ATLAS CYCLES (HARYANA) LIMITED
Registered Office : Industrial Area, Atlas Road, Sonepat-131 001, (Haryana) India.
Corporate Identity Number L35923HR1950PLC001614

Date: 09th December, 2022

The Manager, Capital Market (Listing)
National Stock Exchange of India Ltd.
Exchange Plaza,
Bandra-Kurla Complex
Bandra (E)
MUMBAI – 400051
FAX NO. 022-26598237/38

The Manager (Listing)
BSE Ltd.
Phiroze Jeejeebhoy Towers,
Dalal Street, Fort,
MUMBAI – 400001
FAX NO. 022-22721919/2037/2039/ 2041/2061

SUB: OUTCOME OF BOARD MEETING HELD ON 09TH DECEMBER, 2022 AT SHORTER NOTICE

Dear Sir/Madam,

The new board of directors at its meeting held on 09.12.2022 (commenced at 2:30 p.m. and concluded at 07:10 p.m.) took note of NCLT Order dated 06.12.2022 which summarized hereunder;

The Hon'ble NCLT vide aforesaid order dated 06.12.2022 removed all directors, namely;

1. Mr. Kartik Roop Rai Director (DIN:06789287)
2. Mr. Sanjiv Kavaljit Singh Director, (DIN:00015689)
3. Ms. Sadhna Syal, Director (DIN:07837529)
4. Mr. Chander Mohan Dhall, Whole Time Director, (DIN:01398734)
5. Mr. Ishwar Das Chugh, Director (DIN:00073257)

The Hon'ble NCLT vide aforesaid order dated 06.12.2022 appointed below six directors in place of existing board of directors, namely;

1. Shri Jarnail Singh, IAS (Retired), Former Secretary, Government of India, Ministry of DoNER
2. Shri Hem Pande, IAS (Retired), Former Secretary, Government of India, Department of Consumer Affairs
3. Smt. Surina Rajan, IAS (Retired), Former Director General, Bureau of Indian Standard, Department of Consumer Affairs
4. Shri Manmohan Juneja, ICLS (Retired), Former Director General Corporate Affairs, Ministry of Corporate Affairs
5. Shri Ved Jain, CA, Former President, ICAI
6. Shri R Parthasarathy, IA & AS (Retd.), AOR, Supreme Court of India

Please note that this is just a summary of order, request you to please refer the aforesaid order which is also submitted to you on dated 06.12.2022 and also enclosed herewith for your reference.

Kindly take this information in your records and oblige.

Thanking you,

For ATLAS CYCLES (HARYANA) LIMITED

Atlas Cycles (Haryana) Limited Sonepat

RAKESH
COMPANY SECRETARY

IN THE NATIONAL COMPANY LAW TRIBUNAL

VIKRAM KAPUR & Anr. Versus ATLAS CYCLES (HARYANA) LIMITED & ORS. (CP /18(ND)/2015)

IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

CP /18(ND)/2015

CA/272/PB/2016

CA/533/PB/2020

CA/257/PB/2020

CA/416/PB/2021

CA 469/PB/2021

CA 429/PB/2021

IN THE MATTER OF:

SH. VIKRAM KAPUR AND ORS. **...PETITIONER/APPLICANT**

VERSUS

M/S ATLAS CYCLES (HARYANA) LTD. AND ORS. **...RESPONDENT COMPANY**

Petition filed Under Section 397,398,399,402 and other applicable provisions of Companies Act, 1956 (Now, dealt under Section 241, 242, 244 and other applicable provisions of Companies Act, 2013 consequent upon repealing of Companies Act, 1956)

Order Delivered On: 06.12.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioners:	Dr. U K Chaudhary, Sr. Advocate, Mr. Gaurav Mitra, Ms. Manisha Chaudhary, Mr. Mansumyer Singh, Ms. Samridhi Gogia, Mr. Adit, Ms. Manisha Sharma, Mr. Shravan Chandrashekhar, Advs.
For the Respondent:	Mr. Sudhir K. Makkar, Sr. Adv. with Ms. Saumya Gupta & Ms. Yogita Thakur, Advocates for **R-1, 12 & 14-16**, Mr. Amit Sibbal, Sr. Adv.,Ms. Meenakshi Singh & Ms. Veera Mithai, Advs. for **R-3 to11**
For the Applicant :	Abhirup Das Gupta and Bhawna Sharma for **CA 469/21 & 429/21**

MEMO OF PARTIES

1. **Mr. Vikram Kapur**
   28A, Friends Colony, New Delhi ... **PETITIONER 1**

2. **Mr. Angad Kapur**
   28A, Friends Colony, New Delhi .... **PETITIONER 2**

VERSUS

1. **Atlas Cycle (Haryana) Limited**
   Industrial Area, Atlas Road,
   Atlas Nagar, Sonepat,
   Haryana-131001 .... **RESPONDENT COMPANY**
2. **Mr. Salil Kapur**
   3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 2**
3. **Mr. Sanjay Kapur**
   3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 3**
4. **Mr. Prashant Kapur**
   3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 4**
5. **Mr. Ashwin Kapur**
   3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 5**
6. **Mr. Siddhant Kapur**
   3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 6**
7. **Mr. Girish Kapur**
   3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 7**
8. **Mr. Gautam Kapur**
   3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 8**
9. **Mr. Rishav Kapur**
   3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 9**

10. Mr. Rahul Kapur

3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 10**

11. Mr. Abhinav Kapur

3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 11**

12. Mr. Hira Lal Bhatia

3-B/11 Utri Marg, N.E.A .... **RESPONDENT NO. 12**

, New Delhi-1100060

13. Mr. Hari Krishan Ahuja

147, Jor Bagh, New Delhi-110060 .... **RESPONDENT NO. 13**

14. Mr. Kartik Roop Rai

B-10-7204, Vasant Kunj,

New Delhi-110070 .... **RESPONDENT NO. 14**

15. Mr. Sanjiv Kavaljit Singh

104, Malcha Marg, New Delhi-110021 .... **RESPONDENT NO. 15**

16. Mr. Ishwar Das Chugh

I-73, Narain Vihar, New Delhi-110028 .... **RESPONDENT NO. 16**

17. Vikram Kholsa

A-169, New Friends Colony,

New Delhi-110025 .... **RESPONDENT NO. 17**

18. Mr. Rajiv Kapur

3, Aurangzeb Lane, New Delhi-110001 .... **RESPONDENT NO. 18**

ORDER

PER SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

1. The Present Petition has been preferred by the petitioners who are shareholders in respondent 1 Company and also person in management of Sonepat unit against the alleged oppressive acts of Respondent Nos. 2 to 18 invoking 397, 398, 399 and 402 of the Companies Act, 1956 (**now Sections 241, 242, 244 of Companies Act, 2013**). Respondent 2 to 18 are directors, promoters, etc. in Respondent Company i.e. **ATLAS CYCLES (HARYANA) LIMITED** (Hereinafter referred to as '1st Respondent Company'). Petitioners in the matter have prayed for the following reliefs:

   a. Supersede the Board and appoint an administrator instead of the Board with a direction to constitute a committee of management with due representation of the petitioners to conduct the affairs of the Respondent No 1 Company.

   b. Declare that the Petitioners have independent management and control of the Sonepat Unit in pursuant to the memorandum of understanding signed and executed by the members of the Kapur family and permanently restrain the Board or any of the Respondents herein from acting in manner whatsoever which is likely to impede, obstruct, interrupt or interfere with Petitioners' independent control and management of Sonepat Unit.

   c. Pass appropriate orders recommending the Demerger of the Sonepat Unit as separate company with all its assets liabilities, obligations and rights, claims, interest, entitlements and properties along with 1/3 requisite shareholders of Respondent No.1 Company in exercise of its power under Section 402 of the Companies Act, 1956.

   d. Direct the Respondents to adequately reimburse the Petitioner with respect to the business diverted from the Respondent No. 1 Company; or direct the Respondent No. 2 to bring back the business or money equivalent to that diverted business of the Respondent No. 1 Company

e. To pass an order awarding the costs of the present litigation to the Petitioner

f. To pass such other further orders/directions which this Hon'ble Board may deem fit and proper in the facts and circumstances of the present case

Other than the abovementioned reliefs petitioners have asked for certain **interim reliefs** which are as follows:

a. Restraining the Respondents from selling, parting with, transferring, alienating or disposing of the assets of the Respondent No. 1 Company or creating any third party interest in the assets and properties of the Respondent No. 1 Company without the prior knowledge of the Petitioner and without prior permission of this Hon'ble Board

b. Restrain the Board and Respondents No. 2 to 11, acting individually or through representatives, from acting in any manner whatsoever to impede, obstruct, interrupt or interfere with independent management and control of the Sonepat Unit over its business operations;

c. Appoint an Administrator on the Board of the Respondent No. 1 Company;

d. Appoint a special auditor to examine/ investigate the books of accounts and financial transactions of Malanpur Unit of Respondent No.1 Company,

e. Direct the board from passing any resolutions wherein the liabilities of Malanpur Unit would be set off /cleared by the Sonepat Unit until the pendency of the present company petition

f. Stay the effect of the resolution passed by the board in the meeting held on until the pendency of the Company Petition

g. Stay the effect of the resolution passed by the Board in the meeting held on 03.02.2015 through circular resolution until the pendency of the Company Petition,

h. Direct a stay on pending and in process property deals/ transactions of the Respondent No. 1 Company and assets of the Company.

i. Direct that the Board to give full and proper accounts and detailed explanations of the dealings with assets and properties of the Respondent No.1 Company and any other information as may be required for just adjudication of the present proceedings;

j. Direct the Respondent hereon to furnish all details, particulars and information related to any assets of the Respondent No.1 Company alienated by them;

k. Direct that the Respondents to submit periodic reports giving full and proper accounts and detailed explanation of the dealings of the assets and properties of the Respondent No. 1 Company;

l. Direct that no Board meeting and Shareholders meeting of the Respondent No. 1 Company shall be held without permission of this Hon'ble Board;

m. Direct the Respondents to allow inspection of the statutory records of the Respondent No. 1 Company.

n. Pass such other further order/ directions, which this Hon'ble Board may deem fit and proper in the facts and circumstances of the present case.

2. The main petition CP/18(ND)/2015 was filed somewhere in Feb 2015 and it was dismissed by Chairman of CLB (Company Law Board) by **Justice D. R Deshmukh** vide order dated 27.03.2015. It is sent to CLB for reconsideration as Petitioners went in Appeal against the order of Dismissal. In the Meantime, vide **Notification No. S.O. 1934(E)** dated **01.06.2016 Section 434 of Companies Act, 2013** came into force. **Sec 434(1) (a) of the Companies Act, 2013** states that:

"All matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of Section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in

Accordance with the provisions of this Act"

Hence, Jurisdiction vests with this Tribunal to dispose of the matter in accordance to the provisions of the Companies Act, 2013.

3. Briefly stated, R1 (Respondent Company), a listed Company incorporated on **31.05.1950** under the Companies Act, 1913, has its registered office in Haryana. The Company is in the business of manufacturing and dealing in bicycles, tricycles, motorcycles, carriages of any kind and other vehicles in relation to transportation.

BRIEF HISTORY

4. **Brief History which gave rise to the filing of present Petition i.e. CP/18(ND)2015 is as follows:**

- In the case at hand, the Kapur Family claims to hold 44.72% (as on 15.04.2022, **41.92%)** of the shares in the 1st Respondent Company and the rest is held by the general public and third parties. Below mentioned is the Structure of the **'Kapur family'** which briefly states the shareholding pattern between the Kapurs.
- Late Mr. B D Kapur, Mr. Jaidev Kapur and Mr. Jagdish Kapur along with their sons entered into a MoU dated 08.01.1999 under which the control, management and ownership of flagship of ATLAS was to be divided into 3 equal shares, one for each son. The 3 main units of the Company are situated at Sonepat, Sahibabad and Malanpur. R1 Company incorporated three subsidiaries namely **M/s Atlas Cycles (Sonepat) Limited, M/s Atlas Cycles (Sahibabad) Limited, M/s Atlas Cycles (Malanpur) Limited, on 28.05.1999.**
- The said MoU (MoU dated 8th Jan 1999) which was signed by all male members of Kapur family inter-alia provided that in the event of any disputes and/or difference of opinion in any manner, the same shall be referred to the arbitration before Justice A.M. Ahmadi, former Chief Justice of India who was unanimously selected as the Sole Arbitrator.
- None of the Members of the Kapur family are on the Board of the Respondent Company. R12 to R17 constitutes the Board of the Company. As on **30.04.2022**, R12 (**Mr. H. L. Bhatia**) resigned, R13 is

Late Mr. Jenki Das Kapur
Late Mr. B.D. Kapur passed away on 14/08/2000
Late Mr. Arun Kapur passed away on 07/02/2013
Akshay Kapur not a party
0.40%
Ashwath Kapur not a party
0.40%
Vikram Kapur
P1
1.62%
Angad Kapur
P2
0.80%
Rajiv Kapur
R18
2.78%
B.D. Kapur Group
6.78%
Shareholding of P1 + P2
2.42%
Late Mr. Jai Dev Kapur passed away on 28/03/2012
Girish Kapur
R7
2.18%
Rishav Kapur
R9
0.57%
Rahul Kapur
R10
0.57%
Gautam Kapur
R8
4.25%
Abhinav Kapur
R11
0.75%
Jaidev Kapur Group
11.08%
Late Mr. Jagdish Kapur passed away on 05/01/2003
Sall Kapur
R2
0.00%
Prashamit Kapur
R4
0.40%
Ashwin Kapur
R5
0.40%
Sanjay Kapur
R3
4.10%
Siddant Kapur
R6
0.67%
Late Mr. Ajay Kapur passed away on 31/03/1991
Jagdish Kapur Group
5.79%
- Party number in C.P. No. 18/2015
- Shareholding of person alongwith HUF (if any) as on 30.04.2022
Shareholding of family controlled companies
1 Limrose Engineering Works Pvt. Ltd. 7.92%
2 Milton Cycles Industries Ltd. 10.02%
3 Jankidas & Sons Pvt. Ltd. 0.22%
4 Corona Rim Manufacturing Co. Ltd. 0.11%
TOTAL 18.27%
Total shareholding held by 3 Groups and family controlled companies 41.92%

deceased, **R14 , R15, R16** along with **Mr. CM Dhall** who is also the CFO of Respondent Company & **Mrs. Sadhna Syal** constitutes the Board.

- On 31.08.2003, another MOU was entered into between the parties under the terms of which the Sonepat unit came under the management of BD Kapur. Similarly, the Sahibabad unit came under Jaidev Kapur and the Malanpur unit fell under Jagdish Kapur. On the very same day a Board resolution was also passed by the Company noting that the arrangement would have deemed to come into effect w.e.f 01.09.2003.
- Vide order dated **01.11.2014**, the Sole Arbitrator, **Justice Ahmadi** upheld the 3 lots allocated to each group. The award was, however, set aside by **Muralidhar, J., High Court of Delhi on 03.08.2015 in O.M.P. No. 30 of 2015.**
- Since 2006, the management of the Malanpur unit of the Company came under serious financial crunch. In the following years, the Malanpur Unit became heavily indebted and was burdened with huge financial liabilities. Considering the situation the Board of the Company held a meeting on **05.10.2014 wherein it was resolved that the Malanpur unit be closed and all of its liabilities were to be equally borne by the other 2 units namely Sahibabad Unit and the Sonepat Unit**. It was resolved that liabilities of the Malanpur unit shall be met out of the sale of assets of Malanpur Unit/Atlas Steel Tubes Industries (ASTI)/Atlas Auto and the deficit if any shall be borne in equal share by Sonepat Unit and Sahibabad Unit. It was resolved that to begin with, both Sonepat Unit and Sahibabad Unit shall contribute a sum of Rs. 10 crore each to tide over the immediate liabilities of Malanpur Group which included statutory dues and bank liabilities to prevent any situation of the bank account of the Company turning NPA.
- Aggrieved by this Resolution, the Petitioners along with **R-18** filed a suit, **CS (OS) No. 3510/2014** before the High Court of Delhi praying for a mandatory and permanent injunction against the Board Resolution dated **05.10.2014.**

- **Hon'ble High Court of Delhi granted ad interim relief on 19.11.2014** whereby there was a restraint on the implementation of the Board Resolution dated 05.10.2014 to the detriment of the plaintiffs. **Later, the Hon'ble High Court of Delhi vide order dated 28.01.2015** passed by **Indermeet Kaur, J.**, held that the overall control of the 3 units continued to vest with the Company. Hon'ble High Court placed its reliance on ***Reliance Natural Resources Limited versus Reliance Industries Ltd. (2010 (5) SCALE 223*, it held that:**

  "MoUs signed by the parties being private arrangements did not fall within the corporate domain. Consequently it held that the plaintiffs did not have a prima facie case against the defendants and as a result, the ad interim relief was vacated on 28.01.2015"

5. Thereafter, Petitioners i.e. P1 and P2 approached the then Company Law Board and filed the present Petition i.e. **CP/18(ND) 2015** with the consent of 187 shareholders of the Company which is a case of Oppression and Mismanagement against the Respondents i.e. (R1 to R18).

6. The Company Law Board (CLB) vide Order dated **27.03.2015, Para 32**

   Held that:

   "petitioners have failed to make a prima facie case of oppression and mismanagement. The instances of oppression and mismanagement as also the consent letters are "dressed-up" and, in view of similar prayer in pending litigation (CS (OS) No. 3510/2014) before the High Court of Delhi for the same relief having been declined by the High Court by Justice Indermeet Kaur vide order dated 28.01.2015, amounts to forum shopping which is impermissible.

   In the light of above, declining the interim relief to petitioners, CLB dismissed the petition."

7. Aggrieved by the **order dated 27.03.2015** by the then CLB (now, NCLT) petitioners have filed appeal **CAPP No. 21 of 2015 before the High Court of Punjab and Haryana.** This Appeal was heard by **Single Judge, Hon'ble Justice Amit Rawal.** Hon'ble Appellate court found it appropriate to set

aside the impugned order and remanded the matter back to the Company Law Board. Below is the extract derived from the Judgement in **CAPP No. 21 of 2015:**

"It is a matter of record that respondents had not filed counter/defence or any documents in pursuance to the petition filed under Section 397, 399 and 402 of the Companies Act, 1956. The Company Law Board ought not to have dismissed the petition on merits while declining the interim relief to the petitioner. Appellate Court deemed it appropriate to set aside the impugned order and remanded the matter back to the Company law Board by restoring the appeal to its original number and also gave the liberty to petitioners to pray for interim relief afresh."

8. **On 22.02.2016,** an Application **(CA NO. 272/2016)** under Section 403 of Companies Act, 1956 (now, Sec. of 2013) r/w Reg 44 of CLB Rules was filed on behalf of Respondent Company 1. Respondent Company 1 sought for the following reliefs:

   a. Frame the preliminary issue about the validity of consents given by the consenting shareholders and maintainability of the petition in terms of Section 399 of the Companics Act, 1956, treat the same as a preliminary issue and adjudicate upon the same before hearing the petition on merits;

   b. Pass any other orders

Vide Order dated **24.02.2016 it was ordered that this Application shall be taken up with the main case. On 16.09.2020, *C.A. No. 533 of 2020*** was filed on behalf of the Petitioners u/S. 244 of the Companies Act, 2013 seeking waiver of the precondition of minimum supporting shareholders for filing a petition u/S 241 – 242 of the Companics Act, 2013.

Counsel for Respondent (R1, R12, R14-R16) submits that till date no notice has been issued in application, however a larger public interest is involved. Therefore, in the interest of justice, we have heard the petitioner at length, given number of opportunities to petitioners to advance their arguments, to

make their submissions and to place on record the relevant document. As we have heard the parties, it is clearly a deemed waiver granted to petitioners.

9. We have given number of opportunities to both the parties to make their respective submissions and heard them at length. In this Company petition, there are various CAs which are filed connected with the main matter, hence we are of the opinion to dispose them together with the main petition. Below are the main submissions and the arguments advanced by petitioners (P1 and P2) as well by the Respondents (R1, R12, R14-R16 & R3 to R11). **It seems that there is neither any representation nor any submission on behalf of R2 (Mr. Salil Kapur), R17 (Mr. Vikram Khosla), (R18, Mr. Rajeev Kapur). R13 (Mr. H.K Ahuja) is deceased and there is no substitution of any Legal heir on behalf of R13.** Hence, we are proceeding *ex parte* against the above mentioned Respondents i.e. R2, R13, R17 and R18.

SUBMISSIONS ON BEHALF OF THE PETITIONERS ARE AS FOLLOWS:

10. The Petitioners have submitted copies of MOU dated **08.01.1999** and **31.08.2003,** the Operative portion of the MOU dated **08.01.1999** and another MOU dated **31.08.2003** is extracted below:

10.1 MOU dated 08.01.1999

"AND WHEREAS with the growth of the family during the subsistence of complete amity between all members of the family, it is considered prudent to split the ownership, management and/or control of the companies and the assets in three equal share and to allot each share to the three units of the family which will help in the exercise of better management controls and further/augment the business prospects of the reconstituted units and business enterprises;"

....

..

The Companies, Private Limited Companies, Partnership Firms, Charitable Trusts owned, managed and/or controlled by the three groups are as follows

Atlas Sonepat Haryana; Plant & Machinery/ Stocks....

..

Atlas; Plant II Sahibabad (UP), Plant & Machinery Stocks /All buildings and Temple godown ..

..

Atlas: Plant III Malanpur (MP); Plant & Machinery/Stocks / All buildings and Temple...

..

..

2. The parties hereto agree that the various Companies, Private Limited Companies, Partnership Firms, Charitable Trusts and the assets may be divided in three equal lots between the three groups of the family.

3. It is also agreed that the division should be made in such a manner that:

a) One Cycle Unit falls to the share of each of the three groups. The division is to be made in such a manner that the production facility including machinery, Painting and Plating Plants etc. and that of services including Tool Room, Maintenance, Electrical Generators, Research & Development, Heat Treatment etc. of each cycle unit is more or less equal.

b) Holdings in JDC (Department Store), New Delhi to be first equated amongst three groups and then JDC (Department Store) be placed in one of the baskets for onward division.

c) The Market areas for sales in India and exports for each separate unit shall be clearly identified, demarcated and equated. In case any benefit is to be given to any group/groups the same could be given in the form of net worth assets. This

should be ascertained on the basis of detailed working to be done by Sh. KN Memani of M/s Ernest and Young, Chartered Accountants before draw of lots to avoid unhealthy competition.

..

..

That this MOU incorporates only the broad guidelines to be followed for arriving as a final settlement between the parties. The essence of the mutual understanding is that all the assets and the Companies referred to above shall be divided in the three equal baskets after the same has been properly evaluated at the present market Price. The valuation of all the assets, Companies, Trusts and Firms shall be done by Shri KN. Memani of M/s Emest & Young, Chartered Accountants who shall value the Companies, Private Limited Companies; Partnership Firms, Charitable Trusts and other assets at market price as per the accepted principles of accountancy. Shri K.N. Memani will confer jointly with the three groups regarding the valuation of all the Companies/Firms/Trusts etc. and thereafter declare the value. Shri K.N. Memani's valuation will be final and un-challengeable by the parties or even the Arbitrator.

5. The parties shall also be at liberty to discuss and settle any other points related or incidental to what is stated above. By omission if any joint asset is left out in this MOU the same shall be dealt with in the manner stated above before the draw of lots.

6. In case of difference of opinion on any matter and a settlement is not arrived at, the matter will be referred to the arbitration of Shri A.M. Ahmadi, retired Chief Justice of the Supreme Court of India, who has been unanimously selected by the three groups as the Sole Arbitrator. The three parties mutually on their own will prepare three baskets based on valuation made by Shri K. Memani and the same be distributed..

..

..

10.2 MOU dated 31.08.2003 is extracted below:

"This Memorandum of Understanding is entered into on this day of August 2003 between the following parties:

1. **Mr. Vikram Kapur s/o Late Sh. B.D. Kapur and Mr. Rajiv Kapur s/0 Late Sh. B.D. Kapur, and Mr. Angad Kapur s/o Sh. Vikram Kapur, all residents of 3, Aurangzeb Lane, New Delhi. (hereinafter collectively referred to the B.D.KAPUR GROUP, which expression shall, unless repugnant to the meaning or context hereof shall include their respective successors/legal heirs).**
2. **Mr. Jaidev Kapur s/o Late Sh. Janki Das Kapur, Gautam Kapur s/o Sh. Jaidev Kapur, Sh. Girish Kapur s/o Sh. Jaidev Kapur and Mr. Rishav Kapur s/o Sh. Girish Kapur, all residents of 3, Aurangzeb Lane, New Delhi, (hereinafter collectively referred to as the JAIDEV KAPUR GROUP, which expression shall, unless repugnant to the meaning or context hereof shall include their respective successors/ legal heirs.**
3. **Mr. Salil Kapur s/o Late Sh. Jagdish Kapur and Mr. Sanjay Kapur s/o Late Sh. Jagdish Kapur, residents of 3, Aurangzeb Lane, New Delhi, (hereinafter collectively referred to as the JAGDISH KAPUR GROUP, which expression shall, unless repugnant to the meaning or context hereof shall include their respective successors/ legal heirs.**

WEAREAS the parties to Memorandum of Understanding are the promoters and shareholders of Atlas Cycles (Haryana) Ltd. (Earlier known as Atlas Cycle Industries Ltd.) and are having a substantial

Shareholding in the said company. The parties are also holding Senior Executive Positions in the Company.

AND WHEREAS the parties to this Memorandum of Understanding entered into a Memorandum of Understanding dated 08th January 1999 whereby it was decided to split the ownership, management of all limited companies, partnership firms, trusts and the management controls and to have consistency and continuity of operations the said restructured arrangement shall be duly adhered to by all management members and ought not to be disturbed in any manner;

AND WHEREAS the Memorandum of Understanding dated 08.01.1999 provided for valuation of all companies, partnership firms, charitable trusts and other assets jointly owned/managed by Kapur family, by Sh. KN Memani of Ernst and Young. In pursuance of the said agreement, all the companies, partnership firms, charitable trusts and other assets jointly owned by Kapur family have already been valued by Sh. KN Memani and valuation report has already been submitted to the Hon'ble Arbitrator. However the said valuation is presently the subject matter of the challenge by Shri Arun Kapur in the High Court of Delhi at New Delhi.

AND WHEREAS the Memorandum of Understanding dated 08.01.1999 further provided that the three parties mutually on their own will prepare three baskets based on valuation report prepared by Sh. KN Memani and the said three baskets shall form the subject matter of the draw which was to take place before the Hon'ble Arbitrator.

AND WHEREAS the parties to this agreement are of the considered opinion that in order to have continuity of operations

the parties have agreed to jointly request the Hon'ble Arbitrator that the structured arrangement of management of Atlas as reflected in resolution of Board of Directors dated 31.08.2003 shall be endorsed in the baskets to be prepared for the purpose of the Draw.

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING WITNESSETH AS UNDER:

1. That the parties to this Memorandum of Understanding shall ensure that all members who (TYPING ERROR) other properties and assets jointly owned by the family into three equal parts in a manner specifically detailed in the said Memorandum of Understanding

AND WHEREAS the parties to this Memorandum of Understanding are in the process of implementation of the said Memorandum of Understanding dated 08 January, 1999 and the parties are agreed that the award of the Arbitrator shall be final and binding on the parties.

AND WHEREAS on account of various litigation initiated by Shri Arun Kapur, Former Additional Joint President (Works), the implementation of the Memorandum of Understanding dated 08.01.1999 has been stalled for the time being.

AND WHEREAS keeping in view the contentious issues and ongoing disputes and litigation involving the Kapur family the Board of Directors of Atlas has passed, a resolution dated 31st August 2003 whereby substantial changes have been made, in the control and management and the division of powers and authority in respect of the units of Atlas.

