uncertainty for third parties dealing in good faith and discourage lawful business dealings, ultimately harming the company's interests. Therefore, relief under these sections is preventive and

does not extend to invalidating finalized sales or transfers to third parties unless expressly authorized.

273. It is evident from the facts of the present case that acts of oppression and mismanagement have been committed by the Respondents, warranting intervention under Sections 241 and 242 of the Companies Act, 2013. As reiterated in ***Needle Industries (India) Ltd.****(supra)*, the profitability of a company does not preclude a finding of oppression if it is otherwise just and equitable to grant relief. The Respondents cannot take shelter under the company's financial performance to avoid scrutiny, especially when their conduct has been harsh, unfair, and in clear derogation of principles of corporate probity and fairness. It is a settled position that oppression and mismanagement may exist even when the acts in question are in technical conformity with the prescribed procedure or legally permissible.

274. The Petitioners' allegations are not vague or generalized; rather, they are specific, consistent, and supported by documentary evidence, and even the forensic audit report largely corroborates such allegations, thereby satisfying the threshold laid down in ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*** *(supra)*. While the Respondents rely on the ***Sayaji Jubilee Cotton and Jute Mills Co. Ltd case*** *(supra)* to argue that completed transactions cannot be set aside, it must be noted that this principle does not extend to transactions tainted by fraud, illegality, or bad faith. Suppose any such mala fide conduct is established, this Tribunal is well within its powers to intervene, and even set aside such transactions under the discretionary jurisdiction conferred by Section 242, particularly when such relief is necessary to bring an end to the oppressive conduct.

275. The Respondents relied upon several judicial precedents to assert that the Petitioners have approached this Tribunal with unclean hands and are therefore not entitled to any equitable relief under Sections 241 and 242 of the Companies Act, 2013. In ***Shri Jagdishbhai S. Ramani & Ors. v. M/s. Sachin Infra Management Ltd. & Ors.*** **(2013) 180 Comp Cas 212 (CLB)**, it was emphasized that petitions for oppression and mismanagement must be filed with clean hands, supported by proper statutory compliance, including valid consents and bona fide intentions. The Tribunal's equitable jurisdiction, the Respondents argued, should not be invoked in favour of parties who suppress facts or pursue proceedings for collateral purposes. Similarly, in ***Draegerwerk Aktiengesellschaft v. M/s. Usha Drager Pvt. Ltd. and Anr.*** **ILR (2006) II Delhi 1241**, the Respondents highlighted that equitable relief is discretionary and that a petitioner must not have misconducted themselves, must not seek to take advantage of their own wrongs, and must establish just and equitable grounds for relief. Further, in ***S.P. Chengalvaraya Naidu (dead) by LRs v. Jaganath (dead) by LRs and Ors.*** **(1994) 1 SCC 1**, the Hon'ble Supreme Court categorically held that any party suppressing material facts or withholding vital documents is guilty of committing fraud on the court and is not entitled to relief. Cumulatively, these authorities were cited to establish that the Petitioners, having concealed material facts and acted in bad faith, are disentitled from seeking relief before this Tribunal.

276. However, from the records before this Tribunal, there is nothing to suggest that the Petitioners have approached with an intent to mislead or withhold material facts. No evidence has been placed on record by the Respondents to substantiate the allegation that the Petitioners have acted in bad faith or suppressed vital documents. The delay in approaching this Tribunal, under the given circumstances, should not be the sole criterion to disregard the allegations

made, particularly when such allegations are of a serious nature. On the contrary, the pleadings and supporting documents filed by the Petitioners demonstrate a consistent narrative of grievances concerning the conduct of the company's affairs. Merely raising allegations of unclean hands without concrete proof does not disqualify a party from seeking equitable relief. Therefore, the assertion that the Petitioners have come to this Tribunal with unclean hands is not borne out by the material on record.