AND WHEREAS *the parties to this Memorandum of Understanding are of the considered opinion that the restructured arrangement devised by the Board of Directors of Atlas is in the larger interest of the company and the parties as shareholders of the said company have a direct interest in the financial health and performance of the company.*

AND WHEREAS the parties to this Memorandum of Understanding being signatories to the Memorandum of Understanding dated 08.01.1999 are of the considered opinion that the restructuring of management as reflected in the resolution of Board of Directors dated 31st August 2003, shall be conducive to the growth and development of the company and in order to strengthen (Typing error, as given in typed copy) **are senior executives of Atlas shall exercise their powers in consonance with the resolution dated 31.8.2003. The parties further agree that they shall not use their voting rights in ATLAS in any manner to dislodge or disturb the restructured arrangement of management as reflected in the resolution of Board of Directors dated 31.08.2003.**

2. ***The parties hereby agree to jointly represent to the Hon'ble Arbitrator, that as and when the impediments to the implementation of the Memorandum of Understanding dated 08 January 1999 are removed and all the parties are in a position to proceed with the implementation of the said Memorandum of Understanding, the Hon'ble Arbitrator shall ensure that the preparation of baskets and allocation thereof shall be made in a manner that each unit of Atlas Cycles which is being managed and controlled by a particular Group of the family under the restructured management reflected in the resolution of the Board of Directors dated 31-8-2003 shall be allocated to the same unit and not to any other unit. In other words the SONEPAT unit of Atlas Cycles which has been put under the***

management and control of Sh. B.D.Kapur group shall be allocated to the members of Shri B.D.Kapur group; the SAHIBABAD & NUMERO UNO OF ATLAS CYCLES which has been put under the management and control of Sh. Jaidev Kapur group shall be allocated to the members of Shri Jaidev Kapur group; the Malanpur, Auto, ASTI unit of Atlas Cycles which has been put under the management and control of Sh. Jagdish Kapur group shall be allocated to the members of Shri Jagdish Kapur group.

3. *The parties are further agreed that the understanding arrived at in the present Memorandum of Understanding is in continuation of the earlier Memorandum of Understanding dated 08.01.1999 and not in contravention or derogation of any of the terms stipulated therein. The parties shall remain bound by the terms of Memorandum of Understanding dated 08.01.1999 and the understanding arrived at in the present Memorandum of Understanding shall be subject to final orders/award being passed by the Hon'ble Arbitrator in terms of the Memorandum of Understanding dated 08.01.1999.*
4. *The parties are further agreed that in order to have complete transparency of operations inter-se Management Committees, no Management committee or any individual member of the Management Committee shall circulate the agenda of Board Meeting or initiate any resolution to be passed by the Board of Directors by circulation without giving notice thereof to the other Management Committees in writing and such notice shall be accompanied by the proposed agenda of the Board Meeting or the proposed Board Resolution sought to be passed by circulation.*
5. *The parties are further agreed that the share of Sh. Arun Kapur and his sons who have not signed this Memorandum of Understanding has to be allocated out of the basket allocable to Shri B.D. Kapur Group. In the event the share of Shri Arun*

Kapur or any part thereof is required to be paid out of any basket falling to the share of either of the other two groups in pursuance of the award of the Hon'ble Arbitrator or by mutual agreement of all the parties hereto, necessary adjustment shall be made forthwith from the basket assigned to the B.D. Kapur Group by a transfer of assets/funds or by any other method as may be mutually agreed by all the parties hereto. It is made clear that this adjustment, for balancing of the baskets shall be carried out by the parties simultaneously with the allocation of share of Sh. Arun Kapur and the said allocation/ transfer shall be subject to the balancing of baskets as aforesaid. It is further agreed that the allocation of share of Sh. Arun Kapur shall also be subject to recovery of a sum of Rs.10.43 crores (or such amount as may be settled and agreed) by Atlas in terms of valuation report of Shri K.N. Memani of M/s Ernst & Young and the said amount after adjustment of tax liability shall be apportioned in equal shares amongst the three baskets.

6. This Memorandum of Understanding shall take effect only when all impediments to the implementation of the Memorandum of Understanding dated 08.01.1999 have been removed and the parties are in a position to implement the same in a lawful manner.

11. It is submitted by the petitioners that Board Resolution dated **05.10.2014** is in contravention of the MoUs entered between the parties and it also interfered with the working of the Sonepat unit of which petitioners have independent autonomy under the family arrangement. It was further submitted by the petitioners that it was wrong for the Board of the Company to thrust upon the Sonepat unit, a tide of liabilities which have arisen because of the poor management of the Jagdish Kapur part i.e. **Malanpur Unit.**

12. It was further argued that the petition was of representative nature as the petition was filed with consent of 187 shareholders of the Company, who

felt equally aggrieved and oppressed because of the decision of the Board. It was submitted by the petitioners that the allegations relating to the oppression and mismanagement in the Company was very well within the domain of Company Law Board and not circumscribed by any order passed by the Hon'ble High Court of Delhi; that orders of the Hon'ble High Court dated **19.11.2014 and 28.01.2015** were inconsequential and a nullity as being without jurisdiction. It was stated by the petitioners that if an injunction was not granted, the Board of the Company was likely to throw the Petitioners out of the management of Sonepat unit.

13. Petitioners (P1 and P2) herein submitted their arguments in these broad categories:

13.1 Dummy Board

- The Board constituted in the R1 Company is a dummy Board. The Board of Directors is constituted of Employees, family friends and relatives who are, in other words, nominees of Kapur Family.
- Respondent Company (hereinafter referred as 'R1 Company') is in nature of a quasi-partnership Company, always controlled and managed by the Kapur Family.
- Kapur family is divided into three groups namely BD Kapur Group, Jaidev Kapur Group, and Jagdish Kapur Group.

13.2 De Facto division of the R1 Company

- **R1 Company** is a family Company operating as a de facto partnership with each family group operating an independent and separate unit. Each group has been granted autonomous control of one unit
- Each family group conducts its unit's business independently through separate bank accounts. Each unit enjoys the profits and losses of their respective unit only.

- On **08.01.1999,** the members of the Kapur Family decided to divide all assets and businesses of the Kapur Family into three equal parts. The MoU dated 08.01.1999 was signed and executed by Kapur Family. Also, Respondent No 16 **i.e. Mr. I D Chugh is a witness to the said MOU.**
- R1 Company incorporated three subsidiaries namely **M/s Atlas Cycles (Sonepat) Limited, M/s Atlas Cycles (Sahibabad) Limited, M/s Atlas Cycles (Malanpur) Limited, on 28.05.1999.** BOD resolution dated 23.01.1999 had resolved to incorporate the said subsidiaries. It is submitted by the Petitioners that the sole objective to incorporate three subsidiaries was to demerge the R1 COMPANY into three separate companies. That the R1 COMPANY initiated the process of splitting the Company into three equal parts by appointing Mr. K N. Memani of M/s Ernst & Young (E & Y) for the purpose of valuation and preparing three equal baskets. Valuation report by **M/s Ernst and Young** has been annexed as **P6**. In accordance with MOU dated **08.01.99,** draw of lots took place and following the draw, Sh. BD Kapur was assigned Sonepat Unit, Sh. Jaidev Kapur Group was assigned Sahibabad Unit and Sh. Jagdish Kapur Group was assigned Malanpur Unit.
- This Report by Mr. Memani was challenged by Mr. Arun Kapur, the brother of Petitioner no. 1, however the judgement of Hon'ble High Court of Delhi dated **02.05.2006 passed by Justice Madan Lokur in Suit No. 77 of 2003, held the Report to be binding and final.**
- In furtherance to MOU dated **08.01.1999,** the members of the Kapur Family signed and executed MOUs dated **31.08.2003. Accordingly,** The Board of Directors passed resolution to give effect to MOU dated **31.08.2003 wherein the Sonepat Unit was assigned, earmarked and belonged to B D Kapur group for all purposes. Likewise, the same arrangement for other two units.** The Resolution as well as the MOUs dated **31.08.2003** had blank spaces at various places and the same were filled after draw of the lots. Minutes of the Board

meeting dated **31.08.2003** has been annexed at **Page no 122-294** of the convenient compilation.

13.3 Financial Mismanagement in Malanpur Unit

- Affairs of the Malanpur Unit were being vested with Sh. Jagdish Kapur Group. The management committee of Malanpur Unit mismanaged its affairs and created huge losses which ultimately led to the shutdown of the Unit. The whole debacle of the Malanpur Unit happened under the supervision of so called 'Independent Board'. The Board took note of the letter written by the P1 expressing concerns about financial mismanagement of the Malanpur Unit. In a meeting dated 31.03.2011, Board asked the Malanpur Unit to submit a detailed report of the same.
- Board provided various time extensions to submit the report, but it was not submitted.
- On **30.04.2012,** Board took note of letter by R3 which shows that Malanpur Unit was going through serious financial irregularities.
- Due to defaults of Malanpur Unit, banks started recovering the liabilities from the other 2 units.
- It is further submitted by the petitioners that Malanpur unit had accounts outside the consortium of banks approved by the Company, in violation of the terms of the Consortium Bankers.
- Despite various letters by petitioners and repeated resolutions taken by Board, the Malanpur unit continued to default in compliances and in a meeting dated **29.09.2012,** Malanpur Unit was directed to give response to the allegations made by the petitioners.
- Due to defaults of Malanpur Unit, credit rating of R1 was also affected. It is further submitted by the Petitioners that the Board did not take any stringent measures to control losses of Malanpur Unit. The Board only gave threats to the management committee.

- The President of the Malanpur Unit i.e. R2 admitted to financial irregularities and also admitted persistent defaults towards the suppliers and creditors vide letter dated **01.08.2013.**
- No step was taken by the Board to recover the monies i.e. **15 crore** embezzled by R2 from Malanpur Unit. In fact the resignation of R2 was never accepted by the Board.
- It is submitted by the Petitioners that Sahibabad Unit may be paying for the losses but unit is recovering its money by appropriating the Income Tax Rebates, Export drawback (Export rebates) of Malanpur Unit
- The misconduct and hostile behaviour of the Respondents have resulted in huge liabilities of Malanpur Unit amounting to Rs. 86 crores and the said amount is affirmed by **Mr. C M Dhall, CFO of Malanpur Unit.**
- At the time of signing of the MOU 2003 and Board Resolution of 2003, the Board resolved that the existing Public Fixed Deposits with Atlas were to be paid out of Malanpur Account as and when the same matured or became due for payment. The fresh deposits received by the Respondent Company were to be apportioned amongst the three units in equal shares and were to be paid out of the respective units on maturity. The members of the management committee of Malanpur Unit were regularly defaulting in paying back the fixed depositors and the amount due to the fixed depositors was in crores of Rupees.

13.4 Arbitration Award

- Petitioner No. 1 on **12.08.2013** filed an application in the Arbitral Tribunal for passing an award that the lot which has been allocated to the group shall remain in exclusive management, control and operation of the said lot and in effect to endorse the lots prepared by all three groups vide MoU dated **31.08.2003.**
- Petitioner further submit that the Jaidev Kapur Group and Jagdish Kapur Group with malafide intention raised frivolous objections to the

said application filed by Petitioner No.1. The objection raised in the reply was that they have no objection to allocation of the lots as it is prepared and put in control but a fresh valuation be carried out of the assets. It is submitted that the said objection on the face of it is malafide as the parity was created in all aspects at the time of allocation of lots on **31.08.2003**. The proceedings of the said application commenced on **04.09.13** and continued till **13.09.14**. Over 110 meetings were held with the Arbitrator and Counsel for the Respondent No. I was representing the Jaidev and Jagdish Kapur group fighting against demerger of the Company as per the MOU. It is submitted that the said application was predicated to avoid any foul play or to destabilize the arrangement that has remained operative and binding on the three groups.

- It is submitted that the Sole Arbitrator has passed the award dated **01.11.2014** thereby splitting the assets, ownership, control and management etc. of the Kapur family and various companies into three lots. Since the award had already been passed inter alia on the terms that the lot allocated to each group shall remain in exclusive management, control and operation thereof and that group shall be entitled to hold the same and no other group in managing its lot. **The operative portion of the award reads as follows:**

  a) *The three lots though not finally divided through the MOU(s) have been under respective Groups as per the MOU(s) who have followed it thus far, Final division be done without disturbing the set up in any manner.*

  b) *The lot allocated to each group shall remain in exclusive management, control and operation thereof and that group shall be entitled to hold the same and no other group will have any right or entitlement to any part of the lot or burden it for any liability incurred by other group in managing its lot*

c) *The profit and loss of the lot since 31.08.2003 remain profit and loss of that lot and that no liability of that lot befalls on any other lot.*

d) *Any loss or claim against the Assets arising because of a particular group, shall be met and settled by the group managing, operating and controlling the said lot.*

e) *None of the groups to the MOU shall breach or cause to breach the baskets so caused while dividing the management and control of the assets.*

f) *All the three groups shall jointly and severally perform their part of obligations as per the MOU in implementing and executing the understanding in splitting the ownership as per law.*

g) *The residential building shall be used for the residence of each group on as is basis and shall not induct any third party in the part of its possession and shall pay the taxes and other out goings for the area in their occupation ; repair cost will be met on as is basis.*

- It is submitted by the petitioners that while passing the said award dated 01.11.2014, the Ld. Sole Arbitrator has recorded that ***"the challenge to any decision of the Board of Directors in respect of Atlas Cycles falls outside my purview and therefore I have not expressed any firm view on the Board's decision. If the Board has taken any decision in respect of any business establishment, the matter is treated falling outside the scope of Arbitration."***
- Petitioners further submit that the said award is the adjudication of right between the parties and being in the nature of Decree is binding upon the Respondent No.1 Company. The purview of the present Board of Directors was limited to the extent till the passing of the award as three independent companies with independent Boards had to be created for each unit in terms of the MOUs between the parties and the Award dated 01.11.2014.
- It is submitted that pursuant to the above arrangement, the group handling the particular unit is solely responsible for the workings,

profit and loss of the company and the performance has been based on the efforts put into by the said group.

- It is submitted by the Petitioners that before the Ld. Arbitrator could pass an order in terms of MOU of 2003, the Board in collusion and connivance with the Malanpur Unit and Sahibabad Unit passed a Board Resolution dated 5.10.2014 thereby deciding the closure of the Malanpur unit, the restructuring of the commercial territory of the said unit, the bearing of losses of the said unit and other incidental decisions. The Board also directed that the Sonepat unit and Sahibabad Unit to pay a sum of Rs. 10 crores each for covering the losses of Malanpur Unit.
- It is further submitted that **Judgement dated 03.08.2015 by Muralidhar J., particularly affirms that**

  Any scheme of restructuring of the Company will necessarily have to abide by the provisions of the Companies Act. Chapter V of Part VI of the Companies Act, 1956 contained provisions relating to compromises, arrangements and reconstructions. In the Companies Act, 2013 these provisions are in Chapter XV which is titled "Compromises, Arrangements and Amalgamations". It includes sections 230 to 240. The procedure involved in giving effect to any scheme of restructuring or arrangement requires applying to the Company Court and under Companies Act, 2013 to the NCLT. The restructuring of a Company has to happen mandatorily in accordance with the provisions of the Companies Act.

- Petitioners also relied on Para 85 of the judgement dated 03.08.2015 which held:

  "Notwithstanding this order of the Court it would be open to the parties to seek remedies as envisaged in law in regard to the restructuring/arrangement as far as Atlas Cycles (Haryana) Ltd. is concerned and as far as the two Trusts i.e. the Dewan Harnam Das Saraswati Devi Trust and the Dewan Harnam Das Saraswati Devi

Trust (Regd. Society) are concerned. Whether the parties are bound by the 1999 and 2003 MoUs, whether the said MoUs should be given effect to and to what extent are left open to be decided in appropriate legal proceedings as and when initiated. The Court should not be understood as having pronounced on the legality of the 1999 or the 2003 MoUs in relation to the aforementioned Company and the Trusts. The remaining portions of the impugned Award so far as it relates to the division of the residential properties and other assets are not being interfered as that was not pressed before the Court."

13.5 Hostile Behaviour of Board of Directors towards the Petitioners

- The Board has not taken any stringent action against the financial irregularities in the Malanpur Unit
- Board also not paid any heed to the legal notices and claims of the Creditors of Malanpur Unit
- Board has been ignorant towards all the serious misdeeds of the Malanpur Unit which are prejudicial to the interests of the Respondent 1.
- Board is controlled by Sahibabad Unit and Malanpur Unit.
- Board had not given any heed to the legal notices including the criminal proceedings against the R1 by the creditors of the Malanpur Unit.
- The Board of Directors camouflaged the financial irregularities in the Malanpur Unit and shifted all the liabilities to the other units of the R1.
- Petitioners also wrote various letters dated **18.01.2007** to Board regarding diversion of business from R1 Company to Milton Cycles.
- The Board of Directors did not take any stringent measure when the members of the Management Committee of Malanpur Unit were declared as wilful defaulters. Also, R2 was declared as proclaimed offender and eventually got arrested, Infact R2 is still behind the bars.

- After the closure of the Malanpur Unit, the territories of the Malanpur Unit were reallocated amongst the Sonepat Unit and Sahibabad Unit. The major territories were given to Sahibabad Unit and remaining Territories were given to Sonepat Unit. In fact, the Board asked R3 to reallocate the territories, i.e., the one who is the person responsible for the financial mess.

13.6 Siphoning of Funds

- It is submitted by the Petitioners that the legitimate profits of R1 are being diverted to **Milton Cycles Limited.** The Board of Directors also permitted Milton Cycles to manufacture and sell cycles. Milton Cycles are using resources of R1 Company to manufacture and sell its cycle. **Annexure P36 is annexed** which are the minutes of the meeting allowing Milton to manufacture cycles.
- Respondents Nos. 2 to 6 initiated a Pharmaceutical company M/s **Atlas Laboratories & Pharmaceutical Company Ltd.** Respondents No 2 to 6 were booking fictitious expenditure of this Co. in the books of Malanpur Unit.
- In 2007-08, the Taxation Department of the Sonepat Unit raised serious concern over the fictitious expenditure in the books of Malanpur Unit and the same was reported to the Board. But the Board completely ignored the issues raised by the Sonepat Unit.
- Respondent No. 17 also pointed to various irregularities/discrepancies in stock statements of R1. R17 also wrote letters to the Board. R17 had also questioned the manner in which incorrect certificates certifying compliances with statutory regulations and requirements were being submitted by the management committee of Malanpur Unit and being accepted by the Board. It is further submitted that the Board of Directors callously informed later that this was done by oversight.

13.7 This Hon'ble Tribunal during hearing on 16.12.2021 had called upon the Ld. Senior Counsel for the petitioners to give a solution/way forward in the matter also considering the alleged

concerns of impending IB Code Proceedings raised by the Respondents.

- Petitioner while submitting this solution note contended that the Company petition be heard finally with a set timeline given to each party to argue its case because expeditious disposal of the Company Petition, ascertainment of the claims of the Petitioners qua the Sonepat Unit, and its eventual severance from Respondent No. 1 Company and other units is the only real solution to protect the interest of the Company. Petitioners further submit that if the prayers sought in the Company petition are granted, the demerged units/companies and their respective management will be liable to take care of the existing liabilities of their unit.
- To prove the viable solution of demerger of the Sonepat unit while exercising the jurisdiction under sec 241, 242 and 244 of the Companies Act, 2013, Petitioners had strongly argued with respect to the vesting of unlimited power in the hands of this Tribunal while dealing with the matters of oppression and mismanagement under Section 241, 242 and 244 of the Companies Act, 2013.

13.8 Petitioners submitted various judgements of Apex Court, and various High courts to substantiate the legal proposition that if the company's affairs are conducted in a manner prejudicial to the interest of the shareholders and in an oppressive manner, to protect the interest of the Company, this Tribunal can exercise unlimited powers to do the complete justice.

Relevant Judgments (extracts) as cited by the petitioners are as follows:

Atmaram Modi vs. ECL Agrotech Limited and Ors. 1999 SCC Online CLB 14

The scheme of Sec 397 to 406 is to constitute a code by itself for granting relief to oppressed minority shareholders and for granting appropriate relief, a power of widest amplitude, inter alia, lifting the ban on company purchasing its share under Court's direction, is conferred on the Court. When, the Court exercises this power by directing a purchase of its shares by the company, it would necessarily involve reduction of the capital of the company.

Now, when minority shareholders complain of oppression by majority and seek relief against oppression from the Court under Section 397 and 398 and the Court, ***in a petition of this nature, considers it fair and just to direct the company to purchase the shares of the minority shareholders to relieve oppression, if the procedure prescribed by Section 100 to 104 is required to be followed, the resolution will have to be first adopted by the members of the company, but that would be well nigh impossible because the very majority against whom relief is sought would be able to veto it at the threshold and the power conferred on the Court would be frustrated. That could never have been the intention of the Legislature.***

Bennet Coleman and Co. vs. UOI [1977] 47 CompCas 92 Bom

Under section 398 read with section 402 power has been conferred upon the court "to make such orders as it thinks fit" if it comes to the conclusion that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or that a material change has taken place in the

management or control of the company by reason of which it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, "with a view to bringing to an end or preventing the matters complained of or apprehended". Both the wide nature of the power conferred on the court and the object or objects sought to be achieved by the exercise of such power are clearly indicated in sections 397 and 398. Without prejudice to the generality of the powers conferred on the court under these sections, section 402 proceeds to indicate what type of orders the court could pass and clauses (a) to (g) are clearly illustrative and not exhaustive of the type of such orders. Clauses (a) and (g) indicate the widest amplitude of the court's power: under clause (a) the court's order may provide for the regulation of the conduct of the company's affairs in future and under clause (g) the court's order may provide for any other matter for which in the opinion of the court it is just and equitable that provision should be made.

Shoe Specialities Limited vs. Standard Distilleries and Brewries (P) and Ors. MANU/TN/0114/1996

In other words, sections 397 and 398 are intended to avoid winding up of the company if possible and keep it going while at the same time relieving the minority shareholders from acts of oppression and mismanagement or preventing its affairs being conducted in a manner prejudicial to the public interest and if that be the objective the court must have power to interfere with the normal corporate management of the company. In our view, therefore, the position is clear that while acting under section 398 read with section 402 of the Companies Act, the court has ample jurisdiction and very wide powers to pass such orders and give such directions as it thinks fit to achieve the object and there would be no limitation or restriction on such power that the same

should be exercised subject to the other provisions of the Act dealing with normal corporate management or that such orders and directions should be in consonance with such provisions of the Act." "Under section 397 of the Companies Act, 1956, the court is empowered to make an order 'as it thinks fit'; similar is the power vested in the court under section 398. Power under section 402 is a power which may be exercised, without prejudice to the generality of the powers of the court under sections 397 and 398, and, therefore, such a power can in no way be of a limited nature. A power to make an order as the court thinks fit would necessarily comprise within it a power to make an order which is just and equitable in the circumstances of the case, because essentially, this is an unlimited judicial power."

K. N. Bhargava vs. Trackparts of India Limited MANU/CL/0063/1999 [2001] 104 CompCas 611
(Company Petition under Sec 397/398 filed by the petitioners before CLB, decided by the Bench of S. Balasubhramanian, Vice Chairman and C. Mehta on 30.11.1999)

The first is that the company took over the partnership firm, initial allotment of shares was in the same proportion to the shares in the partnership, it is the family members who decide about the composition of the board as is evident from the family settlement in 1991, it is the family shareholders who pledged their shares for raising finance for the company, etc. According to us, the most appropriate direction that we could give, with a view to put an end to the disputes between the parties is that there should be division of assets of the company by which the petitioners will continue to control and manage the forge division and the respondents the other two divisions. ***This would be in line with our decision in Jaidka Motor's case [1997] 1 Comp LJ 268 (CLB) wherein also, even though the company was a public***

company, in view of the family nature of the company, we directed the division of the assets.

Trackparts of India Limited vs. K. N. Bhargava MANU/UP/0683/2000

(Appeal filed before Hon'ble High Court, Allahabad, decided by Justice M.C. Jain on 30.08.2000)

It should also be pointed out that the concept of division of assets is not unknown to corporate jurisprudence. Sections 293 and 391 of the Companies Act, 1956, may be cited with advantage. Section 293, inter alia, provides for sale, lease or otherwise disposal of the undertaking of a company. The division of assets may also be ordered under Section 391 while sanctioning a scheme of compromise or arrangement. Article 68 of the articles of association of the company in question also, inter alia, relates to the sale or lease of the whole or substantial part of the undertaking of the company, of course, by special resolution of the company passed in general meeting. The exercise of powers by the CLB under Section 397/398 and 402 of the Companies Act is not subject to ratification or approval by the shareholders or the board of directors. The CLB has wide powers for bringing to an end the oppression and mismanagement and can make any order that it considers just and equitable. In my opinion, the division of assets can also be ordered by the CLB in appropriate cases while exercising such powers. As to the scope of the powers of CLB under Sections 397/398 and 402 of the Companies Act, reference may be made to the case of Bennet Coleman and Co. v. Union of India [1977] 47 Comp Cas 92. A Division Bench of the Bombay High Court has held in the said case that Chapter VI, which contains Sections 397/398 and 402 of the Companies Act, deals with emergent situations or extraordinary circumstances where the normal corporate management has failed and has run into oppression or mismanagement and steps are required to be taken to prevent the

oppression and/or mismanagement in the conduct of the affairs of the company.

Vijay Krishan Jaidka vs. Jaidka Motor Co. Ltd [1996] 23 CLA 289

In such circumstances, the court may apply equitable remedies if the petitioners have come to court with clean hands. In case the facts show that the petitioners and respondents have come together on the basis of certain relationship which already existed, the equitable remedies could be considered. Thus, whether a company is a family company and whether partnership principles have to be applied, would all depend upon the facts of each case, and is a significant issue.

Shishuram Ranjan Datta and Anr. Vs. Bhola Nath Paper house Limited (1983) 53 Comp Cas 883

But ultimately in the course of argument it was admitted that there is a complete deadlock and the two groups cannot go together and the company cannot be managed smoothly in the present situation and, therefore, it clearly follows that there is mismanagement of the company amounting to oppression of one group by the other, whichever way it may be looked at.

Considering the respective contentions very carefully it appears to me that there is a complete deadlock and grounds have been made out for the intervention of the court by exercising its extraordinary power under Sections 397-398 of the Companies Act, 1956. It is now well settled that to put an end to the matter complained of in an application under Sections 397-398 of the Companies Act, 1956, the court can make any order according to law having regard to the facts and circumstances of each particular case so that the company and its shareholders and the interest of the public are well protected and no further prejudice may be caused to any of them. Therefore, the court

has ample power under Sections 397-398 of the Companies Act, for intervention and to pass a suitable order for putting an end to the matter complained of so that the business of the respondent-company may be carried on smoothly and the only way in this case appears to me to divide the assets of the respondent-company equitably between the two groups after payment of all the liabilities of the company and for that purpose a Special Officer should be appointed to administer the company and discharge the functions of a board, as there is no valid board of the respondent-company, who will run the said business till the liabilities of the respondent-company are liquidated and the guarantee of the petitioners to the respondent-company's banker, United Industrial Bank Ltd., and the charge of the property of petitioner No. 2 as guarantor, being the security for the loan granted by the said banker to the company, is released and accounts of the company are completed.

Needle Industries (India) Ltd. & Ors. Vs Needle Industries Newey (India) Holding Limited & Ors. (AIR 1981 SC 1298), para 175, it was held that:

"even though the Company petition fails and the appeals succeed on the finding that the Holding Company has failed to make out a case of oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in which they would have been, if the meeting of 2nd May were held in accordance with law...."

SCHEME OF DEMERGER AND REVIVAL STRATEGY PROPOSED BY PETITIONERS

14 **On being asked by this Tribunal regarding the implementation strategy after the demerger of the Respondent 1 as prayed by the Petitioners, Petitioners submitted a note on scheme of demerger of Respondent No. 1. Petitioners submitted that the** proposed demerger of Sonepat Unit stipulates that the Sonepat Unit along with

all its assets and liabilities shall vest with Atlas Cycles (Sonepat) Limited and the Petitioners along with Respondent No. 18 shall have an exclusive 41.92% shareholding in Atlas Cycles (Sonipat) Limited. It is further submitted that pursuant to the demerger, the proposed resulting Company (Atlas Cycles (Sonepat) Limited shall allot the remaining 58.08% of its shares to the public shareholding at par, as held by them in the Respondent No. 1 Company. The remaining units i.e. Malanpur and Sahibabad and all their respective assets and liabilities shall remain with Atlas Cycles (Haryana) Limited.

15 Petitioners also submitted the note on indicative steps which will be taken for revival of manufacturing activity. Petitioners submit that they will first ensure the compliance of the timeline for demerger of all the assets and liabilities pertaining to Sonepat Unit. Thereafter, they will make a public announcement of the said demerger order to ensure that same is communicated to all creditors, shareholders, suppliers etc. Then, Petitioners group may raise funds from the financial institutions and using the abovementioned funds, it will pay off the debts pertaining to Sonepat Unit. Alongwith the process of paying off the debts, it will also ensure the recuperation and up gradation of the machinery of the said unit because as of today, no manufacturing/production process is being undertaken.

BRIEF SUBMISSIONS ON BEHALF OF THE RESPONDENTS (R1, R12 AND R14-R16)

16 **The Present status of the Respondent Company has been elaborately told by the Respondents as:**

- Respondent Company (hereinafter referred as R1) is having over 11,000 shareholders, 600 employees, 1000 vendors and 3000 dealers.
- Shares of R1 are regularly traded on BSE and NSE since **17.04.1979 and 26.04.2000** respectively.
- Currently, the Kapur Family, individually and through other family owned entities, hold **42.12% (now 41.92%)** of shareholding of R1.

- The Shareholding of the promoter Group has never exceeded 50% in the history of the Company. **58%** of the shareholding of R1 is held by Public shareholders, some of whom hold more shares than P1 and P2.
- Out of Respondent Nos. 12 to 16 who have been impleaded in the present petition on account of being on Board of Directors of R1, **R12** (Mr. Hira Lal Bhatia) resigned on **07.06.2020, R13** (Mr. H. K. Ahuja) passed away on **24.02.2016.**
- **Presently, the Board of Directors consists of Respondent Nos. 14 to 16, Mrs. Sadhna Syal and Mr. C.M. Dhall.**

17 The main grounds/challenges to maintainability of the Petition as raised by the Respondents are:

- The petition does not disclose any cause of action for invoking the jurisdiction of this Hon'ble Tribunal under sec 397 and 398 of the Companies Act, 1956 **(now Sec. 241 and 242 of the Companies Act, 2013)**.
- For exercising the jurisdiction under section 397, petitioners have to show that the affairs of the Company are being conducted in a manner oppressive to the minority shareholders.
- Petitioners have approached the Tribunal with unclean hands and suppressed material facts, it did not deliberately disclose to the Tribunal that before approaching this Tribunal, they already had approached the Hon'ble High court of Delhi for the similar relief in **Suit CS (OS) No. 3510 of 2014.** Petitioners just made a passing reference to the pendency of the said suit in **paragraph 7 at page 69 of the petition.**
- The petitioners further did not disclose that the petitioners moved an application being **IA 4299 of 2015** before the Hon'ble High Court on **28.02.2015** for seeking leave of the Court to withdraw the said suit indicating in the said application that the petitioners were desirous of approaching the Company Law Board. Vide order dated **09.04.2015, the Hon'ble High Court disposed of the application while observing that the Applicants/Petitioners**

had abandoned their claim but the remaining Plaintiff may continue the suit. The Suit was continued by Mr. Rajiv Kapur i.e. Respondent 18 herein. Respondent 18 took multiple adjournments before the suit was finally dismissed in default on 25.03.2019. It is further submitted that the Petitioners cannot be allowed to maintain parallel proceedings before the Hon'ble Delhi High Court and before the Hon'ble NCLT.

- Petitioners' Consent letters for application u/s 397, 398, 399, 402 of old Act (now Section 241, 242, 244 of new Act) are not in accordance with law. Only 79 consenters are shareholders of Respondent Company as on **25.09.2020. For the same, Respondents had filed an application (CA No. 272 of 2016) which challenges the maintainability of the petition in terms of Sec 399 of Companies Act, 1956 (Now Sec 244 of Companies Act, 2013).**
- In essence, the present petition seeks enforcement of the MOU signed amongst group of shareholders and the said relief cannot be granted by this Tribunal in exercise of its power under section 402 of the Companies Act, 1956 (**now Sec 242 of Companies Act, 2013)**
- It is further argued by the Respondent (R1, R12, R14-R16) that the prayer for recommending demerger of Sonepat Unit as a separate entity with all its assets, liabilities, obligations and rights etc. is absolutely misconceived and legally untenable.
- The petitioners have deliberately made misleading submission that the Company is in nature of a quasi-partnership and that the petition is validly founded on the arbitral award dated **01.11.2014.**
- Petitioners have tried to project a picture that Sonepat Unit is a wholly autonomous unit in the hands of the Petitioners. A bare reading of various resolutions passed by the R1 would clearly demonstrate that there has never been any division of the assets of Atlas of Atlas Cycles (Haryana) Ltd. amongst three groups, as

claimed in the petition or at all. There was, however, restructuring of management controls effective from **01.09.2003.**

- In the Judgement dated **02.05.2006 passed by Justice Madan Lokur in Suit No. 77 of 2003,** the Hon'ble single judge categorically held that Respondent no 1 Company was an independent juristic entity and had nothing to do with the MOU signed amongst members of Kapur Family.
- There is no manner of doubt that all the Management Committees constituted under the said resolution were to operate within the parameters of authority defined in Resolution dated **31.08.2003** and subject to overall supervision of the Board of Directors. It is pertinent to mention that vide the said resolution "excepted matters" were carved out whereby the decision on all important matters was reserved to the exclusive domain of the Board of Directors.
- The Petitioners have suppressed the true character of the Company and have tried to project that the Sonepat Unit has already been given as their share under some presumed division of assets which was allegedly effected in 2003.
- It is further submitted by the Respondents that the R1 Company continues to have a single balance sheet, a common CEO, whole time director, CFO, Company Secretary; and that Company law Department (including income tax) of the Company continues to remain centralized.
- It is in pursuance of the Board Resolution dated 31.08.2003 that the Kapur family members executed MOUs dated **31.08.2003.** Parties to the MOU only agreed through said MOUs, that they as shareholders shall not use their voting rights in any manner to dislodge/disturb the Restructured arrangement of management as reflected in the Board Resolution dated 31.08.2003. The fact remains that the MOU dated 31.08.2003 relied upon by the Petitioners was in pursuance of the Board Resolution of even date and not vice versa.

- Time and again, it has been the consistent stand of the Respondents that the Board has to act in the larger interest of the company without being governed by the internal arrangement amongst the shareholders or groups of shareholders i.e. the MOU. It is further submitted that the Board is neither a party to such arrangement nor such an arrangement guides the actions of the Board. The Board has consistently held that it has no concern with any internal understanding that may have been arrived at between various groups of shareholders.
- Respondents argued that the Articles of Association of R1 Company has remained unchanged after the execution of the MOUs dated 08.01.1999 and 31.08.2003. Therefore, the MOUs continue to remain private shareholders agreements, which are not binding on R1 Company.
- R1 heavily relied on various judgements for the proposition that **"A private agreement between the shareholders of a listed Company is not enforceable when the company is not a party to the said agreement"**
- Further, **a petition (O.M.P No. 30 of 2015)** under Section 34 of the Arbitration and Conciliation Act, 1996 was filed in January 2015 by **some of the members of the Kapur family (Sanjay Kapur)** against the arbitral award dated **01.11.2014 .**

Sec 34 of Arbitration Act is as follows:

Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

***Provided that,** if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the

application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

- It is the submission of the Respondent that Petitioners are just trying to *enforce* a private agreement against R1 Company and the same has been decided in favour of the petitioners in the arbitration proceedings vide arbitral award dated **01.11.2014** but the same has already been set aside by the Hon'ble Delhi High Court's judgement dated **03.08.2015** by Justice Murlidhar holding that **the arbitral award in so far as it contemplated division of Respondent No.1 company, the same is liable to be set aside, being opposed to public policy. The learned single judge held that a decision to restructure the Company, which is, a public limited Company and majority of shareholdings in which are held by public, cannot be left to be determined by a private arrangement between certain groups of shareholders.**
- It is the submission of the Respondent that the prayer for demerger in present petition is in essence a prayer for enforcement of the arbitral award. The grant of such prayer would be impermissible and unlawful and would be in the teeth of the judgement dated **03.08.2015** of the Hon'ble Delhi High Court in **O.M.P. No. 30 of 2015 under section 34 of Arbitration and Conciliation Act,1996**. It is further submitted by the Respondents that the learned Single Judge of Hon'ble Delhi High Court held that there cannot be any estoppel against law and restructuring of the Company has to happen mandatorily in accordance with the provisions of the Companies Act. It is not open to any of the parties to insist that irrespective of the above legal position, the MOUs entered between them must be given effect to. The learned

Single Judge held that a decision to restructure the Company, which is a public limited Company and majority of shares in which are held by public, cannot be left to be determined by a private arrangement between certain groups of shareholders. The learned Single Judge further observed that the Board of Directors (BOD) of the Company is in control of its management and affairs, the BOD has taken a consistent stand that the Company is not bound by internal arrangement between the groups of shareholders.

- Respondents argued that the Hon'ble High Court has in no manner granted any liberty to the Petitioners herein to approach this Hon'ble Tribunal for enforcement of a private shareholders' agreement in the guise of a petition for mismanagement and oppression.
- The said portion of the arbitral award already stands set aside and an appeal against the said judgment dated 03.08.2015 under Sec 37 of the Arbitration and conciliation Act, 1996 being **F.A.O (O.S.) No. 448/2015 and F.A.O (O.S.) No. 459 of 2015** which is pending adjudication before the Division Bench of Hon'ble Delhi High Court of Delhi and presently there is no stay on the operation of the judgment dated **03.08.2015** given by the learned Single Judge, **Justice Murlidhar.**
- It is submitted by the Respondents that even if the promoters of R1 Company envisioned a division of the company into three parts, the same in itself is not reason enough to grant the relief claimed. The proposed division, which remained only in contemplation of members of Kapur family, never saw the light of the day and was never put to shareholders of the company.
- Respondents further submitted that the petition is a complete abuse of legal process and tainted with malafides. The grievance of the Petitioners regarding non-enforcement of the MOU and the consequent arbitral award, is not a case of alleged oppression by majority shareholders on minority group but grievance of one management group against the Board of Directors on the misconceived assumption

that they have an inherent right to manage and control and eventually own Sonepat unit of the company, on the basis of the arbitral award.

- Even otherwise, the demerger of a unit cannot be sought except through the mechanism devised under the Companies Act, 2013 i.e. by a scheme of arrangement under the provisions of Sections 230-232 of the Companies Act, 2013. Without going through the entire process envisaged for approval of such scheme, no such scheme of demerger ought to be entertained in the guise of a petition for oppression and mismanagement and without scheme of demerger being presented for approval of the creditors and shareholders of the company.
- Respondents argued that the Petitioners are trying to consolidate and perpetuate their control over Sonepat Unit by claiming a right, which does not exist. There is no material on record whatsoever to even remotely suggest that the Board of Directors of respondent No.1 Company is liable to be superseded. The Memorandum of Understanding signed and executed by the members of Kapur Family cannot be a basis for claiming exclusive control of Sonepat Unit in perpetuity.
- It is the humble submission of Respondents that the petition has failed to make out a case of oppression and/or mismanagement. The Petitioners have to show that the affairs of the Company are being conducted in a manner oppressive to the minority shareholders. The Petitioners further have to fairly demonstrate that to wind up the Company would unfairly prejudice the said members, but otherwise facts would justify the making up of a winding up order on the ground that it was just and equitable that the Company be wounded up. Respondents submit that the present petition fails to disclose any of these two pre-conditions.
- Respondents submit that in the instant case, the demerger of Sonepat unit is not even remotely in the interest of shareholders and would in fact sound a death knell for the company as a whole.
- Another ground argued by the Respondents is that the autonomy of the Board ought not to be lightly interfered with. That the commercial

wisdom of the Board cannot be questioned on the basis of some perceived internal family division. That the said Resolution did not in any manner amount to division of ownership control of the assets of the company. The Petitioners ought not to be allowed to take a somersault and question the authority of the Board by staking a claim to the control of one unit to the exclusion of the Board on the basis of an arbitral award which has been set aside. It is humbly submitted by the Respondents that it would be an absurd situation that the Petitioners who have admittedly less than 3% shareholding in the company stake a claim to 33% assets (presently valued at more than 50% of total value of assets of the company), to the detriment of other shareholders, which include 11,000 shareholders of the general public.

- Respondents cited the judgement **dated. 02.07.2019** by Hon'ble Appellate Tribunal in **Comp Appeal no 57 of 2019** which upheld the supremacy of the Board in no uncertain terms. The Hon'ble NCLAT inter alia held that-

  " If the Board of Directors on perusal of the record finds that there is no money payable or receivable to pay to the 'Operational Creditors'/ Financial Creditors' to save it from initiation of the 'Corporate Insolvency Resolution Process', the Tribunal or this Appellate Tribunal cannot go into commercial wisdom and financial matrix of the Company to decide whether a particular asset or one or other asset is required to be sold to satisfy the liabilities of the company (Atlas Cycles (Haryana) Limited') including the liabilities of Sonepat Unit qua vendors. If the salvation for the company is improving liquidity through sale of non-performing assets of the company including the non-core assets that were proposed to be sold and servicing the territory, it is not open for the Tribunal or this Appellate Tribunal to prohibit the company from taking such decision i.e. from initiation of Corporate Insolvency Resolution Process."

- Other important background facts which have been brought forward by the Respondents are that the two applications - one made for review of the said order of the Appellate Tribunal **(C.A. No. 2278 of 2019**

dismissed vide order dated 08.08.2019) and the other made for modification of the said order (I.A. No. 3210 of 2019 dismissed as withdrawn vide order dated **24.10.2019)** by the Petitioners herein, were also dismissed by the Appellate Tribunal.

- Pursuant to the order of **Hon'ble NCLAT in Comp Appeal 57 of 2019** dated 02.07.2019, the Board proceeded to sell the non-core assets of the company including the surplus land of ten acres at Sonepat. While the sale of non-core assets has since been completed, the sale of ten acres could not be completed due to obstructions created by the Petitioners. Despite frivolous allegations made by the Petitioners, details of utilisation of sale proceeds of Bawal land and non-core assets were shared with the Petitioners herein in consonance with the directions of the Hon'ble NCLAT **(Pg. 41-51 of C.A. 416/2021).**
- It is strongly argued by the Respondents that the amount paid by Sahibabad unit against the liabilities of Sonepat unit is about Rs. 66.33 crores as on **31.03.2020. Affidavit by the director of Respondent company dated 05.05.2022, Para 4 states that as on 31.03.2020, a total sum of ₹ 69.41 crores had been paid by the Respondent 1 Company through its Sahibabad and Sonepat unit towards meeting the outstanding liabilities of Malanpur unit.** Out of the aforesaid amount, the amount paid through Sonepat unit was **26.68 crores** while the amount paid through Sahibabad unit was **42.73 crores.** He further stated that as on 31.03.2020, the Company paid a sum of ₹ 66.33 crores under the instructions of the Board, through its Sahibabad unit, relating to the liabilities of Sonepat unit. The company has successfully settled 34 IBC cases, 19 complaints under Negotiable Instruments Act and 36 other recovery cases **(@Pg. 15 of Additional Affidavit dated 14.12.2020**). A total amount of **Rs. 90 crores** has been paid to such creditors, after passing of judgement dated 02.07.2019, out of which about **Rs. 24 crores** was generated through sale of non-core assets under the charge of Sonepat unit and remaining through contributions, by Sahibabad unit.

- Respondent Company seeks to rely upon various judgments for the proposition that "The Tribunal should not lightly intervene in the internal matters of the company and the Board of Directors have the final authority".
- It is submitted by the respondents that the Conduct of the Petitioners disentitles them from grant of any equitable and discretionary relief. It is further submitted by the respondents that the petitioners have no inherent right to continue in the management and control of Sonepat Unit of the Company. Various instances of misconduct are submitted by the respondents like the petitioners' strive to run the Sonepat unit as their personal fiefdom , refusal of the management committee of the Sonepat unit to contribute towards the liabilities of Malanpur Unit, by not allowing the representative of the Board to enter into the property for the purpose of selling of surplus land that too after the resolution had been passed by the shareholders, employing bouncers to prevent entry into the Sonepat Unit, etc. It is further submitted by the Respondents that there was a steep decline in performance of the Sonepat unit over last few years leading to serious losses and it has been lying shut since March 2018 without any production.
- It has been submitted by the respondents that in spite of the directions by NCLT, NCLAT and resolutions passed by the Board, the management Committee of the Sonepat Unit has refused to operationalize the unit.
- It is pertinently argued by the Respondents that due to financial mismanagement of the Company, Respondent Company R1 was declared NPA by Central Bank of India and Bank of Baroda, drawing power of the Company becoming negative, consortium of banks recalled the entire loan and the entire outstanding loan was recovered through seizing of the Bank Accounts leading to acute financial crisis.

Respondents further submitted and specifically contended with respect to the following mentioned grounds raised by the Petitioners:

18 **Petitioners: Dummy Board : The Board of Directors is constituted by family friends, employees and relatives**

Respondents' Reply:

- The Board of Directors of Atlas is a professionally run Board. The members have been appointed in accordance with the Articles of Association of the company.
- All the Directors are suitably qualified having an expertise in their respective fields
- In the **63rd AGM** of R1 company held on **30.12.2014**, which was the last AGM before filing of the present petition, R 12 to 15 were appointed with 99.9% votes and the Petitioners herein also voted in their favour. Additionally, it is submitted that the Petitioners have also voted in favour of appointment of Directors in AGM of 30.09.2015, which was held post filing of the present petition.
- It is further submitted by the respondents that nothing has been placed on record to show that any of these appointments were not in accordance with law

19 **Petitioners allege that there was a de-facto division i.e. Atlas is a family Company operating as a de facto partnership with each group operating as an independent and separate unit, separate bank account, incorporation of subsidiaries which was implemented since 2003**

- Respondents (R1, R12, and R14-R16) submitted that the Board Resolution of **31.08.2003** was only restructuring of management controls and not division as has been shown from the resolution itself, communications of the Board and affidavit of the Petitioner No. 1 himself. The Board continued to have overall control and supervision over all three management Committees and all its employees, including the Kapurs.

- The Board has reserved all power to amend and alter the arrangement devised by it by way of Resolution dated **31.08.2003**. For example shutting down of Malanpur Unit and terminating the services of Salil Kapur i.e. R2 would constitute alterations to the restructuring arrangement devised by way of Resolution dated **31.08.2003**.

20 **Petitioners submitted that the Board did not act on the pleas of Sonepat unit while heavy losses were being incurred in Malanpur unit, further no action has been taken by the Board against the Management Committee of Malanpur unit or to recover losses**

- To this contention of the Petitioners, Respondents submitted that the Board took a prudent decision to in fact shut down Malanpur unit in view of its mounting losses vide resolution dated **05.10.2014** which is self-explanatory.
- The Board further resolved that the territories be equally divided and serviced by the other 2 units; the liabilities of Malanpur unit be met out of sale of assets of Malanpur/ ASTI/ Atlas Auto and the deficit, if any, be borne equally by Sonepat and Sahibabad unit; pending sale of such assets, Sonepat and Sahibabad shall contribute a sum of **Rs. 10 crores** each to tide over the immediate liabilities.
- In fact, it is the submission of the Respondents that Sahibabad unit contributed more towards the losses of Malanpur Unit
- The closure of Malanpur unit was a sound commercial decision and neither the High Court, nor this Tribunal interfered with the said decision at any stage. The decision to shut down Malanpur unit was taken in the best interest of the company and if anything, the said decision squarely belies the contention of the Petitioners that the Board of Directors is acting at the instance of Sahibabad and Malanpur unit. The Resolutions passed by the Board of Directors in this regard are testimony of the consciousness of the Board about these liabilities and the responsibility of the Company to clear its liability.

- In meeting of Board of Directors on 07.09.2015, it was resolved to sell the Malanpur unit of the company. It was decided to pass a special resolution via Postal Ballot. The said resolution was voted in favour by the Petitioners and approved by the shareholders on 26.12.2015. The decision of closure of Malanpur unit was subsequently endorsed by shareholders, including the Petitioners on **26.12.2015** through postal ballot.
- Mr. Salil Kapur (Respondent no. 2 herein) was responsible for financial mismanagement resulting in losses to the company. In furtherance of the same, the R1 directed a special audit for the accounts of Malanpur unit.
- All the financial and other administrative powers of Mr. Salil Kapur were suspended and eventually his services were dispensed with.
- Further, Mr. Salil Kapur was made to give an undertaking that his share in a private asset may stand charged in favour of the company against recoverable dues

21 **Petitioners next submitted regarding the hostile behaviour of Board of Directors towards the Petitioners. Also alleged that Board is controlled by Jagdish Kapur and Jaidev Kapur groups and that there was diversion of business from Atlas to Milton Cycles**

- Respondents submitted that nothing has been placed on record to show that the Board acts on the instructions of or with a motive to favour Jagdish Kapur and Jaidev Kapur groups. As already argued, the Petitioners voted in favour of the appointment of the Directors of Board along with majority of the shareholders.
- The transaction with Milton Cycles is completely at arm's length basis and in so far as Milton Cycles is also manufacturing and supplying bicycles is concerned, the said company caters to an entirely different segment under a completely different brand. Permission was sought from the Board of Directors of Atlas who

granted the permission after placing conditions on the same. Petitioner (P1), Mr. Vikram Kapur granted his no objection to the commencement of business by Milton Cycles in his letter dated **30.06.2006** addressed to the Board of Directors of Atlas

22 **Petitioners alleged that the Board reallocated favourable territories or revenue generating territories to Sahibabad unit.**

- Respondents submit that the territory allocation was made by resolution dated 05.10.2014, while recording sound reasoning. Despite repeated directions given in a series of resolutions dated 19.01.2015, 12.02.2015, 05.03.2015 and 06.04.2015, the Management Committee of Sonepat unit failed to service the territory allocated to it from the share of Malanpur unit and the Board was constrained to direct Sahibabad unit to service the remaining territory also to prevent loss of territory to competitors. Not only was Sonepat unit not able to service the allotted territory of Malanpur unit but there was a decline in its production as a result of which Sonepat was unable to even effectively service the territory originally under its charge.

  While Sonepat unit was not in a position to supply to its own territory, it kept raising a false plea of discrimination against the Board. Also, in the judgement dated 02.07.2019, the NCLAT has given fullest liberty to the Board to decide on the issue of servicing of territory. The application for modification of said order has also been dismissed **(Para 44 @ Pg. 128 of C.A. No. 257 of 2020)**

- It is submitted by the R1, R12 and R14 to R16 that there were requests for reallocation of territory by Sonepat unit. Respondents also submitted that there was considerable decline in the sales figure of Sonepat unit and therefore it was more important for Sonepat unit to channelize its energy and resources to improve its performance and concentrate on the territories already allocated to it. Considering that Sonepat unit was struggling to service its territories and Sahibabad unit had

commenced supplies, it was in the larger interest of the company to allow Sahibabad unit to continue servicing rather than losing the territories to competition.

23 Further Respondents submit that the consistent stand of the parties throughout the arbitral proceedings and before various Courts has been that neither the Company nor is the Board a party to the MOU dated 08.01.1999 or party to the proceedings arising from the said MOU. As such, the Board is not concerned with the implementation of the MOU nor is it bound by the orders passed by the Arbitrator appointed in pursuance of the said MOU. It is submitted that the prayer for demerger of Sonepat unit is legally untenable as the Petitioners have no inherent right to stake such a claim on the misconceived assumptions based on the MOUs or the arbitral award.

24 Respondent no. 1 company is a public limited listed company and its assets cannot be allowed to be divided by way of private treaty and the said position in any event stands upheld in the judgement dated **03.08.2015** passed by the Hon'ble Delhi High Court. It is further submitted by respondents that Sonepat unit is not the private property of the Petitioners which can be segregated from the company and handed over to them on the basis of the MOUs or the arbitral award. Any such claim has no sanctity in law.

25 In so far as the Resolution dated 31.08.2003 is concerned, there is enough material on record to show that the same only amounted to restructuring of management controls and by no means can be construed as a **de-facto division of the company as alleged by the Petitioners.**

26 Respondents argued that a perusal of the record would clearly reveal that though members of Kapur family are holding senior executive positions in the company, they are accountable to the Board and not the other way around. Illustratively, financial powers of various members of Kapur family have been suspended and finally taken away by the Board on multiple occasions and disciplinary action, including dismissal of service, has been taken against some members.

27 Affidavit dated **05.05.2022** by the Company Secretary, Mr. Rakesh annexed as **Annexure A-14,** states the legal cases filed by operational creditors in NCLT Chandigarh under IBC, MSME Councils and other civil courts as on **30.04.2022.** In total, there are 110 cases pending amounting to the tune of **₹80.30 crore.** Out of 110 cases, 32 cases amounting to 55.45 crore are pending in Chandigarh Bench of NCLT, 55 cases amounting to ₹ 18.42 crore in MSME Councils, 23 cases amounting to ₹ 6.44 crore are pending in civil courts.

28 Company Secretary has also annexed **Annexure A-16** stating unitwise statement of despatch of bicycles (No of Cycles Average per month). According to this document, in the year 2008-09, a total of **2,15,106** bicycles (on an average/month) were despatched by all the three units collectively. Highest production of the bicycles was in the year of 2011-12 i.e. 2,89,858 bicycles(average/month). After the year 2011-2012, production of bicycles continued to decline and it becomes 0 in the year 2015-16 for Malanpur Unit and declined to 272 in year 2018-19 for Sonepat unit and in the year 2019-20, it becomes 0 for Sonepat unit. Presently **(year 2021-2022)**, Sahibabad unit is despatching 776 bicycles per month.

REBUTTAL OF RESPONDENTS AGAINST PETITIONERS' PRECEDENTS

29 Against the case laws and precedents submitted by the Petitioners in their submissions, Counsel for Respondent No 1, 12,14-16 submit and contended against them as follows:

- Firstly, the facts in the aforesaid judgements are clearly distinguishable and the orders passed in those judgements were with reference to the peculiar facts of a particular case. Respondent specifically argued that all the cases which have been cited by the petitioners were actually wherein more than 50 % shareholding was between the partners or is divided amongst the family members. Moreover, those are the cases wherein family members themselves constitute the Board of Directors of the particular Company which

is not true in our case wherein none of the family member is on Board and nearly 58% shares are held by general public.

- Secondly, the issue is no longer res integra as the position was considered by the Apex Court in the judgement of **Reliance Natural Resources Limited vs. Reliance India Limited (2010) 7 SCC 1** (where there was a private shareholders agreement in relation to a public limited listed company and the Hon'ble Supreme Court, held in no uncertain terms that such an agreement was not binding on the company. Thus, even assuming that a proposed division of the company was in contemplation of the promoters that was in ignorance of the legal position as expounded by the Hon'ble Supreme Court in this judgement.
- Thirdly, no case has been made out by the Petitioners for oppression and mismanagement nor is there any valid or cogent justification for invoking the extraordinary powers of this Hon'ble Tribunal for passing an order for demerger, as prayed in the petition. The ratio of Needle Industries has no application to this case in as much as firstly there is no parity on facts and secondly because in that case, the Supreme Court passed the orders in exercise of its jurisdiction under Article 142 of the Constitution of India.

30 MISDEEDS OF THE PETITIONERS AGAINST THE RESPONDENT COMPANY

- Counsel for Respondent 1, R12, R14-R16 submits that the petitioner has not approached this Tribunal with clean hands.
- Counsel for Respondent Company submits that the Petitioners as Management Committee of Sonepat unit refused to contribute towards liabilities of Malanpur unit. Further, despite the company having passed a resolution regarding sale of surplus land at Sonepat unit which was also approved by shareholders on 31.08.2019, the Petitioners left no stone unturned to create road blocks in the proposed sale by not allowing the representative of the Board to enter the property,

employing bouncers to prevent entry into Sonepat unit, putting up hoardings / wall paintings all over the property that the same was disputed, approaching every proposed buyer to tell him that he would never get a clear title and they would never allow the sale to be completed without raising a dispute.