ORDERS

277. The Respondents are held liable for the loss sustained by the Company due to the unauthorized investment in Aster DM Healthcare. **The Respondents No.2 to 6 and 8 are hereby directed to refund to Respondent No.1 Company the sum of Rs. 2,37,66,000 (Rupees Two Crores Thirty-Seven Lakhs Sixty-Six Thousand only), along with interest at the rate of 12% per annum, with monthly rest from the date of investment till payment, within a period of three months from the date of receipt of this order.**

278. It is hereby directed that the all types of remuneration and monetary benefits including management fees received by Respondent No. 2 in his capacity as Managing Director after attaining the age of seventy years on 01.07.2020, during which period he was statutorily disqualified from holding such office in the absence of a valid special resolution as mandated under Section 196(3) of the Companies Act, 2013, shall stand refunded to the Company. Similarly, any remuneration, fees, or monetary benefits paid to Respondent No. 5 and Respondent No. 6 during the period of their disqualification under Sections 164(2)(a) and 167(1)(a) of the Companies Act, 2013, consequent to the default in statutory filings by IndusGo Mobility and Technology (India) Private Limited,

shall also be refunded to the Company**. The Respondent No. 2, Respondent No. 5, and Respondent No. 6 are hereby directed to return the entire amount of such remuneration and all benefits, including the premium and entire management fees, to the Respondent No.1 Company, along with simple interest at the rate of 6% per annum from the date of the payment, within three months from the date of this order**.

279. It is important to mention and clarify that different rates of interest have been awarded for the various reliefs granted in this Order. The reason for such differentiation lies in the nature of the underlying transactions. The investment in Aster DM Healthcare was a deliberate and conscious act aimed at the undue enrichment of another entity at the expense of the Company. Such an investment cannot, by any stretch of the imagination, be regarded as having been made in good faith. In contrast, the other cases involve amounts that became recoverable due to statutory directives and instances of non-compliance, without the same element of deliberate misconduct.

280. If the amounts are not refunded to the Company within the stipulated period of three months from the date of this Order, the Company shall be entitled to initiate necessary steps for the redemption of shares to reduce their shareholdings held by the defaulting Respondents, to the extent of their liability, subject to compliance with the applicable statutory provisions and based on a valuation conducted by an independent valuer.

281. Further, it is directed that the Company shall constitute a CSR Committee strictly as per the Companies Act,2013, and other applicable laws. The said Committee shall be responsible for recommending and overseeing the utilisation of CSR funds in the future.

282. There is no evidence that Respondent No. 1 Company ever merged with Bridgeway or Peeves Group. The mere fact that some shareholders may have an interest in these other companies does not justify attributing any association or merger between Respondent No. 1 and those entities. Furthermore, the past actions of the petitioners shall not operate as an estoppel against them in future proceedings. Therefore, we find merit in the prayer under clause (l). As there is no material on record to suggest that Indus Motors ever decided to form a group with the other two companies, the mere fact that the Managing Director of the Indus Group or his family holds some interest in another company does not, by itself, render Indus Motors a group company of the others. A person may be a director in multiple companies, but this alone does not entitle the other companies to treat all such companies as group companies. Accordingly, this Tribunal deems it fit and proper to grant liberty to Respondent No. 1 Company to issue a public notice clarifying that Indus Motors is not a group company of Bridgeway and Peeves Group of Companies and to take all such steps to undo such claims of other entities.

283. The findings and observations made in paragraphs 260 to 267 *supra* are reiterated, and parties shall be bound by the same. Considering all the facts and circumstances of the case, including the long-standing association between the Petitioners and the Respondents, and with a view to affording them time to reconcile and work together for the betterment and development of Respondent No.1 Company, this Tribunal deems it just and proper to defer the buyback offer or exit option as come in supra in paragraphs 260 to 267 for a period of 6 months. During this period, if the parties, through mutual consent or upon mediation, agree to continue with the existing shareholding pattern or adopt a modified arrangement for the smooth and coordinated functioning of Respondent No.1 Company, they may do so. However, in the event parties fail to arrive at a mutual

consensus**,** as discussed *supra* in paragraphs 260 to 267, it shall be open to either party to invoke this order, and the parties shall be bound to do so, and findings so recorded shall be binding upon them.