- Counsel for Respondent 1, R12, R14-R16 submitted that the Petitioners are guilty of defalcation by unauthorized payment of rent to the tune of Rs. 3.4 crores for their personal residence. Such action has been admitted by Petitioner no. 1 on the ground that he has all such powers under the Board Resolution dated 31.08.2003.
- Counsel further submits that Financial mismanagement of the company led to defaults and declaration of the account as NPA by Central Bank of India and Bank of Baroda; Drawing Power of the company becoming negative, consortium of banks recalled the entire loan facility and the entire outstanding loan was recovered through seizing of bank accounts leading to acute financial crisis. The Petitioners defaulted in servicing the said loans and siphoned out funds by diverting them to a non-consortium bank account, contrary to the directions of the Board, consortium agreement and orders of the Tribunal.
- Counsel further submits that, the Petitioners resorted to unauthorized sale of plant and machinery / scrap and stripping off assets of Sonepat unit, photographs of which were placed on record by the company. Taking note of these photographs, vide order dated 02.08.2018, the Hon'ble NCLT was pleased to prohibit the Petitioners from undertaking any such unauthorized sales.
- An attachment order dated 18.03.2020 has been passed by the Excise and Taxation Officer of the Assessing Authority in Sonepat, attaching the entire Sonepat unit, on account of non-payment of sales tax by Sonepat unit for the Assessment Year 2014 – 15 to 2016 – 17 to the tune of Rs. 4,81,86,930/-

alongwith Rs. 40,49,599/. Sonepat unit was sealed for non-payment of property tax to the Municipal Corporation of Sonepat for the FY 2016 – 17 to FY 2019 - 2020 vide notice dated 18.02.2020. Even this liability pertains to the period when Sonepat unit was functional.

31 Respondent's Counsel further submitted that, while this Hon'ble Tribunal has plenary powers, the said powers are circumscribed by the provisions of the statute and cannot be equated with the powers of the Supreme Court in exercise of jurisdiction under Article 142 of the Constitution of India. Even otherwise, there is no valid justification for exercise of this power in favour of the Petitioners for the reasons stated hereinabove.

TURNAROUND STARTEGY (REVIVAL PLAN) BY RESPONDENTS (R1, R12, R14-R16)

32 Respondents (R1, R12, R14-R16) also submitted a "turnaround strategy (Revival plan)" on behalf of Atlas Cycles (Haryana) Limited wherein it has stated that:

- Currently, the Company is facing liquidity crisis. In the absence of funds from the market, the Company needs to sell the "Available Non-Operating/Non-Performing Assets" to revive the company. With the sale of land, building and plant and machinery of Sonepat unit which is the only non-productive asset available for sale with the company, the company will be able to get around Rs 150-175 Cr and will be able to revive its operations.
- The Board of Directors made its own assessment based on the data available and also had a Feasibility study conducted through an expert namely **M/s. Vision One Training and Advisory Pvt Ltd**. The sum and substance of the said Feasibility Report was that the only viable option for revival of the company is through **induction of requisite funds to the tune of about INR.100 crores,**

- Basis the Feasibility Report, the Board of Directors took a conscious decision to sell the land, building, plant and machinery at Sonepat unit for which a Resolution was passed
- Out of the sale proceeds, company will settle the pressing statutory liabilities of **INR.27.70 crores.**
- For Operational creditors, company is planning to offer to pay **INR.72 crores** of outstanding dues of **INR.127.70 crores** as upfront payment and balance shall be paid in phases once creditors streamline the supply of raw material. Thus, under this head company will incur a cost of **INR.72 crores as upfront payment.**
- Further, around **INR.50 crores** shall be used to fund the working capital requirement of the company.
- The funds generated through the said sale can be deployed towards working capital and the company can look at a turnaround situation within a period of 3 – 5 months.

33 Respondents further submitted that Current Installed Capacity (in terms of Production & Sales) of **SAHIBABAD UNIT** is **25 Lakh cycles per annum** which is sufficient to cater to all India and Export market of the company, with the support of working capital and the only unit of company which is technically feasible and economically viable.

34 <u>Brief submissions (dated 06.05.2022) on behalf of Respondent Nos. 3 to 11(Malanpur and Sahibabad Respondents) are as follows:</u>

- The Respondent Nos. 3 to 11 represents the other two groups of Promoters **(representing Mr. Jaidev Kapur Group and Jagdish Kapur Group)** of the R1. Pertinently, there are about 11,000 independent shareholders of the company which account for **nearly 58%** of the total equity of R1.
- It is the submission of the R3 to R11 that the reliefs prayed for in the petition, are essentially to seek specific enforcement of the MOU dated 31.08.2003 as endorsed in the arbitral award dated 01.11.2014. It is

further submitted by the R3 to R11 that the said relief is outside the purview of jurisdiction of this Hon'ble Tribunal.

- A perusal of the pleadings within the Petition makes it clear that the Petitioners (P1 and P2) view the assets of Sonepat Unit as an inheritance and are thus seeking a demerger of the R1 Company, basis a family arrangement without the knowledge, prior approval and consent of the 11000 public shareholders, having majority share over the Kapur Family Group.
- It is submitted that the present petition has been filed in order to evade the statutory requirements contained in the Companies Act regarding scheme of restructuring a Company under Chapter XV "Compromises, Arrangements and Amalgamation" **section 230 to 240 of Companies Act, 2013.** The equitable jurisdiction of this Hon'ble Tribunal cannot be utilized to blind side the public shareholders and implement a family settlement that has not been acted upon substantially since the year 1999.
- R3 to R11 submit that "If a statute provides for a thing to be done in a particular way, then it has to be done in that manner. When the statute contains a specific provision, then the Court should not exercise inherent or residuary powers". Respondents relied on various judgments to substantiate their argument.
- It is further submitted that R1 Company was not a party to either of the two MOUs or the arbitration proceedings arising therefrom between certain members of the Kapur Family. The unified stand of all the parties before the Arbitrator and other judicial proceedings was that company is not bound by the arbitral proceedings or the arbitral award. Even the Arbitrator has clearly ruled that he has no jurisdiction over R1 Company.
- Another contention raised by R3 to R11 is that "a private agreement between the shareholders of a listed company is not enforceable when the company is not a party to the said agreement."
- It is further submitted that even assuming, though not admitting, that MOU dated 08.01.1999 and 31.08.2003 could be enforceable

against the company, the substratum of the said MOUs is lost due to change of situation over a passage of time. It must be noted that from its very inception there have been disagreements with respect to the applicability of the MOU within the Kapur Family. Mr. Arun Kapur, the brother of the Petitioner No.1 had challenged the valuation report made in pursuance of the MOU in the year 2003 before the Hon'ble Delhi High Court and was not a signatory to the MOU executed on 31.08.2003. The fundamental condition in the MOU contemplated one bicycle manufacturing unit to each family group, which condition has now become impossible to be achieved. While one bicycle manufacturing unit namely Malanpur has shut down and the assets of the same sold, the other manufacturing unit namely Sonepat is presently lying closed for over three years. Further various fixed assets of the Company have been sold over a period of time, coupled with this, the valuations of the assets have substantially changed thereby rendering the entire MOU completely meaningless. The MOUs having remained unimplemented for nearly two decades have become meaningless as the ground situation and the assumption on which the MOUs were founded has substantially changed.

- R3 to R11 submitted various grounds based on which the MOU between the parties cannot be implemented. Few of the grounds taken by them are- like the MOU required maintenance of status quo by all parties whereas the shareholding structure of different parties has undergone substantial change. The Petitioners themselves have sold off half their shareholdings during the pendency of the present proceedings. The MOU was between three family units and not individuals. The Petitioners only constitute 1/3 of one group and Arun Kapur family has not even been made a party to the present proceedings.
- R3 to R11 further submit that the jurisdiction of the Hon'ble Tribunal under section 397 **(now Sec 241 of Companies Act, 2013)** is an

equitable jurisdiction therefore the assets need to be divided equally between the parties. With Malanpur unit closed and Arun Kapur family group not a party to the proceedings, equitable relief cannot be granted in this petition.

- It is further submitted by the Respondents 3 to 11 that the petition, in its large part, is based on the MOUs dated 08.01.1999 and 31.08.2003 and the resultant arbitral award. The foundation of the petition is completely lost as the arbitral award, in so far as it relates to Respondent no.1 company, has since been set aside by the Delhi High Court after filing of the instant petition.
- The allegations made against the management committee of the Sahibabad/Malanpur Unit and the alleged nexus between the BOD of Atlas and the said management committee are clearly unfounded and not substantiated by any material on record.
- The Petitioners have attempted to mislead this Hon'ble Tribunal by alleging that the restructuring of management of the manufacturing units by the Respondent No.1 vide Board Resolution dated 31.08.2003 amounted to division of the assets of the Company and consequently Sonepat Unit is a wholly autonomous Unit under exclusive control of the Petitioners. A mere perusal of the language of the Board Resolution dated 31.08.2003 would demonstrate that the Board of Directors merely affected a "*restructuring of control, power, duties and responsibilities*" which was subject to the "*general superintendence and control of the Board of Directors.*" The supremacy of the Board of Directors may also be gauged upon reference to reserved matters which could not be independently decided by any manufacturing unit without prior approval of the Board. The autonomy of day to day functioning was only limited to and to the extent of "*interference from other units*" meaning members of one family group could not interfere in decisions of other manufacturing units. The said intention of the Board is reinforced by the language of the Resolution which states that

"to avoid duplication and interpolation of work and exercise of authority of functions all units shall have complete autonomy of operations subject to the overall control of the Board of Directors."

- The Board of Directors in its wisdom tried to ensure that the restructuring would avoid any deadlock situation and further resolved that *"any difference, disputes and doubts, about the matters governed by these resolutions shall be settled by the Board and the decision of the Board shall be binding on all units or their functional authorities or representatives."*
- The Petitioners have attempted to project the R1 as a family Company running as a quasi-partnership, despite R1 Company being a public limited company run by an independent and qualified Board of Directors elected by its share-holders in accordance with law. In fact, the R1 Company consciously chose not to induct any member of the Kapur family into the Board of Directors and directed independent names to be nominated by each manufacturing unit vide a Board Resolution dated **29.08.2013**. Consequently it is submitted that each unit nominated one member for the Board and consequently three new members (one nominated by each Unit) were impleaded into the Board and that **Mr. Vikram Khosla (R17)** was nominated by the Petitioners.
- Counsel for R3 to R11 relied on the Judgement dated **02.05.2006 by Justice Madan Lokur in Suit No. 77 of 2003 and Judgement dated 28.01.2015 By Justice Indermeet Kaur in CS (OS) No 3510/2014. In the Former Judgement, Hon'ble Justice held that** that the company had nothing to do with the MOU entered into amongst the members of Kapur family. The said order has attained finality as the appeal filed against the order has since been withdrawn and in the latter Judgement Hon'ble Justice vacated the interim injunction and held that petitioners failed to make out a prima facie case in their favour and that the Board had full powers to make all decisions for the overall benefit of the Company. The Court further observed that

the Board Resolution dated 31.08.2003 evidence the overall control and authority of the Board over the Management Committees.

- Further, R3 to R11 placed reliance on the Judgement dated **03.08.2015** by Justice Muralidhar wherein the learned Single Judge held that

  "a decision to restructure the company, which is a public limited Company and majority of shareholders in which are held by public, cannot be left to be determined by a private arrangement between a certain groups of shareholders." Appeal against the said judgement is pending before the Division Bench, however no stay has been granted.

- It is further submitted by the Respondents that the relief prayed for in the present petition is demerger in terms of the MOU executed amongst Kapur Family, which was the subject matter of appeal filed under section 37 of the Arbitration and Conciliation Act, 1996 by the Petitioners against the judgment of the Learned Single Judge setting aside the arbitral award which divided the assets of the Respondent No.1 in terms of the MOU. The question thus to be addressed is *"whether during the pendency of the appeal and the operation of the judgment setting aside the arbitral award, can this Hon'ble Tribunal pass orders under a petition for oppression and mismanagement when the Petitioners' rights under the MOU are still being adjudicated before the Division Bench of the Hon'ble High Court of Delhi."* Respondents challenge this petition on the maintainability of a case for oppression and mismanagement when eligibility criteria is not met and case is pending in Civil Suit. To substantiate their argument, respondents relied on the case of **Aruna Oswal vs. Pankaj Oswal and Ors.** AIR 2020 SC 3088 **(Paras 21, 24, 29 to 33) wherein it was held that "**Such adjudication is also barred by the principle of **"issue estoppel".** Respondents further submitted that grant of relief in the present petition would be in conflict with the judgement passed by the Single Judge of Delhi High Court.

- Further the plea taken by the Petitioners regarding division of Atlas in terms of the MOU resulting in creation of subsidiaries as per

resolution dated 23.01.1999 granting them exclusive right to Sonepat unit has been taken before the Hon'ble NCLAT (Judgement dated **28.08.2018 and 02.07.2019** on two different occasions and the same has been shot down. Respondents submit that those observations of Hon'ble NCLAT and the Hon'ble Delhi High Court are binding upon the Hon'ble Tribunal considering that no appeal was filed against these judgements and they have attained finality.

- It is further submitted by the Respondents that the Petitioners have failed to disclose, much less establish any cogent and tangible allegation of oppression and mismanagement. It is apparent from the conduct of the Petitioners that the present petition has been instituted for the oblique motive of the Petitioners for demerger of the Company so Petitioners No. 1 & 2 with a total shareholding of barely 2% may walk away with one unit the asset value of which is about 60% or more, of the total assets value of the Company. Though the relief prayed for by the Petitioners are in the nature of demerger of the Company but what is actually being sought is the dismemberment of a manufacturing unit and the transfer of the ownership of said unit to the Petitioners. It goes without saying dismemberment of a manufacturing unit of a Public Limited Company is not supported by any provisions under the Companies Act and the equitable powers under section 242(m) cannot be utilized for the individual benefit of two members of a Company.
- It is further pointed out by the R3 to R11 that the Financial Mismanagement of Sonepat Unit by the Petitioners and Respondent No.18 i.e. Rajiv Kapur led to the Respondent No.1 Company being declared as an NPA. Sonepat Unit/Petitioners failed to pay the loan sanctioned to service government tenders. Sonepat Unit was also found to be diverting fund to a non-consortium Bank. Various communications by the Consortium Banks evidence the evasive conduct of the Petitioners towards payment of dues owed to financial institutions. Sonepat Unit also failed to pay its fixed deposit holders

on account of which the R1 Company was directed by the Hon'ble NCLT, Chandigarh to disburse the amount, which was paid through the fund made available by Sahibabad unit. **(Pg. 112-116 of CA 1033/2018).** Respondent alleges the Non- payment of tax by Sonepat Unit resulted in the attachment of land by the Excise & Taxation Authority **(Pg. 667 to 668 *of Respondent No.1 Convenience File Vol. II.)***

- Despite the company having passed a resolution regarding sale of land at Sonepat unit which was also approved by shareholders on **31.08.2019 (@ Pg. 459 to 469 *of Respondent No.1 Convenience File Vol. II*)**, the Petitioners willfully obstructed the proposed sale as voted in favour of by the Shareholders. It must also be noted that the Petitioners employed unscrupulous personnel such as hired bouncers to prevent entry to the representatives of the Board, created hindrances by placing boards/wall paintings over the property to dissuade any potential buyers, approached potential buyers warning them that they shall never receive any clear title over the land and so forth.
- It is strongly submitted by the Respondents that Petitioners claim over Sonepat is limited solely to its assets, however when the liability/responsibility to pay the debts owed to lenders, financial institutions, vendors, operational/financial creditors, fixed deposit holders arises, the same have been met by the R1 Company through the fund galvanized by Sahibabad Unit as the only remaining operational manufacturing unit of the Respondent No.1 Company. The amount paid by R1 Company through its Sahibabad unit towards the liabilities of Sonepat unit is **₹ 66.33 crores (*@ Pg. 5 of Affidavit dated 5.05.2022 by Director of Respondent No.1*)** The R1 Company has successfully settled 34 IBC cases, 19 complaints under NI Act and 36 other recovery cases **(@Pg592 of Respondent No.1 Convenience File Vol. II.)** A total amount of **Rs. 90 crores** has been paid to such creditors, after passing of judgment dated 02.07.2019 by the Hon'ble NCLAT (wherein it was held that it was within the

commercial wisdom of the Board of directors to deal with the assets of the Company), out of which about **Rs. 24 crores** was generated through sale of non-core assets and remaining through contributions by Sahibabad unit. A total of Rs. 90 cr. Liability of Sonepat unit has been paid till date by Respondent Company (Rs. 66.33 crore from Sahibabad Unit and Rs. 24 cr. From sale of non-core assets). The closure of Malanpur Unit was done vide Board Resolution dated 05.10.2014 and subsequently the sale of assets of Malanpur Unit after passing special resolution dated 26.12.2015 via postal ballots which were approved by the Shareholders in accordance with law. The financial debts of Malanpur Unit were met by the sale of its assets, any shortfall was to be met equally by the other two units. As on 31.03.2020, a total sum of **Rs.69.41 crores** have been paid by the R1 Company towards meeting the outstanding liabilities of Malanpur Unit. Out of the aforesaid amount ₹ **26.68 Crores** was paid through Sonepat Unit and ₹ **42.73 Crores** was paid through Sahibabad Unit ***(@Pg. 5 of Affidavit Dated 05.05.2022 by Director of Respondent No.1.)***

- It is further submitted by the R3 to R11 that two out of three manufacturing facilities of the company are lying dysfunctional and the third facility is also operating in limited measure, the losses of the company are mounting day by day. As on **30.04.2022**, a sum of ₹ **155.4 Crores** ***(@Pg28 to 37 of Affidavit Dated 05.05.2022 by Company Secretary of Respondent No.1)*** is due and payable by the company to the operational creditors, statutory dues, wages, salaries and other dues of the Company. Most of these liabilities pertained to Sonepat unit, now pertain to Sahibabad unit for the reason that Sahibabad unit having paid out the liabilities of Sonepat unit, the outstanding dues of Sahibabad unit has significantly increased.

35 Brief Submissions of R3 to R6 against the alleged acts of oppression and Mismanagement are:

- As regards the alleged acts of the Oppression and Mismanagement and regarding the biased behaviour of the Board towards Jaidev Kapur Unit and Jagdish Kapur Unit is concerned, the Respondents R3 to R6 submit that there is nothing on record to suggest that the Board of Directors of the Company are biased in favour of Jaidev Kapur Group and Jagdish Kapur Group. The decision to shut down the Malanpur Unit was taken in view of financial decline of Malanpur Unit and to arrest further losses in the Company. The reasons for taking the said decision are specifically detailed in the Board Resolution itself.
- **Another act of Oppression which Petitioners allege is with respect to alleged acts of R2 i.e. Mr. Salil Kapur, President of Malanpur Unit, has admitted to siphoning of funds in Malanpur Unit & R2 had tendered his resignation as the President of Management Committee of Malanpur Unit vide letter dated 31.07.2013 and R2 also assigned all his powers and liabilities of Malanpur Unit to his son.** To this, Respondents R3 to R6 submit that Mr. Salil Kapur has not admitted siphoning of funds. However, he did admit while tendering his resignation that he had withdrawn various amounts as drawings from the accounts of the Company in his name as also in the name of other entities owned and controlled by Mr. Salil Kapur and his family members. He undertook to pay back the said amounts.
- Also, the R1 Company has secured an indemnity from Mr. Salil Kapur in which he has undertaken that his share in the property of **JDC** (Jankidas Kapur & Co.) shall stand attached in favour of Atlas as and when the said property is sold and the indemnity is coupled with a guarantee of Mr. Sanjay Kapur.
- **Petitioners also allege that the Board has not taken any coercive step against the acts of Mr. Salil Kapur (R2).** To this, R3 to R6 submit that Mr. Salil Kapur was advised not to report to work till a final decision is taken by the Board about acceptance of his

resignation and all financial powers, including bank powers, in the Company were withdrawn with immediate effect as per Board Resolution dated 14.08.2014. To effect recoveries of about **₹ 14.04 crores**, an undertaking was taken from Mr. Salil Kapur duly counter signed by Mr. Sanjay Kapur that his share of property of JDC Connaught Place, New Delhi will be attached and sale proceeds to that extent will be remitted directly to Atlas. An application has been filed on behalf of Atlas Cycles for impleadment as a party in CS 57007/2016 which is a suit for dissolution of partnership and rendition of accounts in respect of the partnership firm namely Jankidas & Co. Vide an order dated 09.04.2019 Patiala House Court has allowed the application impleadment and created a charge to the tune of ₹ 14, 03, 73,171 in favour of Atlas from the share of Mr. Salil Kapur.

- Also, in its meeting held on **19.11.2014** the Board resolved to initiate appropriate legal proceedings against Mr. Salil Kapur. In pursuance of the said Board Resolution, a criminal complaint has already been filed against Mr. Salil Kapur for unlawful drawings made by him and the same is pending adjudication in the Court of Learned Additional Chief Metropolitan Magistrate, Tis Hazari Court, Delhi.
- **Petitioners allege that the liabilities of Malanpur Unit to the tune of Rs.16 Crores i.e. Rs.8 Crores each would be paid by Sonepat and Sahibabad units on instruction of Board of Directors which was a step to shifting the liabilities of Malanpur Unit to Sonepat Unit.** To this, Respondent R3 to R6 submits that the accounts of Sahibabad Unit as well as Sonepat Unit were debited on number of occasions by the consortium bankers to recover the amounts due on account of servicing of loans availed of by Malanpur Unit and interest thereon. As a matter of fact, the liability borne by Sahibabad Unit in that regard is far in excess of the liability borne by Sonepat Unit so far. Even in the Resolution dated 05.10.2014, the Board has categorically stated that liabilities of Malanpur Unit are to be made

out of sale of assets of Malanpur Unit and in the deficit, if any, same to be borne by Sahibabad and Sonepat Units in equal share.

- Respondents further submit that as on 31.03.2020 a total sum of Rs.69.41 Crores have been paid by the Respondent No.1 Company towards meeting the outstanding liabilities of Malanpur Unit. Out of the aforesaid amount, Rs.26.68 Crores was paid through Sonepat Unit and Rs.42.73 Crores was paid through Sahibabad Unit **Affidavit Annexure 2 (page no 5) dated 05.05.2022 by Director i.e. R14 is annexed.**
- **Petitioners next alleges that overwhelming evidence being placed before the Board in the form of complaints from suppliers, creditors, legal notices being served on persistent defaults in payments, note of caution being received from the consortium bankers that the wilful and persistent defaults on part of the Malanpur unit would affect the financial credibility of the Respondent No.1 Company, no effective, concrete or remedial action was taken by the Board and instead repeated opportunities were given to the members of the Management Committee to submit explanation thereby continuously exposing the company to financial risks and liabilities.** Respondent R3 to R6 denied this allegation and submitted that various Resolutions passed by the Board from time to time bear testimony to the fact that the Board has taken every possible action relatable to creditors, suppliers and also service of loan and interest of consortium bankers. However, financial health of Malanpur Unit went from bad to worse and the Board was finally constrained to take a decision to shut down the said Unit and devise such remedial measures as were considered prudent and necessary to save the Company and its business.
- **Petitioner alleges that BOD of R1 Company consists of Majority representative of Jagdish Kapur Group and Jaidev Kapur Group.** Respondents denied this and submitted that Mr. Hira Lal Bhatia **(R12)** has been a Director since 1979, Mr. Hari Krishan Ahuja **(R13)** (since deceased) since 1990 and Mr. I.D. Chugh **(R16)** has been a

Director on the Board since 1988. It is relevant to mention that all these three persons have continuously remained on Board of Directors and were, in fact, inducted on the Board while Mr. B.D. Kapur i.e. the father of the petitioners was at the helm of the affairs of the Company as the President of the Company. In 2013, pursuant to demise of Mr. J.N. Sahni, Mr. P.R. Chawla, the Board of Directors decided to enlarge the size of the Board by inducting three new Directors. The Board of Directors called upon all three Management Committees to suggest suitable names for the post of Directors. Out of recommendations received Mr. Kartik Roop Rai **(R14)**, Mr. Sanjiv Kavaljit Singh **(R15)** and Mr. Vikram Khosla **(R17)** were inducted as Directors. Merely because the said persons were recommended by a particular Management Committee does not in any manner go to show that they are representations of that particular Unit.

- It is not out of place to mention that in the AGM which was held on 30.12.2014, the petitioners themselves voted in favour of re-election of all these Directors and the said Directors were re-elected with more than 99% votes pooled in their favour.
- **Petitioner again alleges the lenient and ignorant behaviour of the Board towards the complaint of misdeeds of Malanpur Unit.** Respondent 3 to 6 denied all these allegations and replied that the Board also directed conduct of a special audit by the statutory auditors into the affairs of Malanpur Unit to enquire into the concerns raised by Mr. Vikram Kapur Group and the reports submitted by statutory auditors did not confirm the said allegations.
- Respondent further submits that resignation of Mr. Salil Kapur was kept in abeyance on account of the fact that substantial recoveries were to be made from Mr. Salil Kapur. The Board also resolved to file appropriate legal proceedings against him which have since been initiated. Thereafter, the Board obtained an undertaking from Mr. Salil Kapur to the effect that his share in partnership from Jankidas & Company shall stand attached in favour of Atlas Cycles. His resignation was finally accepted after he furnished the said

undertaking. Atlas has already moved an application for impleadment as a party, in the pending suit for dissolution of Jankidass & Co. and for rendition of accounts, which has since been allowed vide order dated **09.04.2019.**

- **Petitioners submit that the Respondent No.17 i.e. Director Mr. Vikram Khosla has been pointing out various shortcomings in the statutory compliances in the financial reports being submitted by the various units of R1 Company. The Respondent No.17 has also been reporting discrepancies in book of accounts. All the discrepancies were brushed away by the Board.** Respondents R3 to R6 contended that the legitimate concerns raised by respondent No.17 have always been suitably attended to by the Board of Directors. However, respondent No.17 has assumed to himself the role of a trouble shooter always disagreeing with the majority of the Board of Directors and always espousing the cause of Sonepat Unit which is headed by his brother-in-law i.e. petitioner No.1. Suitable action has been taken from time to time by the Board of Directors on the concerns raised by respondent No.17 as is clear from the various Board Resolutions.
- **Petitioners allege the sale of assets of the Company without approval of shareholders keeping them in complete dark against the interest of the Respondent No.1 Company.** Respondent R3 to R6 submit that the assets of the Company which have been sold (even those sold during the pendency of the present proceedings) including land of tube mill at Gurgaon, Atlas Auto Rasoi, Sonepat, land of tube mill at Bawal, for all these transactions suitable Board approvals were taken and at the time of each sale, all three Management Committees were asked to invite bids so that the property could fetch the best price. Committees were constituted to receive and appraise bids and after following all statutory norms the said properties were sold.

36 **BRIEF SUBMISSIONS ON BEHALF OF RESPONDENTS R7 TO R11 ARE AS FOLLOWS:**

- **Petitioners alleged that the legitimate profits are transferred to Milton Cycles Pvt. Ltd.** To this allegation, R7 to R11 submit that Milton Cycles is a Public Limited Company and not a private limited Company. Also, Mr. Vikram Kapur (Petitioner 1, herein), till recently (about a year back) was one of the Directors in the said Company. Milton Cycles Ltd. is manufacturing bicycles in a cheaper price segment which is not offering competition to R1 Company. Milton Cycles Ltd. sought prior approval of respondent No.1 Company before entering the said market segment. A requisite Resolution was passed by the Board of Directors of respondent No.1 in this regard on **30.06.2006**. It is also relevant that Petitioner herein gave a No Objection in writing to the Board of Directors for Milton Cycles entering into the bicycles market. It is further relevant that Milton Cycles is selling bicycles only in the territory relatable to Sahibabad Unit and is not offering any competition in the territory being serviced by Sonepat Unit. In so far as the sales from Milton Cycles to R1 Company are concerned, the same are made at absolutely competitive prices and in accordance with the transfer pricing norms and it is absolutely incorrect to suggest that any profits are being transferred to Milton Cycles Ltd.
- **Another allegation of the Petitioners regarding the recovery of funds paid to the Malanpur Unit is being done by the Sahibabad unit by taking away the Income Tax rebate and Export Draw Back (Export Rebates) of Malanpur Unit.** To this, R7 to R11 submit that Atlas Cycles (Haryana) Limited maintains a common Duty Drawback Account No. 420900CA00003336 with Punjab National Bank, ICD, Tughlakabad, New Delhi branch for all the three Units i.e. Sonepat, Sahibabad and Malanpur. Further the aforesaid account at the relevant time is operated by Atlas Cycles (Haryana) Limited, Sonepat Unit only. Other units used to get the Duty Drawback claim amount

on the basis of Bank Statement/ Specific Shipping Bill number forwarded to Atlas Cycles (Haryana) Limited, Sonepat Unit after settlement of the claim from Duty Drawback Authorities. As such no Duty Drawback amount received by Sahibabad Unit was pertaining to exports made by Atlas Cycles (Haryana) Limited, Malanpur Unit. The latest position is that upon reconciliation, an amount of ₹ 88 lakhs is found payable by Sonepat unit to Sahibabad unit and Board of Directors has already issued appropriate directions in that regard.

- It is pertinent to mention that Income Tax is centralized at Sonepat unit and Income Tax is paid for the Company as a whole based on the profits of the Company in consolidated balance sheet of the Company. Purely for internal accounting purposes, unit wise distribution is made based on profits of each unit. Thus, there is no occasion for Sahibabad Unit to take any benefit of income-tax rebate relatable to Malanpur Unit. In so far Income Tax Refund is concerned, the refund received from time to time is to be allocated to various units and the statutory auditor has been entrusted with the responsibility of ascertaining the extent of such allocation.
- **Petitioners allege that Sahibabad Unit has been selling cycles in Malanpur Unit's territory without the permission of the Board.** R7 to R11 submit that by the Resolution passed on **05.10.2014**, the Board allocated part of the territory which was earlier being serviced by Malanpur Unit to Sahibabad Unit and Sahibabad Unit has been supplying bicycles to the said territory in pursuance of the mandate of the Board. Sonepat Unit while refusing to service the territory allocated to Sonepat Unit, has been surreptitiously and unlawfully supplying bicycles in that portion of Malanpur territory which was not even allocated to Sonepat Unit. In fact, in the Resolution passed by the Board of Directors on **12.02.2015**, this position was admitted by Mr. Vikram Khosla (Respondent 17) on behalf of Sonepat Unit who assured the Board of Directors that any such unauthorized intrusion in the territory shall be stopped forthwith.

- **With respect to the allegation of Petitioners regarding the allocation of the more profitable territories of Malanpur unit to the Sahibabad unit by the Board on the suggestion of Respondent 3,** R7 to R11 submit that it was done prudently by the Board. While passing the Resolution on 05.10.2014, the Board clearly observed that the territory division was made on the basis of the suggestion made by Sanjay Kapur who was best conversant with the territory being serviced by Malanpur Unit and the proposed allocation of territories was considered prudent by the Board. It was further resolved that Sonepat and Sahibabad Units shall be at liberty to alter the territory division in the said Resolution through mutual consent under written intimation to the Board. If Sonepat Unit was not satisfied with territory allocation they could have easily approached the Board instead of defying the said Resolution with impunity and challenging the validity of the same firstly before the High Court and now before this Hon'ble Tribunal. In the meeting held on 05.03.2015, the Board once again took note of the fact that Sonepat Unit had not started servicing the territory allocated to it which was earlier being serviced by Malanpur Unit. The Board once again directed Sonepat Unit to forthwith comply with the resolution dated 05.10.2014 and submit a report of compliance within a period of 7 days from the date of communication of the resolution. The Board was further constrained to resolve that in the event of failure on the part of Sonepat Unit to start servicing the territory allocated to it within a period of 7 days from the date of communication of the said resolution, the Management Committee of Sahibabad Unit may start servicing the said territory.
- Further, the Board clarified that servicing of the said territory by Sahibabad Unit shall not affect the liability for contributions to be made by Sonepat and Sahibabad Units in terms of the resolutions passed by the Board of Directors from time to time to meet the liabilities of Malanpur Unit. Despite the aforesaid resolutions, Sonepat Unit failed to service the territory allocated to it and consequently in

its meeting held on **06.04.2015**, the Board was constrained to note that while Sonepat Unit had not started servicing the territory allocated to it, Sahibabad Unit had already started servicing the said territory in pursuance of the resolution dated 05.03.2015. The Board accordingly directed that the said territory may continue to be serviced by Sahibabad Unit. The Board took note of the representation made by Sahibabad Unit that they had started servicing the said territory and had spent considerable amounts in organizing infrastructure for servicing the said territory. Keeping in view the fact that the petitioners failed to even begin the servicing of the said territory for nearly six months after the date of passing of resolutions by the Board of Directors, the Board of Directors noted that the said territory has already been serviced by Sahibabad Unit for a few months, the Board considered it prudent that it may not be in the larger interest of the Company to reallocate and regroup the territory at that stage.

- It is pertinent to mention here that while there were requests for reallocation of territory by Sonepat Unit, the Board was also mindful of the fact that there was considerable decline in the sales figure of Sonepat Unit and the Management Committee of Sonepat Unit was accordingly advised to bring up its performance and concentrate on its own sales rather than channelizing its energy and resources in claiming to service the territory which was already being successfully serviced by Sahibabad Unit. The sales turnover of Sonepat Unit, over a period of time, was a clear indicator that it was not able to fully service the territory which was originally carmarked for it and therefore, the allocation of any further territory to Sonepat Unit would only amount to eventually losing the said territory to competition.
- **Petitioners allege that the BOD of R1 Company consists of all representatives of Jagdish Kapur Group and Jaidev Kapur Group.** Respondents (R7 to R11) submit that Mr. Hira Lal Bhatia had been a Director since 1979(has resigned in 2020), Mr. Hari Krishan Ahuja (since deceased) since 1990 and Mr. I.D. Chugh has been a Director

on the Board since 1988. It is relevant to mention that all these three persons have continuously remained on Board of Directors and were, in fact, inducted on the Board while Mr. B.D. Kapur i.e. the father of the petitioners was at the helm of the affairs of the Company. On account of demise of Mr. Hari Krishan Ahuja, the Board of Directors decided to enlarge the size of the Board by inducting three new directors. Accordingly, Mr. Vikram Kapur, Gautam Kapur and Mr. Girish Kapur offered to be a part of the board. However, the said request was declined by the board of directors stating as a matter of policy, senior executives cannot be appointed as directors as they are drawing salary from the company. .Out of recommendations received Mr. Kartik Roop Roy, Mr. Sanjiv Kavaljit Singh and Mr. Vikram Khosla were inducted as Directors. Merely because the said persons were recommended by a particular Management Committee does not in any manner go to show that they are representatives of that particular Unit.

- It is not out of place to mention that in the last AGM which was held on 30.12.2014, the petitioners themselves voted in favour of re-election of all these Directors and the said Directors were re-elected with more than 99% votes pooled in their favour. There is nothing on record to even remotely substantiate the allegation that the Board of Directors of the Company are representatives of any Group or are siding with any particular person/Unit.
- In the end, Respondents submit that in petitions under section 241 and 242 irrespective of what is pleaded the paramount consideration of the Hon'ble Tribunal is the interest of the Company. For the same R3 to R11 cited Judgement of **Amritsar Swadeshi Woollen Mills Private Ltd. vs. Vinod Krishan Khanna** 2019 SCC Online NCLAT 166 **(Para 59) and TATA Consultancy Services Ltd. vs. Cyrus Investment Pvt. Ltd. & Ors.**- (2021) 9 SSC 449 **(Para 113, 115, 136, 138,140, 163 to 165, 181, 18)**

CA/ 257/2020 & CA/ 416/2021

37 The Application **(CA 257/2020)** has been filed on **12.05.2020** on behalf of Respondent nos. 1, 12 14 to 16 under Rule 11 of NCLT Rules, 2016 for seeking indulgence of this Hon'ble Tribunal for certain urgent reliefs. The reliefs prayed by applicant are as follows:

a). Permit the company to sell the land, building, plant and machinery of Sonepat unit, subject to all necessary approvals;

b). Pass any such appropriate orders and/or directions as this Hon'ble Tribunal deems fit in the interest of justice.

38. The Application **(CA/416/2021)** has been filed on **06.09.2021** on behalf of Respondent No. 1 under Rule 11 of NCLT Rules, 2016 and prayed for the following reliefs:

a. Appropriate directions be issued for the company to sell the land, building, plant and machinery of Sonepat unit, subject to all necessary approvals;

b. Pass an ad interim ex parte order in terms of prayer (a) above;

c. If necessary, C.A. No. 257 (PB) of 2020 be taken up for hearing without being linked to hearing in the main petition in partial modification of order dated 16.07.2020;

d. Pass any other order.

39. Submissions of Applicant in CA 257/2020 and CA 416/2021 are as follows:

- Pursuant to NCLAT order in Comp Appeal No. 57/2019 dated 02.07.2019, the Board proceeded to sell the non-core assets of the company including the surplus land of ten acres at Sonepat. While the sale of non-core assets has since been completed, the sale of ten acres could not be completed due to obstructions created by the Petitioners. Despite frivolous allegations made by the Petitioners, details of utilisation of sale proceeds of Bawal land and non-core assets were

shared with the Petitioners herein in consonance with the directions of the Hon'ble NCLAT.

- The amount paid by R1 company through its Sahibabad unit towards the liabilities of Sonepat unit is about INR.66.33 crores as on 31.03.2020. ***(@Pg. 5 of Affidavit dated 05.05.2022 by Director of Respondent no. 1).*** In addition to this, the amount generated through sale of non-core assets was also utilized towards payment of outstanding dues of Sonepat unit.
- A total amount of **Rs. 90 crores** has been paid to such creditors, after passing of judgement dated 02.07.2019, out of which about Rs. 24 crores was generated through sale of non-core assets under the charge of Sonepat unit and remaining **₹ 66.33 crore** through contributions by Sahibabad unit. The company successfully settled 34 IBC cases, 19 complaints under Negotiable Instruments Act and 36 other recovery cases.
- It is further submitted by the Respondents that as on **30.04.2020**, 10 applications under Insolvency and Bankruptcy Code, 2016 have been filed against the Applicant Company before NCLT, Chandigarh for an alleged claim of **INR 3.55 crores**. With passage of time, the said numbers increased and as on 31.08.2021, 25 applications under Insolvency and Bankruptcy Code, 2016 had been filed against the Applicant company before NCLT, Chandigarh towards alleged dues was **INR 47.52 crore.**
- That as on 30.04.2022, there are 32 applications pending before NCLT, Chandigarh and the total amount which is subject matter of the alleged default is **INR 55.45 crores**. For the same, Respondents has annexed affidavit dated 05.05.2022 on behalf of Company Secretary of R1 Company.
- Additionally, the Applicant (Respondent Company) has received demand notices under S. 8 of IBC, recovery notices, summons from MSME Councils and various other Courts for cases filed by vendors of the company. The total of all amounts claimed in all such cases and notices was around **INR 69.64 crores** as on **31.08.2021**.

- It is submitted by the Applicant that the Company is unable to raise loans from any financial institution on account of the drawing power of the company being negative, recurring losses for three years and multitude of legal cases pending against the company in various fora. It is further submitted by the Applicant Company/ R1 Company that out of three manufacturing units of the company - Malanpur unit was shut down in October 2014, manufacturing activity at Sonepat unit is lying suspended since February 2018; Sahibabad unit is functioning at a very marginal capacity of **approximately 800 bicycles per month** due to lack of working capital and non-supply of parts by unpaid vendors.
- It is further submitted by Applicants that despite directions of NCLAT and best efforts of the company, it has not been possible to revive Sonepat unit and the same continues to burden the company with cost of overheads and other statutory liabilities. The losses of the company are mounting day by day because of overheads. The company is operating below the break-even point. All mutual funds had been redeemed and there were no readily encashable instrument available with the company that could be utilized for infusion of funds.
- It is submitted by the Applicant Company that the entire Sonepat unit stands attached by the Excise & Taxation Department for recovery of an outstanding amount of Rs. 5.22 Crores which is due on account of liability of VAT and sales tax which was payable by Sonepat unit for the Financial Years 2014-15 to 2016-2017.
- Further, the company has not paid salaries to its workers for periods of almost a year to more than a year, which has resulted in protests from workers and threats from the worker unions. The company owes a sum of **INR 14.60 crores** to its employees and workers as on 31.08.2021.
- The company has posted a tentative operational loss of **INR 44.50 crores** as per the unaudited balance sheet of FY 2019 – 20, whereas the net loss after factoring the sale of non-core assets is in the vicinity of **INR 6 crores**. Also, on account of non – payment of dues of vendors

who supplied materials to the company, the company is not receiving any material from the market to produce any more bicycles which in turn is resulting in loss of reputation, brand name, market and customers. The total amount outstanding to vendors of the company as on **31.08.2021** is approx. **INR114 crores** and another sum of **INR 9 crore** is payable against Inter Corporate Deposit.

- In addition to this, the company has outstanding statutory dues to the extent of INR 9.93 crores as on 31.08.2021.
- As on 30.04.2022, the Respondent no. 1 company is liable to pay a sum of **INR 155,40,10,281/-** towards dues of vendors, employees and other statutory dues. For the same, Applicant /Respondent Company has annexed affidavit ***dated 05.05.2022*** **on behalf of Company Secretary of Respondent 1 Company.**
- It is further submitted by the Applicant company that as per the report of the Management Consultant dated **04.05.2020**, the only option for survival of the company is infusion of funds to the tune of about **INR 100 crores**, which is possible only through sale of land, building, plant and machinery at Sonepat unit and infusing the said funds for running the company and operating only one unit at Sahibabad. On account of passage of time, the funds required to pay off all liabilities and dues of the company as on **31.08.2021** was **INR 131.8 crores** and has increased to **INR 155.40 crores** as on **30.04.2022.** The said amount continues to rise on account of overheads, interest and penalties.

- Another reason for sale of Sonepat unit as against any other unit is that Sahibabad unit has historically been the most profitable unit, having a maximum average turnover, having a superior infrastructural capacity, is equipped with the latest technology and fully automated plant and machinery and continued to be profitable while other units were incurring huge losses. It is commercially the most viable unit which is responsible for survival of the company till now. The commercial wisdom of the Board and the Feasibility Report dictates that if this unit is operationalized after

infusion of funds, the company can bounce back to profitability and overcome its financial burden in the least possible time.

40. Brief Submissions on behalf of Respondents herein (Petitioners in main petition i.e. CP 18/2015)

- On 18.06.2020, **CA 257/2020** was moved by R1 Company seeking sale of the entire land, plant, building and machinery of Sonepat Unit and it was pressed that the said application be heard instead of the main Petition.
- A consent order dated 16.07.2020 is passed that the main Petition shall be heard instead of CA 257/2020.
- On 05.03.2021, R-1 moved **CA 110(PB)/2021** seeking directions pertaining to finalization of the accounts of the Company.
- **CA 220/2021 was moved on 20.05.2021** for urgent listing, and an order dated **20.05.2021** for listing of the Petition and all applications for hearing on 03.06.2021 was passed.
- It is submitted by the Respondents/Petitioners in main petition that **CA 257/2020, 416/2021** cannot and ought not to be heard ahead and independent of the main Company Petition.
- Hearing of **CA 257/2020, CA 416/2021** without the Company Petition would tantamount to review of the consent order dated 16.07.2020 and order dated 31.07.2021.
- Respondents further submit that there is no change in circumstance shown between 16.07.2020 to date to prove any immediate threat of IB proceedings which cannot wait for disposal of the petition. The 10 IB Code proceedings have been filed between November, 2019 to December, 2019 and have been pending ever since then. Furthermore, the stated value of outstanding claims spanning legal proceedings as well as demand notices issued to the Company amounts to INR 41,96,48,448.5/- and whereas R1 Company is proposing sale of the entire Sonepat Unit which has an approximate value of **INR 130 Crores** (10 Acres Land+ Plant+ Machinery). It is beyond comprehension as to what commercial prudence the Board can have by

selling the entire Sonepat Unit to discharge liability worth approx. **INR 40 Crores.**

- It is submitted by the Respondents that the prayer for selling the entire Sonepat unit is only to defeat and render infructuous the company petition. Further, the Petitioners in the Petition have prayed for demerger of the Sonepat Unit and independent management and control of the Unit. Entertaining a prayer for sale of the Sonepat Unit ahead and independent of the main Company Petition defeats the very purpose, case and prayer of the Petitioners.
- Another submission of the Respondent is with respect to the value of Sahibabad unit *vis-à-vis* Sonepat unit. The Sahibabad unit is approx. 12 Acres with 58% built up area and the remaining 42% being vacant land. The value of the unit in total including the vacant land is approximately **INR 370** Crores. The said unit is situated in a highly sought after area on the borders of NCT Delhi. Against this, the Sonepat Unit (what is left after non-core asset sale) is only approx. 10 Acres with a value approximating to INR 130 Crores. Further, the Sahibabad unit still has 42% non-core surplus land admeasuring which can be sold to meet the liabilities mentioned without there being any need for sale of the entire Sonepat Unit thereby completely defeating the rights, claims, contentions and prayers of the Petitioners.

It is further submitted that the alleged Feasibility and Revival Plan being relied by Respondent No. 1 Company is a self-serving document which states that the Sahibabad Unit is the only viable unit. Reliance on such a report is itself proof that the efforts to sell the Sonepat Unit are not to meet the threat of IB Proceedings but to render Respondent No. 1 Company as a single-unit Company in violation of the MoUs, Board Resolutions etc.

41. **CA 110(PB)/2021** is the Application on behalf of Respondent No. 1 under Rule 11 of NCLT Rules, 2016 for directing Petitioner No. 1 and 2 and Respondent 18 to forthwith furnish all requisite information necessary for finalization of the accounts of the Company. **The same has been DISPOSED OF AS INFRUCTUOUS vide order dated 26.08.2022.**

42. As both the applications are with respect to the sale of land of the Company which is connected with the main matter CP (18)/ 2015. Hence we propose the pass the common order in both these applications alongwith the main matter.

C.A. No. 429 of 2021 & C.A. No. 469 of 2021

43 In the present Company Application being C.A. No. 429 of 2021 and CA 469 No. of 2021, the petitioners/applicants are representatives of the Vendors/suppliers and the Employees' Union respectively of the R1 Company. The Applicants have been constrained to approach this Hon'ble Tribunal praying for directions to Respondent No.1 Company/ and its Management to make payment of the lawful dues owed to the Applicants in the two applications namely the employees and Vendors respectively.

44 **CA 469 of 2021** is the Application on behalf of workers Union of Atlas Cycle (R1 Company) under Rule 11 of NCLT Rules, 2016 read with Section 242(2)(m) and 242(4) of the Companies Act, 2013. The Applicant herein appearing in a representative capacity is constrained to file this application on account of becoming the unwitting victims to the disputes between the Management/shareholders/promoters/Board of Directors of the Respondent Company. Employees have not been paid their lawful wages and statutory dues such as gratuity, PF etc. since February 2021. Applicant has asked for the following reliefs:

1. **Pass urgent direction as may be considered prudent to ensure that the Respondent Company make payment of Rs. 5 crores against wages inclusive of statutory dues of gratuity and PF owed to the members of the Applicant, within a fixed timeline;**
2. **Pass any such appropriate order and/or directions as this Hon'ble Tribunal deems fit in the interest of justice;**

45 **C.A. No. 429 of 2021** is the Application on behalf of United Cycle & Parts Manufacturers Association under Rule 11 of NCLT Rules, 2016 read with Section 242(2)(m) and 242(4) of the Companies Act, 2013 for urgent

directions. The Applicant is the Apex association of cycle Parts manufactures in India. The Applicant herein is Asia's largest Body in single trade incorporated under the Indian Companies Act, 1956 (now Companies Act, 2013) with **CIN U35923PB1969NPL002727.** Applicant has asked for the following reliefs:

1. **Pass urgent directions against the Respondent No. 1 to make payment of over 100 crores owed to the members of Association of Manufactures of the Applicant;**
2. **In the alternative if the payments are not paid within the timeline as determined by this Hon'ble Tribunal, direct sale of assets of the Respondent No. 1 Company to ensure payments are made to the Applicant;**
3. **Pass any such appropriate orders and/or directions as this Hon'ble Tribunal deems fit in the interest of justice.**

CA 469/2021

46 BRIEF SUBMISSIONS DATED 06.04.2022 ON BEHALF OF THE ATLAS CYCLE LIMITED EMPLOYEES UNION ARE AS FOLLOWS:

- It is submitted that the facts in the present matter merit this Hon'ble Tribunal to exercise its powers under section 242(m) and section 242(4) of the Companies Act, 2013.
- It is submitted by the Applicants that the total pending dues owed to the members of the Applicant amount to nearly ₹ 5 Crores as on September 2021, **Page 14 of CA 469 of 2021.** It is further submitted that the members of the workers union have become unwitting victims of the internal disputes within the R1 Company. Members of the Applicant have not been paid for the services rendered to the Respondent No.1 Company at great risk to their personal health and well-being during the prevailing pandemic situation.
- R1 Company has continued to make vague and routine assurances that the Company is in the process of raising funds through sale of its various assets. However, till date no payments have been made to any

worker, rather in June 2020 a substantial part of the work force (i.e. 367 workers) at Sahibabad Unit were laid off vide notice of Lay off **dated 03.06.2020 @ Pg. 11 of C.A. 469 of 2021.**

- It is submitted by the Applicants that they have a vested interest in the continued existence of the R1 Company as a going concern as their livelihood is completely dependent on their employment with Sahibabad Unit. Members of the Applicant are in a dire situation wherein basic needs of food, shelter, medical emergency, educational expenses of their children cannot be met. It is submitted that the workers of the R1 Company are skilled in the niche field of cycle manufacturing and are thus unable to be commensurately employed in other industrial units. Some workers are also advanced in age and thus cannot seek new opportunities in other factories. However, despite all such pleas the R1 Company has failed to prioritize the claims of the Applicant.
- Another pressing concern of the Applicant is the pending IBC petitions filed against the Company, which if admitted, then the dues owed to the Applicant shall stand subject to the decisions of the Committee of Creditors and the payment of legitimate dues of the workers may stand diminished against other competing claims or substantially delayed. Further admission of any petition under the IBC may permanently jeopardize the chances of employment of these workers.

CA 429/2021

47 BRIEF SUBMISSIONS DATED 06.04.2022 ON BEHALF OF UNITED CYCLE & PARTS MANUFACTURERS ASSOCIATION ARE AS FOLLOWS:

- The Applicant is the apex association of cycle parts manufacturers in India. The Applicant herein is Asia's largest bicycle parts manufacturing body, incorporated under the Indian Companies Act, 1956 with Association's Corporate Identification Number **(CIN) U35923PB1969NPL002727** and registration **number 2727**. A total of

1698 manufacturers all over India are members of the Association, which include local suppliers operating small manufacturing units, MSMEs that produce cycle components & parts such as tyre-tubes, bells, handle bars, intricate rubber/metal/plastic parts, hubs, chain covers, chains, frames, forks, mudguards, and so forth required for manufacture of bicycles. The R1 Company until recently was one of the largest customers of the members of the Applicant.

- It is the submission of the Applicant that the R1 Company had become irregular in its payment obligations since 2018 and the situation since the COVID-19 lockdown has progressively worsened. It is submitted that some dues of its members have not been paid for over two years by the R1 Company. It is further mentioned by the Applicant in its written submissions that due to long and profitable business association with the R1 Company which is spanning several decades, the members of the Applicant had restrained themselves in taking collective action against the subsisting pending dues owed by the R1 Company to the various members of the Applicant.
- Despite a large leeway given to the R1 Company to repay its pending dues owed to the Association's vendors, which is approximately between **₹ 110 to 125 Crores as on September 2021**, no substantial payment has been made to any of its members.
- It is submitted that the Applicant had in good faith, attempted to allay the apprehension of its members, regarding pending dues on the strength of the promises made by the R1 that the Company was in the process of sale of the assets and once such sale was fructified, all payments would be duly paid. All these assurances were extended by the Applicant on the basis of the promises made by the Management of R1 Company to the Applicant. It is pertinent to mention here that the Applicant believed the assurances given by the management of the R1 Company on the basis of the payment history, business relationship and reputation of R1 Company. After sale of certain assets in 2019, the R1 Company had made payments to some of the vendors against outstanding dues. Thus, keeping in mind the past

antecedents, the Applicant got belied by the assurances given by Respondent no. 1 and all promises were taken at their word.

- It is pertinent to note that for some vendors of the Association, Respondent No.1 Company is their principal customer. Thus, there is a vested interest of the suppliers in settling the pending dues and continuation of business with R1 Company rather than pursuing winding up or insolvency proceedings against the company.
- The Applicant is not in a position to overlook that some suppliers' existence is dependent on the continued running of R1 Company. However, almost no payment having been made to any of the members of the Applicant since March 2020. The very survival of its members is threatened as operations of manufacturing units are being run on low working capital due to non-payment of dues.
- Applicant specifically submits that presently, there are 14 cases filed by members of the Applicant pending under Section 9 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble NCLT Chandigarh. The total dues claimed in these petitions are in excess of **₹ 13 crores**. Pertinently, the R1 has sought time in these petitions on the pretext of pendency of **C.A. No. 257 of 2020 which is the Application under Rule 11 of NCLT Rules, 2016 on behalf of the R1 Company asking for permission to sell the land, building, plant and machinery of Sonepat Unit.**
- It is submitted by the Applicant that the R1 Company has indicated that the obstructions in approval of sale are being caused by internal disputes between shareholders and promoters of the Company. It is further submitted by the Applicant that the R1 Company had assured that an application disclosing the grounds of urgency of sale would be filed in May 2020 and consequent to the permission being granted payments would be made expediently. However, despite lapse of two years no substantial payments have been made by R1 Company.
- It is also submitted by the Applicant that **about 250 members** of the Applicant have had business dealings with the R1. These members have dutifully honoured all supply orders placed by the R1 Company

and against such supply the R1 Company has sold its products in the market and earned profits. It is submitted that the claims of the Applicant are owed by the Company at large and cannot be side-lined on account of inter-se dispute of promoter groups. It can also not be ignored that the promoters irrespective of their disputes against the Company/ Board of Directors / amongst themselves have an obligation to honour dues owed to its vendors and the vendors of the Applicant being a third party cannot be made to suffer the consequences of infighting between the members of the Company.

- Applicant vide letter (**Letter dated 28.08.2021 issued by the Applicant @ Pg. 9 of CA 429 of 2021**) dated **28.08.2021** to the R1 Company stating that no further leeway could be granted to the Company to make repayments and requested the R1 Company to formally settle the claims of its members with the President/Secretary of the Applicant by **31.08.2021**, failing which the Applicant would be forced to pursue the claims before the Hon'ble NCLT and various state forums on behalf of its MSME members, wherein the full statutory interest shall also be claimed. It is further submitted that Applicant on failing to receive a concrete response to amicably settle the matter, has approached this Hon'ble Tribunal to seek indulgence in passing appropriate orders directing the Respondent No. 1 Company and its Board of Directors to galvanize the necessary funds to make payments of dues owed.

48. Both the abovementioned CAs are filed for the dues owed to Applicants by the Respondent Company 1 and are connected with the main matter which is pending adjudication before this Tribunal. We are inclined to pass a common order in both the CAs along with the main matter (CP/18/2015)

49 We have perused the documents placed by the Petitioners (P1 and P2) as well as the documents placed by the Respondents (R1 Company, R12, R14-R16 and Respondent 3 to 11). We have heard the oral submissions at length by both the parties. We have gone through all the written submissions and affidavits as well as additional affidavits placed on record by both the parties. We have also analysed the entire case history and all the orders and judgment

passed at various occasions by Hon'ble Delhi High Court, Hon'ble Punjab and Haryana High Court, Hon'ble NCLAT and other judicial/quasi-judicial authorities in the various matters connected with the main petition i.e. **CP /18/2015** referred to earlier in this order.