284. Once both parties, despite relying on the forensic audit report, expressed their dissatisfaction by filing objections against it, it became imperative to direct an investigation by the Central Government to examine the matter in greater depth, particularly in light of the evidence on record indicating alleged payments made in Dubai in connection with the affairs of a company incorporated in India. All financial and managerial irregularities including highlighted by the auditors, warrant a detailed investigation by the Central Government to uncover the truth. Upon careful consideration of the facts and circumstances on record, it is evident that acts of oppression and mismanagement have occurred within Respondent No. 1 Company. Considering the seriousness of the allegations, the additional reliefs sought by the Petitioners shall be considered following the outcome of a comprehensive investigation to be conducted by the Central Government under the relevant provisions of the Companies Act, 2013. At this stage, no further relief is being granted. However, liberty is granted to the parties to approach this Tribunal afresh upon conclusion of the said investigation.

285. Accordingly, in exercise of the powers conferred under Section 213 of the Companies Act, 2013, this Bench directs the Ministry of Corporate Affairs to initiate a thorough investigation into the affairs of Respondent No. 1 Company by appointing competent and duly qualified Inspectors for this purpose, covering the period since the financial year 2011–12. If the Ministry of Corporate Affairs deems it appropriate, it may alternatively and simultaneously proceed under Section 212 of the Companies Act, 2013, and appoint any other competent investigative authority as it considers fit for conducting the investigation. It is

expected that the central agency will be able to summon all concerned parties who have benefited from such funds and those who have returned the funds to the Company**,** to ensure the end use of the funds of the Respondent No.1 Company.

286. In the interim, and to protect the interests of the Company and its stakeholders, and to facilitate a smooth and unhindered investigation, this Tribunal appoints **HON'BLE JUSTICE S. SIRI JAGAN,** Former Judge, Hon'ble High Court of Kerala, residing at 4C, Star Paradise, Cheruparambath first Cross Road, Kadavanthra, Kochi - 682 020 email id: sirijagan@hotmail.com, **as the Administrator** with immediate effect. The Administrator shall exercise control, supervision, and oversight over the working of Respondent No. 1 Company and the Board of Directors of Respondent No. 1 Company and shall take all necessary steps to ensure the proper governance, transparency, and effective functioning of the Company during the pendency of the investigation. Further directions of this Bench are as follows:

I. That the Administrator shall be paid a monthly remuneration of **Rs. 4,00,000/- (four lakhs only)** and other applicable taxes by Respondent No. 1 Company. Further, the Administrator shall also be paid by Respondent No. 1 Company the travel, stay, and other expenses as may be incurred for the discharge of his duties.

II. The Administrator can appoint a competent hand to assist him in the said assignment, and the fees and expenses of the said professional are to be borne by the Respondent No. 1 Company. If required, the Administrator is authorized to engage the services of professionals, including Advocates, Chartered Accountants, Company Secretaries,

Valuers, or Auditors, for the smooth functioning of the Company and to facilitate effective implementation of this Order.

III. Any appointment or removal of a person as Director of Respondent No. 1 Company, except as specifically directed in this Order, shall be undertaken only after consultation, concurrence, and approval from the Administrator.

IV. All employees of Respondent No. 1 Company shall be answerable to the Administrator and are required to comply fully with his directions. In the event of any non-compliance or disobedience, the Administrator shall be empowered to take appropriate action against such employees in accordance with applicable laws.

V. The Administrator and the Board of Directors of Respondent No. 1 Company shall cooperate fully with the investigation and provide access to all books of accounts, statutory records, contracts, agreements, and any other relevant materials. In the event of any disagreement between the Administrator and the Board regarding the investigation, the opinion of the Administrator shall prevail.