50 **Vide order dated 25.11.2022,** a clarification was sought by this bench from the R1 Company wherein it was directed to R1 Company to submit a list and composition of all the Committees formed for the management of R1 Company. An Affidavit has been filed by the Mr. Kartik Roop Rai, Director of R1 Company (Respondent No 14) which constitutes the details of the five committees as on 31.03.2015 & as on 31.03.2022. **The list is as follows:**

i. **Audit Committee**
ii. **Stakeholders Relationship Committee**
iii. **Nomination and Remuneration Committee**
iv. **Risk Management Committee**
v. **Capital Assets Sale Committee**

S.NO.	NAME OF COMMITTEE	COMPOSITION OF COMMITTEE AS ON 31.03.2015	DESIGNATION	COMPOSITION OF COMMITTEE AS ON 31.03.2022	DESIGNATION
1	Audit Committee	Mr. Kartik Roop Rai **(Director)**	Chairman	Mr. Kartik Roop Rai **(Director)**	Chairman
		Mr. Sanjiv Kavaljit Singh **(Director)**	Member	Mr. Sanjiv Kavaljit Singh **(Director)**	Member
		Mr. Hira Lal Bhatia **(Director)**	Member	Mr. Sadhna Syal **(Director)**	Member
2	Stakeholders Relationship Committee	Mr. Hira Lal Bhatia **(Director)**	Chairman	Mr. Sanjiv Kavaljit Singh **(Director)**	Chairman
		Mr. I D Chugh **(Director)**	Member	Mr. Kartik Roop Rai **(Director)**	Member

				Mr. Sadhna Syal **(Director)**	Member
3	**Nomination & Remuneration Committee**	Mr. Sanjiv Kavaljit Singh **(Director)**	Chairman	Mr. Sanjiv Kavaljit Singh **(Director)**	Chairman
		Mr. Kartik Roop Rai **(Director)**	Member	Mr. Kartik Roop Rai **(Director)**	Member
		Mr. Hira Lal Bhatia **(Director)**	Member	Mr. Sadhna Syal **Director)**	Member
4	**Risk Management Committee**	Mr. Hira Lal Bhatia **(Director)**	Chairman	The Committee is no longer in existence as the Company is no longer covered by the applicable Regulations	
		Mr. Hari Krishan Ahuja **(Director)**	Member		
		Mr. I D Chugh **(Director)**	Member		
5	**Capital Asset Sale Committee** (Constituted as on **06.04.2015)**	Mr. Vikram Kapur/ Mr. Rajiv Kapur	Member	Mr. Vikram Kapur/ Mr. Rajiv Kapur	Member
		Mr. Girish Kapur/ Mr. Gautam Kapur	Member	Mr. Girish Kapur/ Mr. Gautam Kapur	Member
		Mr. Sanjay Kapur/Mr. Prashant Kapur	Member	Mr. Sanjay Kapur/Mr. Prashant Kapur	Member
		Mr. I D Chugh, Whole Time Director	Member	Mr. I D Chugh, Director	Member
		Mr. N P Singh Rana, CGM Co-ordination	Convener	Mr. N P Singh Rana, CGM Co-ordination	Convener

51 Another document submitted by the R1 Company which consists of 3 more committees i.e. management committees wherein both the Petitioners and Respondents are members. These 3 committees are other than above-mentioned committees. The list of 3 management committees along with its members is as follows:

Management committees for the 3 units are as follows:

AS ON 31.03.2015			As on 31.03.2022	
6. Management Committee- Sonepat				
S.NO	**NAME**	**DESIGNATION**	**NAME**	**DESIGNATION**
1.	Vikram Kapur	Member	Vikram Kapur	Member
2.	Rajiv Kapur	Member	Rajiv Kapur	Member
3.	Angad Kapur	Member	Angad Kapur	Member
7. Management Committee- Sahibabad Unit				
S.NO	**NAME**	**DESIGNATION**	**NAME**	**DESIGNATION**
1.	Girish Kapur	Member	Girish Kapur	Member
2.	GautamKapur	Member	GautamKapur	Member
3.	Rishav Kapur	Member	Rishav Kapur	Member
8. Management Committee- Malanpur Unit				
S.NO	**NAME**	**DESIGNATION**	**NAME**	**DESIGNATION**
1.	Sanjay Kapur	Member	Sanjay Kapur	Member

ANALYSIS OF VARIOUS JUDGMENTS PASSED IN THE MAIN MATTER:

52 From 2000 to 2019, numerous suits, applications, miscellaneous petitions, appeals, application for interim relief, arbitration proceedings were initiated by the parties. Amongst them, the orders/judgement which we find most relevant to take note of are as follows:

- Arbitration Award by **Justice A.M. Ahmadi, the Sole Arbitrator** dated **01.11.2014 held "***the 3 lots though not finally divided through the MOUs have been under the respective groups as per the MOUs who have followed it thus far. Final division be done without disturbing the setup in any manner. The lot allocated to each group shall remain in exclusive management, control and operation thereof and that group shall be entitled to hold the same and no other group will have any right or entitlement to any part of that lot or burden it for any liability incurred by the other group in managing its lot.***"**
- Order by **Justice Madan Lokur** dated **02.05.2006 in Suit No. 77 of 2013 (by which the valuation report of Mr. Memani was challenged by Mr. Arun Kapur) held that "***The conduct of the plaintiffs, particularly Arun Kapur, in allegedly defalcating a huge amount of money from Atlas Cycles cannot be easily overlooked since it forms a part of the annual report of Atlas Cycles for the year 2001-2002. For this reason also, equity does not lie in favour of any of the Plaintiffs and there is absolutely no reason why the ex-parte ad interim injunction should be allowed to continue.***"**
- Order by **Justice Indermeet Kaur** dated **28.01.2015 in CS (OS) No 3510/2014 (filed by Petitioners along with R18 before Hon'ble High Court of Delhi) held that "***this Court is of the view that the plaintiffs have failed to make out a prima-facie case in their favour. In fact an irreparable loss and injury would be suffered by the company if directors of the company are not allowed to transact the business of the company which would be in the interest and welfare of the company. The Resolution of the company dated 31.08.2003 containing***

exception clauses which in fact evidences the authority and control of the Company over all the three units which were allowed to function only to the limited extent as contained in the Resolution. The overall control of the units continued to vest with the company and this is clear from the simple fact that a common balance-sheet of the company continued to be filed before the Auditors. Balance of convenience is also not in favour of the plaintiffs. Accordingly, the interim order dated 19.11.2014 is set aside."

- Order by **Justice D.R. Deshmukh** dated **27.03.2015 in CP 18(ND) 2015 filed by Petitioners before C.L.B. held that** "*petitioners have failed to make a prima facie case of oppression and mismanagement. The instances of oppression and mismanagement as also the consent letters are dressed up and in view of the similar prayer in pending litigation* ***(CS (OS) No. 3510/2014)*** *before the High Court of Delhi for the same relief having been declined by the High Court of Delhi by order dated* ***28.01.2015,*** *amount to forum shopping which is impermissible. In light of above, while declining to grant any interim relief to the petitioners, I also dismiss the petition*"
- Order by **Justice Amit Rawal, Punjab & Haryana High Court** dated **20.04.2015 in CAPP No. 21 of 2015 in appeal filed by Petitioners against order of J. D. R. Deshmukh dated 27.03.2015 held that** *"It is a matter of record that respondents had not filed counter/defence or any documents in pursuance to the petition filed under Section 397, 399 and 402 of the Companies Act, 1956. The Company Law Board ought not to have dismissed the petition on merits while declining the interim relief to the petitioner. Appellate Court deem it appropriate to set aside the impugned order and remand the matter back to the Company law Board by restoring the appeal to its original number and also gave the liberty to petitioners to pray for interim relief afresh"*
- Order by **Justice Murlidhar** dated **03.08.2015 in O.M.P. No 30 of 2015 (Petition filed u/s 34 of the Arbitration and Conciliation Act, 1996) held that** "*The Court is of the view that the learned Arbitrator wholly overlooked the above legal position. This is perhaps*

also the reason the learned Arbitrator did not consider it a serious enough issue when it was raised in one of the applications filed by Mr. Arun Kapur questioning the very legality of the 1999 MOU. While it is true that in the reply filed by the Petitioners to the application filed by Mr. Arun Kapur they did not specifically urge the issue of the legality of the 1999 or the 2003 MoUs, insofar as the division of the units of the Company was concerned, it cannot be said that only on that score they are estopped from questioning the Award to the extent that it puts a seal of approval on the division of lots which includes the units of the Company.

The narration of facts reveals that the BoD of the company is fully in control of its management and affairs. The BoD has taken a consistent stand that the company is not bound by any internal arrangement between the groups of shareholders. While the 2003 resolution of the BoD may have brought about a change in the structure of management by putting the three units under the control of the respective management groups comprising different branches of Kapur family, that by no means resulted in the assets of the Company itself being transferred to the respective branches. While three subsidiary companies may have been incorporated, the transfer of the assets to those units is yet to take place. That can happen only in accordance with the procedure under the Companies Act, 2013.

It is not possible to anticipate what could be the outcome of proceedings, as and when initiated, under the Companies Act by any or all of the groups pursuant to the MoUs and the BoD resolution of 31 August, 2003. That stage is yet to be reached. The learned Arbitrator, therefore, could not have pre-empted the decision in such proceedings by putting a seal of approval on the division of lots as set out by Mr. Vikram Kapur in para 14 of his application insofar as it involved the assets of Atlas Cycles (Haryana) Limited or for that matter any other company to which the Companies Act applies. In the proceedings under the Companies Act 2013 it would be open to any group to contend that members of other groups are bound by the 1999 or the 2003 MoUs and

cannot resile from it. Even that would not prevent the court or the tribunal from coming to a conclusion as to whether the arrangement or restructuring, agreed upon by the members of different groups of Kapur family is in the best interests of the Company.

Viewed from any angle these were matters entirely outside the scope and ambit of the arbitration proceedings. It was impermissible in law for the "learned Arbitrator to take upon himself the task, which could be done only in accordance with the Companies Act and only by the authorities, entrusted with such powers. The parties to the 1999 MoU could not have conferred a jurisdiction upon the learned Arbitrator which he did not have to begin with. Therefore, a patent error was committed by the learned Arbitrator in not dealing with the application of Mr. Arun Kapur under Section 16 of the Act questioning his very jurisdiction to examine the question of the division of the assets of the Company into baskets or lots."

- Petitioner nos. 1 and 2 and Respondent 18 filed an appeal against the order by Justice Muralidhar dated **03.08.2015 under section 37 of Arbitration and Conciliation Act, 1996 being F.A.O. (O.S.) No. 448/2015 and F.A.O. (O.S.) No. 459 of 2015 which is pending adjudication before the Hon'ble division bench of Delhi High Court. Although the appeal stands admitted, no stay order was granted against the operation of the Judgement dated** 03.08.2015

53 We would like to draw attention towards the findings of this Tribunal (then, Company Law Board) by **Justice D. R. Deshmukh, Chairman Company law board:**

- An argument of the petitioner that proceedings before the High Court of Delhi were without jurisdiction and the order dated 28.01.2015 passed by the High Court is nullity is liable to be outright rejection. This view had been adopted by the CLB after placing reliance on the Judgement of CDS Financial Services (Mauritius) Ltd. vs. BPL Communications Limited and Ors. (2004) wherein it has been held that when there is no express provision excluding the jurisdiction of

civil courts, an inference relating to an implied bar on the jurisdiction of civil court cannot be inferred.

- It has been shown by the respondents that 10 out of the 187 shareholders were not even shareholders to be eligible under the Companies Act for this petition. This shows that the conduct of the petitioners in filing of the petition lacks probity.
- Prima facie, the resolution dated 5.10.2014 was a sound decision in the interest of the company and any private family arrangement between the parties cannot be allowed to supersede the interest of the company which is paramount.
- The Board Resolutions dated 05.10.2014 not only equally apportions the liabilities of Malanpur Unit on Sonepat Unit and Sahibabad Unit but also reserves the right to both units to alter the territorial division by mutual consent.
- This Tribunal (then, CLB) holds that prima facie, it does not see any act of oppression or mismanagement and had declined to grant any interim relief and also dismissed the petition.

54 Thereafter, Petitioners/Appellant had filed an appeal i.e. **CAPP 21 of 2015 (O&M)** under Section 10-F of the Companies Act, 1956 against the order dated **27.03.2015** before Hon'ble High Court of Punjab & Haryana. Petitioners submitted that Company Law Board, while deciding the matter on the interim relief has dismissed the case on merits without calling upon the respondents to file reply and documents in support of their defence. Respondent R1 & 12 to 16 submitted that the order passed by the Company Law Board was fair, legal and justified.

55 The Appellate Court in **CAPP No. 21/2015 (O&M) vide decision dated 20.04.2014 held that:**

"It is a matter of record that respondents had not filed counter/defence or any documents in pursuance to the petition filed under Section 397, 399 and 402 of the Companies Act, 1956. The Company Law Board ought not to have dismissed the petition on merits while declining the interim relief to the petitioner. Appellate Court deem it appropriate to set aside the impugned order and

remand the matter back to the Company law Board by restoring the appeal to its original number.

Parties are directed to appear before the Company Law Board on 28.04.2015.

The Petitioners shall be at liberty to pray for interim relief afresh."

FINDINGS & CONCLUSION

56 As per the directions by Hon'ble High Court of Punjab & Haryana (Appellate Court), we have heard the submissions of the parties at length and gave various opportunities to the Petitioners as well as the Respondents to place all the relevant documents on record and to make all the relevant submissions required to give them necessary relief under Sec 241, 242 and 244 of the Companies Act.

57 At the outset, Respondent submitted that it is the Board Resolution dated **31.08.2003** which precedes the MOU dated **31.08.2003.** The entire case history revolves around the premise that 2003 MOU segregates the Respondent Company into 3 baskets i.e. 3 units and allocate the management of three units to three family groups. The relevant question to be answered by Respondent 1 is that **Why the Board was a party to such a division of management? Resolution of the Board to divide the management of a public listed company raises a doubt on its independent nature.** Had been the Board acted independent, it would not have conceded to the request of family groups to divide the management of the Respondent Company into 3 family groups. Since 2 decades, Board is stuck between these 3 family groups and the litigations initiated by one or the other group on one pretext or the other. The efforts of the Board/R1 Company are seen to be frittered away mainly in firefighting the repeated litigations by the Kapur brothers, rather than working on corporate management and wealth creation for the Company.

58 It is the submission of the Respondents that the proposed division remained in the contemplation of members of Kapur family, but it had

never saw the light of the day and it was never put to shareholders of the Company. The relevant question which arises in the first place is **why did BOD allow the family to manage the affairs of the Respondent Company?**

59 Time and again, it is the contention of the Petitioner that more profitable territories of Malanpur unit were allocated to Sahibabad unit by the Respondent Company intentionally. It is observed from the facts that family members were constantly warring over territory, not the units or the Company.

60 It has been held in catena of Cases that the Tribunal constituted under the Companies Act, 2013 is vested with huge powers in the matters of Oppression and Mismanagement. Although, the term "oppression and mismanagement" is not defined anywhere in the Act but time and again, the words have been elaborated at length by various courts of the Country. In the case of **In Re H.R. Harmer Limited [1958] 3 All. E.R. 689 it was held that**

"the word ' oppressive ' meant burdensome, harsh and wrongful".

The term "Mismanagement" is defined in **MARRIAM-WEBSTER DICTIONARY as "to manage something wrongly or poorly" Mismanagement means a pattern of incompetent management actions which are wrongful, negligent or arbitrary and capricious and which adversely affect the efficient accomplishment of an agency function.**

61 Every case should be decided on its own facts. The circumstances in which oppression may arise being so infinitely various that it is impossible to define them with precision.

62 Provisions of the Companies Act, 2013 which deals with the jurisdiction in the matters of Oppression and Mismanagement are given in **Chapter XVI "PREVENION OF OPPRESSION AND MISMANAGEMENT'.**

63 It has been submitted by the petitioners in their submission note dated **16.02.2022 while** highlighting the salient points of judgement by J. Madan B. Lokur in **CS (OS) No. 77 of 2003 dated 02.05.2006** that Late Mr. Arun Kapur, one of the legal heirs of Late Mr. B. D. Kapur, was excluded from the management and affairs of the Malanpur unit of Atlas cycles since he had

allegedly defalcated and siphoned off huge amounts to the tune of over INR 10 crore. For reference we are citing the relevant Para i.e. **Para 67** from the judgement dated **02.05.2006** by Justice Madan Lokur:

The conduct of the plaintiffs, particularly Arun Kapur, in allegedly defalcating a huge amount of money from Atlas Cycles cannot be easily overlooked since it forms a part of the annual report of Atlas Cycles for the year 2001-2002. For this reason also, equity does not lie in favour of any of the Plaintiffs and there is absolutely no reason why the ex-parte ad interim injunction should be allowed to continue."

64 Another defaulter, Mr. Salil Kapur (R2, herein) had siphoned huge amount of money from Malanpur Unit, as President of its Management Committee as submitted by the counsel for Respondent R1, R12, R14 to R16 and that he (R2) was responsible for financial mismanagement resulting in losses to the company. In view of the mounting losses, the Board decided vide Resolution dated **05.10.2014** to shut down the Malanpur unit, and later vide resolution in its meeting dated **07.09.2015** the Board decided to sell the Malanpur unit.

65 Sonepat unit is closed since 2018 after incurring huge losses, paid for by the Respondent Company. The Management Committee consisting of Late B D Kapur faction of Kapur family is directly responsible for the precarious condition of Sonepat unit which has very adversely affected the creditors, workers and other stakeholders of the Company as a whole.

66 Sahibabad unit is also operating at sub-optimal level with production of about 800 bicycles/month against the monthly dispatch of 2 lakh bicycles/month by the Company till 2013. It is the contention of the petitioners that the Board of the Company has sided with Sahibabad unit and passed resolution for sale of Sonepat unit, including the land, whereas the Sahibabad unit also has some surplus land which can easily be sold off at a good price to salvage the Company. We also find that the Board delayed action against the management and financial embezzlement of Malanpur unit. Further, the Board minutes of meeting held on **31.03.2011** show that the financial embezzlement in Malanpur

unit had come to the knowledge of the Board, yet the actions against Salil Kapur (R2) were taken as late as in 2014-2015. Further, the Petitioners claim to have raised bogey against the financial mismanagement of Malanpur unit in 2006 itself.

67 Also, all the three units although have three different management committees but were constituted to work for the betterment of the Respondent Company only. The three baskets were not created for the purpose of segregating them from the company altogether rather was a restructuring for better administration of the Respondent Company. Sahibabad unit is not on record for having raised any concern nor alleged anything against the Management of Malanpur unit even after knowing all the debacle and losses that the Respondent Company had suffered due to misactions and misdeeds of the management committee of Malanpur unit. Inaction on part of the Sahibabad unit did not solve the problem rather contributed towards worsening the situation of the Company.

68 Every stakeholder, promoter, key managerial personnel, office bearer of the Company has a duty to consistently and effectively work for the Company as a whole. We are not concerned with who defaulted more in the management of the R1 Company. The key question which needs to be answered is "Whether or not there was a contribution of the members/committees as to the precarious condition of the Company? If the Answer comes in affirmative, then who contributed more or less may not be germane to decide in this particular case. Though two of the Kapur brothers of the management committees allegedly siphoned money and there is no such embezzlement alleged against or on record on part of the Management Committee of Sahibabad unit, yet we find it difficult to hold them beyond approach in management of the affairs of the R-1 Company which have led to the dire financial situation of the R1 Company. It is seen that each management Committee though the family member is concerned mainly with their own benefits rather than taking the Company as a whole.

69 It is the contention of the Petitioner group that Board always sidelined them (the petitioners). The Petitioner group has further alleged that Board is a Dummy Board and is controlled by the Jaidev Kapur Group

(Sahibabad Unit) and Jagdish Kapur Group (Malanpur Unit). To this, the submission of the Respondent Company is that Board has always remained independent and that in the history of Atlas Cycles, members of the Kapur family have never been on Board. It has been submitted by the petitioner that Sh. I D Chugh (Respondent 16) who is currently a Non-Executive Director of the Respondent Company is the Factory manager of the Sahibabad Unit. It has also been submitted by the Respondent Company that Sh. I D Chugh is one of longest serving employees of the Respondent Company and has been earlier Whole Time Director of the Company for a long time. Time and again, Petitioners raised the contention of connivance between the Respondent Company and management committees of Units 2 and 3. Another contention raised by the petitioner in his petition is that Petitioner constantly requested the Board that the Petitioner No. 1 be represented on Board but the Board of Respondent Company, on the behest of Respondents 2 to 11(who are members of management committees of Sahibabad Unit and Malanpur Unit) using their dominant position, have denied all those requests. While it is also the Contention of the Petitioner group that Respondent No 14 (Sh. Kartik Roop Rai) and Respondent No 15 (Sh. Sanjeev Kanvaljit Singh) are family friends of Respondent No 7 & 8 (i.e. Joint President of Sahibabad Unit's Management Committee). Counsel for the Respondent Company submitted that respondent 14 and 15 were appointed with consent of petitioners with the 99.9% voting.

70 If we closely look at the constitution of the Board and constitution of Management committees of the Respondent Company, we find it difficult to agree that the Board was truly independent of the members of management committee of Sahibabad Unit.

71 Board was acting on the dictates of the Kapur family. With respect to the Malanpur unit, the Board sought the advice of the same defaulting management committee head i.e. Sanjay Kapur, Respondent 3, and divided it inequitably in favour of Sahibabad Unit much to the angst of Sonepat Unit. It is one thing to say that Sahibabad Unit was doing well and that Sonepat Unit was run by errant family members. The Petitioners'

allegation is that if valuable service area was given to them, they could have also turned themselves around. We observe that though these are allegations denied by the Board and the Respondents, in reality, Sahibabad Unit benefitted from the division of Malanpur Unit.

72 The primary issue is the fight between the brothers of Kapur Family to outsmart each other and in that, the Board was only playing as an Umpire quenching the unrest in the family oriented dispute. We observe that the Board, if it was independent, it would have taken a very pragmatic, decisive action to ensure that the public listed company is far away from the reach of the warring Kapur family brothers. The entire Board therefore appears to be showing supine indifference to the needs of a public listed company. In this background, a doubt has arisen in our minds as to the independence of the Board.

73 After hearing all the arguments from both the sides and perusing the documents placed on record, it is seen that the present perilous condition of the Company is primarily on account of the (mis)actions of the members of Kapur family, be it as a President of Management committee or by exercising influence over the BOD. The Board was ineffective in reigning in the 3 management committees or the members of the Kapur family and could do precious little to prevent the Company from sinking in the quagmire of mismanagement underlined by mounting debts, decreasing output and multifarious litigation. The family members took action in their personal interest and used the Company as their personal fiefdom. The whole time of Company (Board) was spent on fire fighting the inter se family members' litigation, financial irregularities etc. The Company went down over the years. Resultantly, the public shareholders interest got lost. The various events show that the Kapur family looked upon the Company and its units as their personal fiefdom and indulged in defalcation, there was delayed action against members responsible for deteriorating condition in Malanpur unit, mis (non) handling of Sonepat Unit leading to its closure, inability to maintain its market share linked with suboptimal operation of Sahibabad unit. All these are serious indicators of lack of appropriate

corporate governance in the Company, which responsibility falls heavily upon the shoulders of the Board of the Company.

74 It has been admitted by the Respondent R1 that BoD took major decisions regarding the mismanagement in Malanpur unit including the decision of re-allocation of territory after the closure of Malanpur Unit after taking recommendation from R3 i.e. one of the Kapur brothers, Mr. Sanjay Kapur (R3). We fail to understand why instead of taking an independent decision, Board had acted on the advice given by the person who (along with his brother, Mr. Salil Kapur) was behind the (mis) management of Malanpur unit.

75 It has been admitted by both the parties that never in the history of the Respondent Company, any member of the Kapur family has been on Board since they were employed as President of Management Committee on paid basis. Friends, relatives or employees of the Respondent Company were and are serving in the current Board of Directors. Though directly, Board did not induct any member of the Kapur Family in the Board, but the inference that there is a very great influence of promoter group on the decisions of the Board cannot be ruled out.

76 Ultimately, it is always the Respondent Company 1, which has suffered losses. The three management committees comprise of all the Kapur brothers. Because of defalcation and siphoning of funds by Kapur brothers namely Mr. Salil Kapur (R2), Late Mr. Arun Kapur, brother of Petitioners, Company has sustained huge losses. Since 2014, the position of the Respondent Company has been getting worse day by day. In fact, it has been submitted by the counsel of Respondent 1 that earlier, there was no competitor of the Respondent Company in the arena of bicycle manufacturing. Atlas Cycles (Haryana) limited used to rule the market of bicycle manufacturing. It is pertinently mentioned by the Ld. Counsel for Respondent R1 that till 2013, monthly dispatch of the cycles was 2 lakh bicycles/month but in 2014, it went down to 2700/ month. Annexure 60 @ page 38.

77 Since 2018, Sonepat unit is dysfunctional, Malanpur Unit has been closed earlier (2014) and the only remaining unit i.e. Sahibabad unit is barely

functional with the meager production of 800 bicycles/month. Ld. Counsel for Respondent Company has aptly stated that the reason for the diminishing production is the huge dues which Respondent Company owes to various vendors of the Company.

78 On being asked by this Tribunal regarding the share price of the Respondent company earlier and now, Ld. Counsel for the Respondent submits that it went down to ₹ 29 (approx.) which used be ₹360 when the Company was booming and flourishing.

79 We observe that litigation with respect to one or the other matter connected with the division of the Respondent Company into 3 management units started long time ago, around 2003. On one pretext or the other, the litigation is still going on. We are of the opinion that even if we dismiss this petition on the ground that no case of oppression has been made, the litigation will still go on between the litigious family members with the Board fire-fighting the situation rather than devoting it's time to manage the company properly.

80 The judgments relied upon by the Petitioners for demerger will not apply for the following reasons:

- **In the Case of Atmaram**, the relevant fact was that the petitioners held 25% shares in the Respondent Company, with which they were in a position to block any special resolution. But in the present case, total shareholding held by 3 groups and family controlled companies is 41.92%. Major shareholding still vest with public that is approximately 58%. The best interest of the Company is in the protection of public shareholders. Interest of almost 11000 shareholders is at stake. Demerging the Sonepat unit without the consent of public shareholders would cause great prejudice to them. So this case does not help our case as every case is decided in the background of its own facts and circumstances. In our case, there is a mismanagement and gross negligence on the part of management committees and the Board which is a helpless onlooker. Also, management committees directly or indirectly hold 41.92% stake in the Respondent Company and somehow have been treating the Respondent Company as their personal fiefdom,

causing great prejudice to public shareholders. Demerging the unit shall aggravate the loss to vendors, employees, public at large, even the Respondent Company itself.

- Another judgement on which Petitioner relies is **Vijay Krishan Jaidka Vs. Jaidka Motor Co.,** division of the business was ordered in that case depending on the facts of that case. Major shareholding in that case was with the family members, 44% shares were held by petitioners only. Respondents were also the members of the same family holding majority of shares. If at all ,outsiders held shares then they were minority shareholders, not like our case, wherein Public shareholding is to the extent of 58% (approximately).
- Another case on which Petitioner relies is the judgement in case of **Shishuranjan Dutta &Anr. Vs. Bhola Nath**. In that case the company was really a Family Company divided into two groups holding 50% shares in the Company. This fact in itself distinguishes our case. Atlas (Respondent Company) is managed by the family members. It is not at all the case that entire shareholding of the Company is divided amongst family members like Shishuranjan Case (supra).
- Another landmark judgement on which Petitioner relies is the judgement in the case of **Needle Industries (India) Ltd. And Ors.** The key point which the petitioner raised is that even though the petition fails to make out a case of oppression, the court is not powerless to do substantial justice between the parties (Para 175 of the judgement). What we may like to point out here is that what is substantial justice and what not depends on the facts. In our case parties themselves contributed towards the decline of the Company. Firstly, all the management Committees the Respondent Company as their personal asset while the Board remained a helpless onlooker. Various instances have been quoted in the abovementioned facts wherein few of the Kapur brothers embezzled the funds of the Respondent Company. Board also treated the Kapur brothers with kid gloves, failed to take stringent action against them. What is needed in this case is to dispense substantial justice with the Company. It is the Company which has been declining since a

decade due to feud between family members. It is the management which failed, it is not a case of Oppression rather it is a matter of huge mismanagement on the part of Kapur brothers and the Board. We are not satisfied with the solution that tearing/demerging one unit from the Company will serve the purpose. There is a famous saying in Law that "One Cannot take the advantage of its own wrong".