VI. As soon as the Administrator assumes his role, the Respondents are directed to ensure full co-operation and timely disclosure to the Administrator and his staff of all financial, legal, and commercial records of the Company, including but not limited to books of accounts, financial statements, contracts, and agreements.

VII. Until disposal of the present petition, the Respondents and the Administrator shall not (except in the ordinary course of business):

a) Sell or otherwise dispose of or encumber Respondent No. 1 assets.
b) Incur liabilities.
c) Distribute funds from the Company.
d) Enter into any contracts.
e) Change the nature of business.
f) Alter or increase the paid-up share capital or issue further shares.
g) Enter into any related party transactions.
h) Make investments in other bodies corporate.

VIII. The Company shall not create any lien, charge, mortgage, or transfer any of its assets, as mentioned above, except where required for legitimate business purposes, and only with the concurrence of the Administrator. Furthermore, no loans, advances, or any other financial assistance shall be extended to any person for any purpose, except in the ordinary course of business, without the prior concurrence of the Administrator. The Administrator shall also have the authority to pursue recoveries in accordance with this Order, and in the event of non-compliance, may take further appropriate action.

IX. The Administrator shall enjoy full immunity from any civil or criminal proceedings, whether pending or initiated in India or abroad, relating to acts done by the Company or its directors prior to or subsequent to his appointment. No agency of the State or Central Government shall initiate civil, criminal, punitive, or coercive action against the Administrator for acts carried out in good faith in the exercise of his responsibilities.

X. The Administrator shall be at liberty to approach this Tribunal for appropriate directions needed, if any.

XI. All Board Meetings and General Meetings of Respondent No. 1 Company shall be convened and conducted under the direction and supervision of the Administrator.

XII. Any interim protections granted earlier by this Tribunal regarding the operations and working of the Respondent No. 1 Company would merge into this Order and would be observed in the light of this Order.

XIII. The Administrator shall file a Quarterly Progress Report detailing the affairs of Respondent No. 1 Company and the status/progress of the investigation with this Tribunal.

XIV. As per the DMS portal, **Application No. 64 of 2020** is pending. However, at the time of the hearing, none of the parties pressed the application. Moreover, the prayers sought therein have become infructuous. Accordingly, the application is **disposed of as infructuous**.

XV. In view of the observations made in paragraphs 260 to 267 and 283, **IA(C/ACT)/159/KOB/2024 is disposed of** for the time being. However, the parties are at liberty to file a fresh application if the need arises.

XVI. In view of the findings recorded in paragraphs 250 to 254 regarding the cash collateral, the Application **IA(C/ACT)/178/KOB/2024 stands disposed of.**

XVII. In view of the directions issued in this Petition, **IA(C/ACT)/17/KOB/2025**, seeking the appointment of an Interim Administrator, **stands disposed of**.

XVIII. Let the Company Petition be placed before this Bench on receipt of the copy of the investigation report from the Ministry of Corporate Affairs, along with the proposed actions of the said Ministry thereon.

XIX. Let copy of this order be immediately sent to Hon'ble Justice S. Siri Jagan, the Administrator, Information, and to assume the charge immediately.

XX. The Registry is directed to send e-mail copies of this Order to all parties and their respective counsel, and a certified copy shall be served upon the Hon'ble Secretary, Ministry of Corporate Affairs, 5th Floor, A-Wing, Shastri Bhawan, Dr. Rajendra Prasad Marg, New Delhi–110001. A certified copy shall also be served on the Registrar of Companies, Ernakulam, for necessary follow-up.

XXI. Urgent certified copy of this Order, if applied for, shall be issued upon compliance with all requisite formalities.

SD/-	**SD/-**
MADHU SINHA	**VINAY GOEL**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Signed on this the 3rd day of September, 2025.

A* & St4