- In the Case of **K N Bhargava** relied by the petitioners, 80% shareholding vested with the family members. What was decided in that case cannot be applied in our case. Here 58% stakeholding vests with the Public. We cannot demerge one unit of the company just for the reason that there is a deadlock between three family groups who are managing the whole Company with a (supposedly) Independent Board. Huge Public Interest is at stake. What we have to look after is the Public interest and the interest of the Company and not the interest of the family members who have been the key managerial persons behind the (mis)management of the Company.

81 The petitioners are asking for the demerger of the Sonepat unit along with its assets and liabilities. The pertinent question raised here is "whether a demerger can be granted to a party as a relief by exercising the jurisdiction of this Tribunal under section 241, 242 of the Companies Act, 2013." Various judgement, both (for and against) are referred by both the parties for this legal proposition. But we are of the opinion that every case is decided on its own facts. Whether to demerge or not is a question of law. When a statute specifically lays down the provisions and essential requisites and detailed procedure for doing the same, it has to be done in accordance with the statutory provisions of law and not otherwise. There is a famous rule of interpretation i.e. Strict and literal rule of interpretation which says that if the language of the statute used is unambiguous and clear, then the rule of interpretation which should be used is the strict interpretation. Even otherwise, we see no reason to divide the Company when the other remedy(s) is available. A public limited Company cannot be divided as prayed for. The procedure has to be followed. The Respondent Company has 11000 shareholders, nearly 58% shares held by general public. A huge

public interest is involved in it. Scheme of merger/demerger mandates the consent affidavits of various stakeholders like, secured creditors, unsecured creditors, shareholders of the company. Hence, plea for demerger contrary to provisions of Companies Act cannot be granted.

82 On the question of "Oppression and Mismanagement" it is clearly seen that the case at hand is not a case of oppression rather it is a case of mismanagement by the management committees and by ineffective Board of the Respondent Company. The key personnel behind every crucial decision making in these management Committees were the Kapur brothers. The Kapur brothers have taken an unfair advantage being the 42% (approx.) shareholder of the Respondent Company. Instead of taking the Respondent Company as a whole, they have treated each unit as their private property and dealt with it in the same way. The Board has failed to reign them.

83 The issue of Oppression is a question of fact and the presumption of oppression can be rebutted by substantiating and establishing the contrary. As far as oppression as alleged by the petitioners is concerned, it is seen that oppression is not proved. It is the Sahibabad unit which had paid to the tune of ₹66 crores for the liability of Sonepat unit.

84 Whatever MoU or family arrangement had been entered upon between three promoters group in 2003, in substance, it was entered upon to effectively manage the affairs of the Company in the best possible way. But, in the present scenario, only one unit is barely functional. As far as the proceedings which are pending against the Respondent Company R1, the number is quite large and very troublesome.

85 Comprehending the current situation, we are of the opinion that the family arrangement or restructuring entered upon 2 decades back, is not working anymore rather the internal family disputes among the three promoter groups is creating more and more trouble day by day. Also, the overall decline of the Company is accepted by the Board. The enforcement of MoU which created three baskets, one for each group is not possible in this situation of deadlock between the groups. A public Company cannot be made to suffer due to the disputes between the family of the promoter

group. Our duty is to look at the affairs of the company in the best possible way and the public shareholders.

86 Petitioners have prayed for the demerger of the Company's Sonepat unit to run it effectively with all of its assets and liabilities to be dealt independently. However, the Companies Act provides for merger and demerger of the Company and it has to be done in accordance with statutory provisions and it has to be done in that manner only. In any case, demerger may not improve the health of the Company, nor it may be beneficial to its shareholders.

87 Respondent Company R1 is a public listed company having approximately 11000 shareholders. Under Sec 241, 242 of the Companies Act, 2013, this Tribunal is vested with appropriate powers for the sole purpose of protecting the interest of the Company and devise any mechanism in furtherance of the best interest of the Company. It is in the interest of the Company and various Vendors and Employees of the Company that Respondent Company should survive against all odds and be put on the path of recovery. In the past as well, Respondent Company had significantly contributed towards the Country's economy and we are sure that there is a long way ahead for the Respondent Company and it has the capability of generating employment to an even greater extent.

88 In a case of stalemate between the board and its operating agency, the executives who are also shareholder, the Company has to be revived. It should be removed from the clutches of the family members and the Board that is unable to reign them into the benefit of the Company. The Company Court has its mandate to save the Company for the benefit of shareholders, employees, creditors, Operational and Financial etc. The way forward is to make a new approach to this problem and save the Company. The time has come to cut the umbilical cord of the Kapur family and the Board so as to enable the R-1 Company to breathe and rebound.

89 On the basis of the foregoing discussions and after considering the facts of the case at length, considering the replies along with affidavits made by the parties on the queries made by this bench and perusing all the relevant submissions made by the parties during the course of hearing, this Bench is

of the considered view that it is judicious to invoke the jurisdiction prescribed under 242(2)(h) & 242(2)(k) of the Companies Act, 2013. We are of the opinion that the affairs of the Respondent Company are conducted in a manner prejudicial to the interest of the Company as a whole.

-Sd-

(RAMALINGAM SUDHAKAR)

PRESIDENT

-Sd-

(AVINASH K. SRIVASTAVA)

MEMBER, TECHNICAL

ORDER

PER CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR, PRESIDENT

1. **I have perused the order passed by my Ld. brother Sh. Avinash K. Srivastava, Member (Technical). In the analysis of the facts of the case and the rival contentions and the reasoning contained therein, I am in respectful agreement with the same. Nevertheless, there are certain issues that I would like to address and add my opinion in support of the order passed by My Ld. Brother.**

2. On the basis of the facts as enumerated and on the basis of submissions made by the Ld. Counsels for the parties, the four main issues that need to be considered are:

   i) **Whether the petitioners have made out a case of oppression and mismanagement? And if so, to what relief?**

   ii) **If the answer to the above is yes, whether winding up the R-1 Company would be an appropriate remedy?**

   iii) **Whether in the facts of the case this Tribunal can grant an order for the demerger of R-1 Company, as prayed for?**

   iv) **Do the facts of the case present a situation for just and equitable relief?**

ISSUE NUMBER 1:

3. The Company Atlas Cycles was originally incorporated in the year 1950 and grew from time to time. The shareholding pattern is recorded at **paragraph 4 in the earlier part of this order**. Curiously on 08.01.1999, an MOU was signed between the family members and by that MOU, which can also be called as a family arrangement, the family members became entitled to control the management of the three units in three different baskets. According to the petitioners, the Kapur family wanted to divide all the assets and businesses into three equal parts and to that effect, the MOU dated **08.01.1999** was signed and Mr. I.D. Chugh (R 16) was the witness of MOU. It is pertinent to mention that now he is a Non-Executive Director of the Company. In May 1999, Atlas Cycles (Sonepat) Limited, Atlas Cycle

(Sahibabad) Limited and Atlas Cycles (Malanpur) Limited came to be formed as three subsidiaries and this is confirmed by the Board Resolution dated **23.01.1999**.

4. It is the contention of the petitioners that the Board also wanted to further the cause of the MOU dated 08.01.1999 so that the three family members take over the three subsidiaries of R-1 Company. On the contrary, it is the stand of the R-1 Company that it was only intended to enable the family groups to manage the units and in no way it was intended to divide the Atlas Company into three groups for the benefit of the family members because R-1 Company is a public limited company and the Board alone will have control. However, we find the course of events that follow, do not show that the Board had taken a very realistic and definitive stand that the company is one unit and that the family members are just mere management units. This will be evident from the events which happened thereafter.

5. In August, 2000 after the demise of Mr. B.D. Kapur, dispute arose between the family members and in terms of MOU dated **08.01.1999**. Mr. Arun Kapur (since deceased) employed in Atlas Cycles (Haryana) Ltd., the R-1 Company, as Senior Vice President having been found guilty in irregularities filed an application before the Ld. Arbitrator seeking certain relief. The Ld. Arbitrator observed that Atlas Cycles (Haryana) Limited (R-1 Company) was not a party to MOU and therefore the Ld. Arbitrator declined to grant relief.

6. Thereafter, the R-1 Company initiated the valuation process through M/s KN Memani for the purpose of valuation of the company and for preparing three equal baskets. That valuation report was paid for by the R-1 Company (Annexure-P6). It is also not in dispute that in terms of MOU dated **08.01.1999**, the draw of lots took place and Late Mr. B.D. Kapur was assigned Sonepat unit, Late Mr. Jaidev Kapur was assigned Sahibabad unit and Late Mr. Jagdish Kapur was assigned Malanpur unit. The lightning struck Atlas at this moment when the Board conceded to the request of the family members for creating three baskets and marked the beginning of series of litigation. In a later development on **14.01.2003**, Mr. Arun Kapur filed a suit and obtained an injunction against other family members. He

challenged the valuation report by Mr. K N Memani of M/s Ernest and Young before Delhi High Court in **Suit No. 77 of 2003**. The valuation was upheld but there was no adverse order against the Board.

7. Despite this, the dispute among the family members kept simmering from time to time. Due to the constant bickering of the family members, the Board undertook another exercise on **31.08.2003**. In a detailed resolution, it proposed restructuring of all the three units for better management and operational efficiency. While much has been relied upon by the petitioners that the Board has accepted the division of the three units by its own resolution keeping in line with the MOU dated 08.01.1999, it is the contention of the Board that the division of the units was for the better management of the three units, however, the overall control of the key issues of running the company was kept in the hands of Board only. Here again, we notice that the Board was lending its hands to the family groups to reinstate and reinforce the claim of the family members in form of running the units. In effect, the Kapur family members were trying to control the three units as if it is their personal fiefdom, while Board maintains that the overall control vests in its hands. The subsequent events will prove the contrary.

8. The appeal no **F.A.O. (O.S.) 338 of 2006** filed by Late Mr. Arun Kapur and his family members against the final order in **Suit No. 77 of 2003** was dismissed as withdrawn on **15.04.2014** and finally the **Suit 77 of 2003** was dismissed as withdrawn on **09.05.2014.** However, the problem did not end there. Due to precarious financial conditions of Malanpur unit which was managed by one of the family group, the Board of Directors of R-1 Company resolved in their meeting held on **05.10.2014** to close the unit and suspended all manufacturing activity in this unit. Vide Board Resolution dated **05.10.2014**, the territory of Malanpur unit was to be divided equally and serviced by other units and their respective family groups namely Sonepat managed by the petitioners and Sahibabad unit by one other family group. The Board further proceeded to resolve that all the liabilities of the Malanpur unit shall be met out from the sale of assets of Malanpur unit/ ASTI/ Atlas Auto and the deficit, if any, shall be borne

equally by Sonepat unit and Sahibabad unit. It also indicated that a sum of **Rs. 10 crore** each will be contributed by Sonepat and Sahibabad to cover up the liabilities created by the Malanpur unit. While various reasons are given for the decline and ultimate closure of Malanpur unit, the petitioner group felt and grieved that mismanagement and poor Board of Directors control contributed to the loss incurred by the Malanpur unit. This resulted in a Suit **CS (OS) No. 3510/2014**.

9. Another incident that happened in the interregnum was the Arbitration award passed by **Hon'ble Justice Ahmadi** dated **01.11.2014.** While the Arbitration award upheld the inter se arrangement between the family members, it took away the company from the purview of the award. The petitioner group did not relent and pursued the issue before the Delhi High Court against the Board Resolution dated **05.10.2014**. However, in **CS No. 3510/2014**, the Court while granting an interim order finally rejected the relief sought for, primarily holding that the plaintiffs i.e. Vikram Kapur's group failed to make out a prima facie case in their favour. It in fact upheld the primacy of the company and it's Board in the decision-making process. This was another attempt by the one group of the family to hit at the Board. While the matter stood, thus the award dated 01.11.2014 was challenged under Section 34 of the Arbitration Act, 1996 in the month of January, 2015 being **OMP 30 of 2014.** The suit **CS (OS) 3510 of 2014** was also dismissed and the Arbitration award was finally set aside by the Single Judge of the Delhi High Court by an order passed by Hon'ble Justice Murlidhar on **03.08.2015**. It is submitted that an appeal against the order of the Single Judge dated **03.08.2015** is now pending.

10. In between these proceedings, another event happened whereby the present petitioners approached the Company Law Board in February, 2015 and filed a petition **CP. No. 18/ND/2015**, inter-alia seeking demerger of Sonepat unit in the light of MOU dated **31.08.2003** and on the basis of the Arbitral award dated **01.11.2014**. This CP was dismissed at the threshold by **Justice D.R Deshmukh** vide order dated **27.03.2015**. An appeal was filed by the petitioner before the Punjab and Haryana High Court and vide order dated **24.04.2015,** the appeal was allowed and the matter was remanded back to

the Company Law Board. The net effect of all these proceedings and few interlocutory proceedings, which we are not mentioning as they may be irrelevant, had the effect of draining the company of its valuable time in promoting the business. The primary objective of the company became to firefight the litigations that were initiated by one or the other family group, primarily, the petitioner's group. The Board and the R-1 Company got distracted and started sliding down.

11. We have also seen the financial statements of the R1-Company which has been declining since two decades i.e. from the era beginning from 08.01.1999, when the ill manoeuvre of family interest overlooking the company's interest started surfacing in the Atlas group. The Board, as we observe, was only trying to appease the family groups instead of taking a very stern and definitive action as in the case of Arun Kapur. The action as in the case of Malanpur group was also taken, but at a belated stage.

12. While there can be no justification for the wrongful action on the part of any shareholder or a family group, it is also to be stated that every inaction on the part of the Board may also lead to the downfall of the company and that is what we are able to perceive in the present litigation. Ld. Sr. Counsel for the Respondent was at pains to bring to our attention the various wrongful acts of the petitioners which we have already recorded. The correct course of action for the R-1 Company at best would have been to take appropriate action as per law and the Companies Act against errant actions or claims opposed to the interest of the Company to safeguard the interest of the company by defending the R-1 Company in each of the litigations cannot be treated as appropriate and prompt action. The Board of Directors of the R-1 company or the key persons in charge of the affairs of the company have a duty to the company and its shareholders who are primarily the public shareholders. When the petitioners or the R-1 Company breach their solemn duty in ensuring an efficient management of the company, then the Tribunal has to step in and chart a corrective course of action. If the person at the helm of affairs, be it the petitioners or any of the respondents, indulge in endless litigation and deride the strength of the company, such person be it the petitioners or the respondent will have no place in the affairs of the

company. The Companies Act provides and enables the person or persons responsible for the conduct of the affairs of the company to perform all or any action in the best interests of the company and if they do not subscribe to the dictum of the Act, then it becomes necessary for the Tribunal to ensure that such person does not hold the reign of the company in any capacity whatsoever.

13. In the present case, we find that the petitioners who are complaining of oppression and mismanagement have primarily contributed to the depreciation of the value of R-1 Company by seeking the implementation of the MOU for division of the units among family members unmindful of the fact that R-1 company is a listed public limited company. The other family groups have also subscribed to the division. Unfortunately, Board of the R-1 Company willingly succumbed to the request of the family members by giving them the management of running of these units. This was followed by yet another indulgence by Board in its 2003 resolution. One may ask what is the result of this endeavour by the Board of the R-1 Company? Has it created any positive result? The answer would be a clear **NO,** because subsequent to these events Malanpur unit which was with another group, pushed the R-1 Company to a precipice. Though it is pleaded by R-1 Company that the causes for Malanpur failure are manifold we do not fail to note that Kapur family members dealing with Malanpur unit were primarily at fault and that is not disputed by anyone of the parties. Board of R-1 Company took steps to fire fight the situation which it should have taken at much earlier stage to stitch the seams before it broke. We do not find the fault with the Board *per se* but we cannot lose sight of the fact that the consequence of the inaction of the Board for a long period of time, may be in good faith, if we may preface, the net result was that the Malanpur unit was wound up, the interest of various stakeholders was severely compromised.

14. The Board of Directors of R-1 Company tried all their means to put the company in order by accommodating the family groups to manage the subsidiary units. But their endeavour in all their attempts did not achieve the desired result. The Malanpur unit was closed, liabilities were settled by selling of assets and further sums were contributed by Sonepat and

Sahibabad units. This led to consternation among family groups. The Board of Directors are accused by the petitioner group as aligning with the Malanpur group and Sahibabad group. Though such an allegation is denied by R-1 Company. The fact of the matter is that the R-1 Company had started sinking by then.

15. We also notice, on fact and not disputed, that substantial payments were made by the R-1 Company to the petitioner unit for settling liabilities and if the petitioners were running the Sonepat Unit as per the MoU, there was no need for such payment. This would show that the petitioner group has also contributed to the mismanagement which in turn affected the R-1 Company.

16. Mr. Makkar, Ld. Sr. Counsel for R-1 Company pleaded that the company had taken strong actions against erring members of the family who were indulging in various acts prejudicial to the interest of the company. We however find that any such action taken has not shown the desired result. The company has, on the contrary, suffered. There appears to be no promptitude and decisiveness that is expected in the conduct of the affairs of R-1 Company in its interest.

17. Atlas Cycles started from a humble beginning, it grew into a company of repute. The public showed great response by investing in the company. All went well during successive generations, people who are part of running of the company assumed directorships from time to time. The control of running the units however remained with the family with the help of the Board based on their shareholding and also through other companies in which the family members have a predominant interest.

18. When the subsequent generation took reigns as operating officers of separate units, the Board had no option but to give the running of units to the three family groups. The Board willingly passed the resolution in 2003 for the management of the three units to the three family groups with controlling power in its own hands. When the Kapur family members began systematically canvassing for individual rights in a listed public limited company, R-1 Company should have or could have taken a definitive decision to get the R-1 company out of the clutches of the members of the Kapur family as its decline was evident and apparent. The R-1 Company Board

apparently was suffering from the vestige of the founders and showed handling of the errant family members who were presidents or executives of the units with kid gloves for a long period of time. The Board took action very late in the day when most of the damage had already been done. This fact has already been culled out in the facts recorded by the Hon'ble Member (Technical) which makes it clear that the allegations by the petitioner group against other family groups and against the Board inter alia are primarily on account of treating the listed public limited company as the personal fiefdom of the Kapur family. The reply of R-1 Company is that they have taken action from time to time, which we don't deny, but we noticed that such action did not save the situation nor improve the condition of the R-1 Company.

19. The petitioner group, Board of Directors of R-1 Company and other respondent family members of Kapur family owe to the public limited company which they hold in trust and we can only infer that they failed in their fiduciary capacity to perform in good faith and fair in their dealings.

20. In this case, there are a series of allegations by one group against the other and by some groups against the Board of R-1 Company. If we have to go into each and every allegation it will be a never-ending process and it takes us nowhere. The problem of R-1 Company needs to be resolved. In fact, the litigation is going on for several years and this petition started in the year 2015 before the Company Law Board. The list of earlier litigation has also been indicated.

21. Moreover, the stagnation is not because of any inherent incapacity of the company. On the contrary, the quagmire of litigation by the petitioner group and other family groups and the inability of the present Board to take strong and decisive action in the interest of the company, we perceive, is the stumbling block. We are unable to see any other valid reason as to why the R-1 Company should slide down in the market and face financial litigation of liabilities. The plea to sell assets one by one and settle the dues is as good as liquidation.

22. We have recorded the list of the litigation at the behest of the petitioner group and other family groups as well. These litigations primarily arise out of very differing interests of family groups and are based on the MOU of 1999 and

2003. In fact, the MOUs were fomenting the litigation and it was not in the interest of the company which is evident from the balance sheet of the company which has been declining over the last two decades. While we do not hesitate to hold that the Kapur family group was primarily responsible for the downslide of the company, we also hold that the Board failed to take appropriate steps to keep the company in their control, resulting in the downslide of the Company. Therefore, the issue is whether a case of oppression and mismanagement looms large. The oppression, in this case, is the plea of the petitioner group that the Board and the other family groups were oppressive against the petitioner group. On our analysis of the facts of this case, we find no cause to accept such a plea of the petitioner group because we find that even the petitioner group has been enjoying the largesse given by the Board from time to time including saving the Sonepat unit from its delirious financial condition which we have recorded in the earlier part of this order. Therefore, there is no justification for the petitioner group to plead oppression.

23. Considering the facts in this case, we are unable to hold that the conduct of the Board or the other shareholders namely other Kapurs, is oppressing the petitioners. If it is admitted to be so, it appears to be a family fight beginning with MOU of 1999 and Arbitration as to how the three groups will divide the company among themselves. This is the fallacy in the approach of the petitioner and the other groups in respect of a public listed company to which the Board of Directors of R-1 became a willing accomplice. We do not countenance the argument of the Board having overall control over the affairs of the company, that it only gave the management to the family group. The present situation would not have arisen if the Board had realised that net worth of the R1-Company was falling only because of the Kapur family litigation and the two MOUs.

24. We have taken note of the facts before and after the CP was filed and considered the numerous documents to consider the allegation of petitioner group against R-1 Company. We have also considered the Response by other Respondents with vehemence. In this endeavour as stated by the Hon'ble Supreme Court in Needle Industries case we need to separate the chaff from

the grain and ascertain if it is a case of oppression or mismanagement. On the above conclusion, the plea of oppression does not hold substance. The real intention appears to break away with valuable assets much against the interest of the public listed R-1 Company. As the answer to the issue of oppression is negative, we come to the issue as to whether there is a case of mismanagement of the units and the R-1 Company.

25. In the case of mismanagement, the word ***"mismanagement"*** has been already stated **in paragraph 60 in the earlier part of this order**. In this case, we find that while the petitioners have grossly contributed to the mismanagement of the unit which was given to them, they are shifting the blame on the Board of the R-1 Company. We find that the Board has been unable to control the downslide of the company by allowing the family groups to run the units which did not serve the interest of the R-1 Company. As the Board did not take decisive steps to remove such persons who have acted against the interest of the company and have allowed the company to downslide and come to this precarious condition, we have no hesitation to hold that the affairs of the company have been mismanaged by all concerned including the Board. It is in this situation that as a Tribunal we step in to correct the course of action. Why we do so is on the premise that the Companies Act provides this wide power to this Tribunal under Section 241 & 242 of Companies Act, 2013. The power of the Tribunal is to serve the best interest of the company and ensure that it does not get wound up and to protect the interest of various stakeholders like shareholders, the union of employees, creditors, banks, financial institutions, operational creditors, vendors, ancillary part manufacturers and prevent the sufferings of various stakeholders of the Company because of such a misadventure by the family groups and the Board which is unable to control the family groups will result in liquidation of the R-1 Company.

26. If one has to look for a reason, as to why we hold that there is mismanagement, is to see what happened in the R-1 Company. One does not require to look deep down for the needle that pricked Atlas. Atlas being a public listed company, had to function through its Board of Directors, whereas with the blessing of the Board, the family Members (Kapurs) entered

into the MOU in the year 1999 to divide units into three baskets, however, under the control of the Board, as it is observed. As to whether it was a prudent decision of the Board and in the interest of the R-1 Company has been unravelled in the course of the time by the conduct of the family groups who were holding lesser shares as against the public shareholding. Admittedly, there is a breach of fiduciary duty by the Board of Directors of the R-1 Company *(Ref: Needle Industries (India) Ltd. Vs Needle Industries Newey (India) Holding Ltd. AIR 1981 SC 1298)*. The downfall of Atlas year after year alongside the series of litigation and the failure of one unit after another primarily on account of mismanagement by one family group or the other led to the precarious situation of the company. The Board of R-1 company cannot point fingers at a litigant family group because the Board's decision should have been clearer and presented to the needs of the public listed company as against the wishes and foibles of the family members. In this case, we find that the Board did not act promptly, independently and decisively and therefore Atlas is no more the giant that it was in the field of bicycle manufacturing.

27. Hence there is a clear case of mismanagement which is attributable to both the petitioners and respondents. However, we find no material to rule on oppression as prayed by the petitioner. We have no hesitation to hold so.

ISSUE NUMBER 2:

28. In the light of our finding in issue number 1, we take up issue number 2 as to whether winding up the R-1 Company would be an appropriate solution to this case. We asked either party as to the ability of the company to rebound and they have given a positive picture of sound economics.

29. It is therefore clear that the R-1 company has enough assets and capacity to rebound and also has the market to grow. The vendors and ancillary units will survive if the R-1 Company Atlas rides all over again. The Union of manufacturers of ancillary parts represented before us that R-1 Company should start over so that their livelihood is saved. A number of workers working in the ancillary units and their families will be greatly benefitted.

They also pleaded that these ancillary units are tailor-made for the R-1 Company and they have no other option to survive.

30. We however hasten to add that though facts and circumstances of this case warrant that the Company should be wound up for the alleged case of mismanagement, we do not find justification for winding up because the worth of the Company is shown to be appreciable and a turnaround is also possible. This fact is admitted by the petitioner group as well as R1 Company. Moreover, if we order the winding up of the Company, it will be burdensome, harsh and unlawful qua the public shareholders and other stakeholders *(Shanti Prasad Jain Vs Kaling Tubes Ltd. (1964)1CompLJ117)* like the union of employees, creditors, banks, financial institutions, operational creditors, vendors, ancillary part manufacturers, etc.

31. We also rely upon an order passed by CLB in the matter of Navin Ramji Shah v Simplex Engineering & Foundry Works P. Ltd., (2007) 76 CLA 1 (CLB), where it was held that "once it is established that there have been acts of oppression, winding-up of the company on the just and equitable ground should naturally follow and the CLB has only to consider whether such a course would be in the interest of shareholders."

32. In the present case, winding up the R-1 Company would not be a solution to this issue and we take this decision with a fair belief that the object of the Companies Act is to enable a company to bounce back and not wither away. Hence, we find no cause for winding up and issue number 2 is answered accordingly.

ISSUE NUMBER 3:

33. On the third issue in question as to whether this Tribunal can grant an order of Demerger of a Listed Public Limited Company, the petitioner proposed a projection as to how the demerger can happen and the interest of all stakeholders can be addressed (i.e.) shareholders will not be affected.

34. The petitioner relied upon the various judgments of Courts and the Tribunals to plead that even in a case of oppression and mismanagement if circumstances warrant and the matters complained off deserve a quietus to

the parties concerned then the Tribunal can order the demerger of the company.

35. The Judgements relied upon by the petitioner counsel are as follows:-

1. **V.K. Jaidka vs. Jaidka Motors Co. Ltd – (1996) 23 CLA 28**

Facts of the case:

- In this judgment, the Petitioners held 44.75% of the shareholding and the Respondents held 54.75%, whereas only 0.5% was held by an outsider shareholder.
- The company was incorporated as a public company but all shareholders were friends, relatives or associates of the Jaidka family.
- Subsequently, all shares were acquired by the Jaidka family and both groups remained in control of the company by having equal representation on the Board, at all times.
- The Articles of Association provided that the Managing Director would be from the Petitioner's family and it was always understood that the managing directorship would remain with the Petitioner's branch of the family.
- The petition had been filed under Section 397/398 alleging that removal of the Petitioner's representatives from the Board of Respondent no. I company, changing the registered office address of the company without notice, fabricating the financial statements of the company, appointing Directors from the Respondents branch in a meeting held on Sunday etc. were acts of oppression.
- In this case, the CLB examined the relationship between all the shareholders and concluded that Respondent No. I was a family company.
- The CLB was influenced by the judgement in Sishu Ranjan Dutta & Anr. Vs Bhola Nath Paper House Ltd – (1983) 53 Comp Cases 883(Cal) and held that since there were two distinct independent units and businesses, which could be divided between two groups, it would be in the best interest of the parties to part ways.

Analysing the facts of the cited case, we find that:-

- While in the aforesaid judgement, the Tribunal came to an inevitable conclusion that the company was a family-held company, in the present case, not only is the R-1 Company is a public limited listed company, 58% of the equity is admittedly in the hands of 11,000 public shareholders.
- Unlike in the matter of Jaidkas, in the case of Atlas, there is no private arrangement amongst the promoters for management of company or election of the Managing Director. Infact, the management as well as the election of the Managing Director needs to be conducted in compliance with the provisions of Companies Act, 2013 and the Rules made thereunder.
- In fact, there is no parity in the factual matrix in the Jaidkas matter and in the instant case.
- A perusal of the aforesaid judgement would clearly reveal that the equitable relief granted by the CLB was primarily founded on the peculiar factual situation of that case of almost equal shareholding by the two groups and there is no parity to the facts of the present case.
- The grant of prayer of demerger would virtually amount to overreaching the rights of 11,000 shareholders and creditors of the company to the tune of INR. 155 crores. The rights of the public shareholders are being deprived without them being heard.
- R-1 Company is not a family company as the R-1 Company is run by a common Board of Directors controlling three units, one CEO, one Company Secretary, and one Whole Time Director. Hence, the cited judgment is not applicable to the facts of the present case.

2. **K.N. Bhargava vs. Trackparts of India Ltd. – (2001) 104 Comp Cases 611(CLB)**

Facts of the case:

- In this judgement, a private company was incorporated to take over the running business of a partnership firm wherein four (4) brothers were the partners of the firm.
- The company was subsequently converted into a public company but 80% of the shareholding was held by the Bhargava family and both groups had representatives and nominees as the Board of Directors.
- All family members executed a family agreement, which provided for the appointment of Directors, and equalization of shareholding between the 4 groups of shareholders of the family. The terms of the family agreement were incorporated by amending the Articles of Association of the company.
- The Petitioners were the Managing Director and Joint Managing Director of the company and the main issue was with regards to control of the company.
- At the time of filing of the petition, the Petitioners held 27.29% of the shareholding and Respondents held 51.87% of the shareholding.
- In light of the circumstances of the case, the CLB passed an interim order, in terms of the consent given by both sides, to propose an interim arrangement of separation of the division of management of two units of the company by two sets of Promoters, under the guidance of a retired Supreme Court Judge acting as the Chairman of the Board.
- Further, the CLB noted that both groups were guilt of acts of oppression and therefore did not deal with the allegations in detail. The CLB appointed a valuer to value the shares and to value the forge division which would be sold to the Petitioners at that value.

Analysing the facts of the cited case, we find that:-

- The directions of the CLB in the K.N. Bharghava case, were premised on the inescapable conclusion that the company was a family held company in the nature of a partnership.

- The arrangement devised by the CLB had been implemented after both parties and their counsels had consented to such an arrangement which envisioned division of assets of the company.
- As to the present case, the Petitioners have heavily relied on MoU's dated 08.01.1999 and 31.08.2003 and the arbitral award dated 01.11.2014. R-1 Company is not a party to the arbitral award. The R-1 Company has not carried out any amendments to its Articles of Association in line with the MoU's.
- In Trackparts case, the understanding between the family groups had in fact been incorporated in the Articles of Association which is not the case here. Hence, the cited judgment has no application to the facts of the present case.

3. Gurmit Singh & others vs Polymer Papers Ltd. & Ors – (2005) 123 Comp Cases 486(CLB)

Facts of the case:

- The facts of this judgement were that the Respondent no. 1 company was incorporated pursuant to the execution of an MOU between the Petitioner group and the Respondent promoter group.
- Pertinently, the Articles of Association of the company made reference to the private agreement / MOU executed between parties and therefore there was a legitimate expectation of the Petitioners that they would have significant influence or control over the management and functioning of the company.
- The Articles of Association provided that both groups would exercise equal voting power, each group would nominate 2 Directors, each group would appoint one Managing Director and that Mr. Gurmit Singh (from Petitioners group) and Mr. Sunil Puri from the Respondents group) would remain as Managing Directors for life, not liable to retire by rotation.
- In pursuance thereof. Mr. Gurmit Singh remained the Managing Director of Respondent no. 1 company for nearly 28 years.

- Since relatives of Petitioner no. 1 had incorporated a company with competing business with Respondent no. 1 company, and diverted business and employees of Respondent no. 1 company to the new company, it would be in the interest of the company that shares of the Petitioner Group were purchased and allowing them to exit the company.
- The CLB observed that Petitioners had established that Respondent no. 1 company was in the nature of a quasi-partnership and the Petitioners had legitimate expectations and his removal as a Managing Director would amount to an act of oppression by applying the "principle of legitimate expectation".
- It was directed by the CLB that in the fitness of things and in the interest of the company and exercise of powers under Section 402 of Companies Act, 1956, the shares of Petitioner group be purchased either by the company or by the contesting Respondent group.

Analysing the facts of the cited case, we find that:-

- The MoU was entered into by the groups at the time of incorporation of the company itself, the Petitioner group held 11.87% shares.
- The CLB noted that the terms of the MOU clearly indicated that the company was a quasi-partnership and the facts revealed a basic understanding between the parties that the company would be run and managed on partnership principles.
- It is pertinent to mention that the Tribunal did not direct the division or dismemberment of the company but directed the parties to purchase the shareholding of the Petitioner. Hence the ratio as laid down in the case of Gurmit Singh & Ors. cannot be made applicable to the present case.

4. **Atmaram Modi vs. ECL Agrotech Ltd. & Ors – (1999) 98 Comp cases 463(CLB)**

Facts of the case:

- In this case, the petition had been filed under Section 397/398 by the Petitioner along with the consent of shareholders who collectively held 25% of the shareholding of Respondent no. 1 company.
- The Petitioner sought a declaration from the Company that the Petitioner continues as a Director of the company and that the company was a quasi-partnership.
- The Petitioner also sought directions against the Respondents to purchase the shares held by the Petitioners or sale of shares held by the Respondents to the Petitioners.
- Respondent no. 1 company was incorporated by 4 groups with each group having 25% shareholding in the company.
- Petitioner no. 1 and Respondent nos. 2 to 4 commenced business relationship in the form of a partnership and then proceeded to purchase Respondent no. 1 company by making an equal contribution of INR.10 lakhs each.
- It was understood between the parties that each group would only hold 25% shareholding and have one representative on the Board of Directors of Respondent no. 1 company.
- Respondent no. 1 company was a "public company" because it had 31 shareholders but no public shareholding: all shareholders were relatives and acquaintances of one group or another and no invitation was made to the public.
- Further, Petitioner no. I was the Chairman cum MD of Respondent no. 1 company, yet had incorporated a new company to run a competing business while diverting business and employees of Respondent no. 1 company to his new company.
- The petition had been filed by Petitioner no. 1 alleging that his removal as the Director of Respondent no. 1 company was oppressive to him and his group of shareholders.

- Further, the parties had made multiple attempts to settle the matter by valuing his shares for a buyout but the settlement could not be concluded due to the demands of Petitioner no. 1.
- The CLB examined whether the Petitioner had made out a case to prove that Respondent no. 1 company was in the nature of a quasi-partnership. While holding that there was no straightjacket formula for such determination, it factored in the relationship between all the shareholders prior to the incorporation of the company, the legitimate expectation of each group to have representation on the Board of Directors, history of equal shareholding and joint management between groups of shareholders. Shareholding of no group exceeded 25% under any circumstances, all shareholders were closely related family members, and no outsider was a shareholder in the company, to come to the conclusion that Respondent no. 1 was a quasi-partnership.
- Secondly, the CLB examined whether the removal of Petitioner no. 1 as a Director was an act of oppression. It was noted that the conduct of Petitioner no. 1 of commencing a competitive business with Respondent no. I was in breach of the partnership agreement and in contradiction to the interest of Respondent no. I company and its shareholders.
- The CLB noted that "In respect of a company, partnership principles are invoked only on equitable grounds. The conduct of the Petitioner shows that he has not come with clean hands, in the sense, he has acted in a manner prejudicial to the interest of the company as well as the shareholders and it is he who has acted in violation of mutual trust and confidence. When an action is taken against a wrongdoer, he cannot seek remedy in equity,"
- It was held that the act of removing Petitioner no. 1 as a Director was not prejudicial or oppressive, but was necessitated due to the conduct of Petitioner no. 1.
- The CLB was of the view that the petition ought to be dismissed but directed that the Respondents should buy out the shareholding of the Petitioners and permit the Petitioners to leave the company.

Analysing the facts of the cited case, we find that:-

- The aforesaid judgement does not advance the case of the Petitioner in the present case, in any manner as the company in question was a closely held family company wherein the equity of the company was spread over 4 groups and the total number of shareholders was 31, with no public shareholding at all.
- The CLB directed buy out of the shares of Petitioners rather than to divide the assets of the company which only had 4 groups of shareholders, with a total of 31 shareholders and no public shareholding. Hence, the cited judgment has no application to the facts of the present case.

5. Sishu Ranjan Dutta & Anr. Vs Bhola Nath Paper House Ltd – (1983) 53 Comp Cases 883(Cal)

Facts of the case:

- Respondent no. 1 company was a family company with two groups having 50% shareholding each.
- The Articles of Association of the company provided that from the inception of the company, two representatives from each group would be appointed as the Managing Director for their lifetimes and will not liable to retire in any AGM.
- Respondent no. 1 company did not have an independent Board of Directors and was managed jointly by both groups from its very inception.
- It had been incorporated as a private company and subsequently converted into a public company. Both parties admitted that there was a deadlock but also agreed that a buyout of shares was not possible in the company and therefore an equitable division of assets was possible on account of bifurcation of management of business between the groups.

- Pertinently, both groups consented to the separation and counsels of both parties submitted a draft order providing the outline of the equitable division.
- The CLB exercised its extraordinary powers on account of the company being a family concern, the possibility of an equitable division of the assets and business of the company and the consent given by the parties to such division.
- The CLB appointed a Special Officer to discharge all functions of the Board of Directors of Respondent no. 1 company. The Special Officer was also authorized to divide the assets and properties of the company into 2 groups and then allot them to the 2 groups of shareholders who would then continue the business under two different names.

Analysing the facts of this case, we find that:-

- The shares of the company were held by two groups with no public shareholding and thus the company was held to be a closely held family company in the nature of partnership and the relief granted flows from that peculiar situation.
- However, in the present case, no amendment has been made to the Articles of Association to incorporate any of the provisions in pursuance of execution of MoUs dated 08.01.1999 and 31.08.2003 or the arbitral award dated 01.11.2014 regarding division/demerger of the company in three equal baskets. Hence, the cited judgment has no application to the facts of the present case.

6. T. Ramesh U. Pai & Ors vs. Canara Land Investments Ltd & Ors – (2005) 123 Comp cases 869 (CLB)

Facts of the case:

- The shareholding pattern in Respondent no. 1 company was Petitioners held 44%, Respondents held 52% and remaining 4% of the shareholding was held by the public.
- Petitioners and Respondents were family members who controlled various companies together, including Respondent no.1. which was held to be a family company.

- Since its inception, the Petitioner's group had a representative on the Board of Directors of Respondent no. 1.
- On account of various disputes between both groups, the parties had resorted to arbitration before two different arbitrators culminating in three awards, all of which directed the separation of ways of both groups in various business enterprises.
- In light of the previous awards, the CLB held that it was in the best interest of Respondent no. 1 company that Petitioners holding 44% of the shareholding, leave the company. However, the price of the shares was not to be paid in cash but by division of assets of the company i.e. immovable property valued at 44% of the value of the company would be given to the Petitioners.

Analysing the facts of this case, we find that:-

- This is a closely held public company whereby the public shareholding was minuscule in the company whereas in the case of Atlas, it is a public listed company and a majority of the shares are held by the public i.e. around 11,000 public shareholders.
- The order passed by CLB in this case is on the basis of the three arbitral awards that were in favour of separation of units, whereas in case of Atlas, the arbitral award for demerger was set aside by Hon'ble Delhi High Court indicating that procedure as per the Companies Act is to be followed for demerger if at all.
- Hence, the cited judgment has no application to the facts of the present case.

7. Needle Industries (India) Limited & Ors vs. Needle Industries Newey (India) Holding Ltd. & Ors – AIR 1981 SC 1298

Facts of the case, findings and analysis thereof have been discussed in paragraphs 47,48 & 49 of this judgement.

36. In all these cases, the major shareholding of the company was primarily between the contesting parties. The companies were closely held company, or the parties consented to the division of the Company. Therefore, the deadlock

was resolved by the Court/Tribunal by adopting methods of division after valuation. In the present case the petitioner and respondent family groups are not the sole shareholders. The public shareholding is higher. We are unable to comprehend as to how petitioner shareholders who own lesser shares than the public can hold brief for the unrepresented public shareholders and seek demerger.

37. Company Law provides for a procedure in case of demerger under Section 230-232. This was clearly highlighted by the Single Judge while setting aside the award dated 01.11.2014 *supra*. That course of action has not been followed.

38. Section 230-232 of Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, provides for a procedure to be followed for the merger or demerger of a Company which includes filing a separate application before this Tribunal, making public announcement about the scheme; taking consent of the Shareholders, Creditors and other relevant stakeholders; giving notice to Statutory Authorities namely, MCA, RBI, SEBI, IRDA, Stock Exchanges (if the company is listed) and obtaining a 'No Objection Certificate' from such authorities; and after addressing to and considering the objections received by the various stakeholders, this Tribunal approves or rejects the scheme of demerger.

39. In the present case, the R-1 Company is a Public Listed Company and it has to seek approval of the Securities Exchange Board of India (SEBI). Bypassing the statutory provision, relief of this nature cannot be countenanced in respect of a Public Listed Company. As we have noticed the majority of judgments where the decision of demerger has been contemplated, the Companies in question were either Private companies or closely held group companies, and the shareholding of the public is either nil or minuscule.

40. The petitioner has chosen not to invoke the provision of section 230-232 of the Companies Act, 2013. On this count prayer (b) & (c) is not maintainable. When a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner *(See: Taylor vs Taylor (1875) 1 Ch.D.426,431; Chandra Kishore Jha vs Mahavir Prasad AIR 1999 SC*

3558 (Para 12) & Dhananjaya Reddy vs. State of Karnataka AIR 2001 SC 1512)

41. In any event the prayer for demerger on the basis of MOU is misconceived. The MOU that is providing for the division into three baskets and the award recognizing it has been set aside by the learned single Judge, vide order dated 03.08.2015 in **CS(OS)3510 of 2014**.

42. The Hon'ble Delhi High Court has set aside the arbitral award, and it has clearly held that such a demerger of the Company, if at all, should be as per the provisions of the Companies Act. This is binding on the petitioner.

43. At this juncture we also rely upon a judgment of Hon'ble NCLAT, whereby though the facts are different, it gives a guiding ray of light that this Tribunal is not empowered to dispense with the compliance of the provisions of the SEBI Act. In BSE Ltd. v Ricoh Company Ltd., Company Appeal (AT) No. 25 0f 2016, decided on 23 May 2017, the NCLAT held that provisions of the SEBI Act and rules and regulations issued thereunder relating to the reduction of capital are supplementary to the provisions of the Companies Act and the Tribunal is not empowered to dispense compliance with the provisions of the SEBI Act and regulations issued thereunder, in a case of a reduction of share capital involving the listed company. An appeal against this order before the Supreme Court, came to be dismissed.

44. On the basis of an MoU which has no bearing insofar as R-1 Company, has no binding effect, and it cannot be the basis for demerger, however much the Petitioner pleads that it was acted upon. The fact remains the MoU of 1999 and 2003 are at best a family arrangement between Kapur family. If it is held to be not binding on the board of R-1 company as held by the Hon'ble Delhi High Court *supra*, then it cannot bind the public shareholders as well. Their consent is essential in a case of demerger and the Companies Act provides for it. If it has to be done in any manner it will only be as the law provides and not as prayed for by the petitioner.

45. A breach of an MOU is outside the purview of Companies Act, 2013, and it cannot be dealt with by a Company Court. The appropriate remedy in such a case will be the civil court. In this case, the Company is not a party to the MOU. This principle is followed in the following rulings:

a. *Manoj Kumar Kanunga v Marudhar Power P. Limited, (2012) 110 CLA 99 (CLB): "as a breach of the condition in the MOU, the remedy available to the petitioner is to seek specific performance of the MOU before a Civil Court as the terms of MOU have not been made part of articles of association. CLB has no jurisdiction to deal with the same."*

b. *Satish Chand Jain v Himalaya Communications Ltd., (2005) 124 Com Cases 614 : (2005) 57 SCL 395 : (2005) 66 CLA 22 (CLB—PB): "When an order is passed on a parties' compromise, they cannot resile from statements made before the CLB. But where the memorandum of understanding was entered into between the parties privately, its enforcement is to be through the Civil Court and not CLB. Proceedings before the CLB are different from those before the Civil Court. Directions of the CLB are not to prejudice proceedings before the Civil Court"*

46. Hence, the petitioner's plea of demerger on the basis of MOU or oppression & mismanagement is not only opposed to law, but also not justifiable on facts. Further, the decisions relied upon by the petitioner do not enure to their benefit nor advance their case.

47. The petitioner pleaded that this Tribunal should invoke its inherent and extraordinary jurisdiction to do complete justice and put an end to the matter complained of. To this end counsel for the petitioner relied upon the Hon'ble Supreme Court's decision in the case of Needle Industries. The facts in the case of Needle Industries was that the Indian shareholders who were minority shareholders in the Indian Company acted in a manner oppressive to the rights of the majority shareholder of the holding company in England in respect of allotment of shares of the Indian Company.

48. The primary issue was in relation to Section 397 of the Companies Act i.e. oppression, and not Section 398 i.e. of mismanagement. The Supreme Court, exercising its power under Article 142 has passed the orders in the Needle Industries Case.

49. While it is true that this Tribunal has ample powers to pass an order as it deems just and appropriate to end the matters complained off. It however has to ensure that such power is not used unfairly against one or the other party.

In any event, the plenary power of the Hon'ble Supreme Court under Article 142 is a constitutional power and no other Court or Tribunal can venture to subscribe to such a thought.

50. In the present case if demerger is allowed as is suggested, the public shareholders will be a group of affected parties who have not been noticed or heard. Such an endeavour will be opposed to the principles of Natural Justice and violation of law as we have indicated above.

51. We, therefore, decline the relief of demerger. The issue is answered accordingly. However, to end the matters complained off, there has to be a solution to the problem as in this case. R-1 Company needs to be revived for the benefit of various stakeholders.

52. "Should we use the scythe to demerge the company as the petitioner wants or save the company from further decline?" In our considered view we opt for the latter as it would be in the best interest of the company, the public shareholders, the employees, the vendors, financial institutions, ancillary parts, and suppliers to name a few.

53. Therefore, the plea for demerger in the facts of the present case cannot be granted in the manner proposed by the petitioner, and in any event, not on the basis of a case of alleged oppression and mismanagement. We find no merits in such a plea.

54. However, to put an end to the matters complained off and in order enable the company to rebound to its original stature, we choose the better option to enable the R-1 company to work on a new platform, disgorging the present management.

55. The person who complains of oppression and mismanagement should be one who has acted fairly in relation to the company. The conduct of person who pleads for just and equitable relief should have conducted himself in a manner beyond reproach. In this case, the Board has cited instances where the petitioner group has taken benefits and rights as if the company and assets are their personal assets.

56. No doubt they are part of the founder's lineage but that by itself does not give them a royal mantle to deal with a public company in any manner prejudicial to its interest as is the case here. The acts of misconducts of different family

members and misconducts of the Petitioner has been spelled out by my Ld. Brother at paragraph 13.1-13.10 and 30-31 respectively. This is in relation to running of the R-1 Company.

57. The Companies Act, 2013 is a complete code in itself and governs all aspects of the functioning of the company. It defines the duties and obligations of all the functionaries of the company in every capacity. It takes care of the rights of shareholders, be it a private or public limited company.

58. In recent times, several public limited companies which were mismanaged and suffered financial losses and acted against the public interest, to name a few allegations, were taken over by the Government and independent directors were placed on the Board to redeem the situation. Accordingly, this approach we opine is the just and equitable way in the present case.

59. The conduct of the petitioners and other Kapur family shareholders breeding litigation and sapping the R-1 company which the board of directors are finding difficult to reign in, will eventually end up in a situation of winding up the R1- Company.

60. As it was stated in a Judgement in the case of D. Ramakishore v Vijyawada Share Brokers Ltd., (2008) 144 Com Cases 326 : (2009) 89 SCL 279 (AP), there are no limitations and restrictions upon the wide power to grant relief in cases of oppression and mismanagement. The shareholders had lost mutual trust and confidence. Election of directors led to resources disputes. The court held that it was within the power of the CLB to direct constitution of a fresh Board of Directors and appointment of a chairman.

61. In the present case, the petitioner's plea for demerging the company as per MOU will only result in winding up the affairs of the company. Therefore, the plea for demerger which will eventually result in winding up is not acceptable to this Tribunal. It will not be in the interest of the company and its stakeholders like shareholders, the union of employees, creditors, banks, financial institutions, operational creditors, vendors, ancillary part manufacturers. No case is made out for demerger both on law and facts. The said plea is declined.

62. Hence, I concur with the finding of my Ld. Brother to relieve the present Board of Directors of R-1 company Atlas cycles Haryana with immediate

effect and replace it with an independent board of directors keeping in mind the best interest of the R-1 company and its stakeholders. In the result issue number 4 is answered as above.

63. CA-257/2020 & CA 416/2021

This application is moved by R-1 Company for sale of the land, plant and building and machinery of Sonepat unit. Since we have held that the affairs of R-1 Company itself has not been effectively managed by the Board and the worth of the company including shares have been declining from time to time. For various reasons including the conduct of the petitioners, we feel that, in the light of our final order where we have indicated that the Board should be reconstituted, it is left to the wisdom of the new Board to take a decision as to how the properties of the company should be dealt with and in what manner sale of any kind should be effected. Therefore, the relief sought in the application is declined. Accordingly, this application stands disposed of.

64. CA-429/2021 & CA-469/2021

These two Applications are filed by the vendors/suppliers and the employees union respectively of R-1 Company. In view of the litigation between the Kapur family group consisting of Petitioner on one hand and other family members on the other, the condition of the vendors, suppliers and the employees union has become very pathetic and they are in a delirious condition. Similarly, the employees union also represents that the fate of the employees is suffering due to the units being closed one after the other. Similarly, in CA-429/2021, the United Cycles & Parts Manufacturers Association have also addressed the grievance that they are dependent on R-1 Company for their existence and because of the various litigations between the family members, their entire livelihood has been lost. In all these cases, we find that the perilous situation in which these two applications have been filed is only because of the conduct of the members of the Kapur family and the supine indifference shown by the Board to reign them in the proper

manner and run the company. That being the case, we have already held that the present Board will be replaced by an independent Board unconnected with the family members, which in effect will enable the company to turn around. The grievances of these petitioners namely vendors, suppliers, Employees Union and Cycle Parts Manufacturers Association would be better addressed by the new Board to be constituted so that their grievances can also be addressed. We hereby issue appropriate direction to the new Board to deal with these claims and their grievances in accordance with the law.

Accordingly, these applications stand disposed of with the afore- said observations.

-Sd

RAMALINGAM SUDHAKAR

PRESIDENT

ORDER

In the result, we order as follows:

1. In exercise of powers under Sec 242 more particularly Sec 242(2)(h) of Companies Act, 2013, we order that the present Board of Directors be removed with immediate effect. The removed Directors henceforth shall not represent the R1 company as Director and shall also not exercise any powers as Director in any manner before any authority.
2. In furtherance to the above and in exercise of powers under Sec 242(2)(h) of the Companies Act, 2013, we order that all the management committee/s headed by the members of the Kapur family be hereby removed. All the Kapur brothers and legal heirs will cease and desist to hold the management in R1 Company in any capacity with immediate effect.
3. Further, in exercise of powers under section 242(2)(k) of the Companies Act, 2013, we find it appropriate and fit to appoint an independent Board consisting of 6 (six) Directors who shall take over the R1 Company immediately and administer its affairs.
4. The 6 directors appointed by this Tribunal are:
   i. **Shri Jarnail Singh**, IAS (Retired), Former Secretary, Government of India, Ministry of DoNER
   ii. **Shri Hem Pande,** IAS (Retired), Former Secretary, Govt. of India, Department of Consumer Affairs
   iii. **Smt. Surina Rajan,** IAS (Retired), Former Director General, Bureau of Indian Standards, Department of Consumer Affairs
   iv. **Shri Manmohan Juneja**, ICLS (Retired), Former Director General Corporate Affairs, Ministry of Corporate Affairs
   v. **Sh. Ved Jain**, CA, Former President, ICAI
   vi. **Sh. R Parthasarathy**, IA & AS(Retd.), AOR, Supreme Court of India

5. While choosing the new Board we have taken note of their ability, past service, stature in the respective fields of avocation and the reputation that they command.

6. The 6 (six) Directors appointed by this Tribunal shall take over the R1 company forthwith. They shall hold a meeting on or before **16.12.2022** and conduct business as per the Memorandum and Articles of Association of the company and in accordance with the provisions of the Companies Act, 2013.

7. Further, if requested by the new Board, the RD (Northern Region), MCA is directed to extend full cooperation and assistance to the new Board to take over the charge of R1 Company from the erstwhile management.

8. The new Board will take all the appropriate and necessary steps in the interest of the R1 Company with a view to revive it and save it from present situation. It will include the constitution of new management committees, if needed, appointing accountants, auditors, finance officers etc. in the best interest of the R1 Company and comply with statutory filings etc. It will also submit periodical reports to this Tribunal.

9. This arrangement will be in place for a period not exceeding 1 year or till further orders of this Tribunal whichever is earlier, subject however to periodic review by this Tribunal as may be necessary.

10. Liberty is granted to the new Board of Directors to select a chairperson from among themselves and to constitute committee/s as per the Company Law and take all further and necessary steps as may be required for the effective running of the Company.

11. We further direct that the removed Directors, the removed members i.e. heads of the removed Management Committees and all other personnel of the previous management in whatever capacity they have served shall extend full cooperation and provide all the relevant information as and when required by the new Board. Failure to co-operate as directed above will be considered as disobedience to this order with consequences.

12. All or any actions, proceedings, conduct etc. of the removed Directors, removed members including heads of the removed management Committees or any of the officers/officials of the R1 Company which is in violation of any law will not be binding on the newly appointed Directors and no action to be initiated without the prior approval of this Tribunal.

13. It is further ordered that the newly appointed Directors, who have been appointed in larger public interest to regulate the affairs of the Public Limited R-1 Company and to save the R-1 Company from mismanagement, shall not be subject to any disability or disqualification in terms of Section 164 and 167 of the Companies Act, 2013, on being appointed as Directors in the R1 Company and in discharge of their duties.

14. The new Board is at liberty to move application for any other direction or order as it may deem appropriate before this Tribunal including, handing over the management of the R-1 Company in due course of time to the duly appointed Board as per the Companies Act, once the R-1Company has been put on the path of revival.

15. This Order is purely an interim arrangement till the Company is revived.

16. The Company Petition **(CP/18 (ND)/2015)** stands **DISPOSED OF** with the above directions.

List for next hearing on 22.12.2022

Copy of the order be sent to all the parties.

LIST OF DOCUMENTS SUBMITTED BY THE PARTIES DURING THE PROCEEDINGS is annexed herewith.

-Sd-

(RAMALINGAM SUDHAKAR)
PRESIDENT

- Sd-

(AVINASH K. SRIVASTAVA)
MEMBER, TECHNICAL

LIST OF DOCUMENTS SUBMITTED BY THE PARTIES DURING THE PROCEEDINGS

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	Petitioners	
1.	Original Petition	
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3.	Convenience File Volume II	388-899
4	Judgement by Petitioners	1-326
5	Judgements by Petitioners **18.09.2020**	1-385
6	Petitioners Judgements Vol 1 **30.05.2022**	1-427
7.	Petitioners Judgements Vol 2 **30.05.2022**	1-112
8.	Submissions by Petitioners dated **16.02.2022**	1-13
9.	Submissions on behalf of Petitioners regarding orders passed by the NCLT/NCLAT qua various board resolutions passed by the Board of Directors	1-100
10	Comparative submissions by petitioners	1-20
11	Note of Rejoinder on Behalf of Petitioners	1-21
12	Note on Demerger by petitioners	1-3
13	Revival Strategy on behalf of Petitioners	
	RESPONDENTS (R1, R12, R14-R16)	
1	Convenience File by Respondent nos. 1, 12 & 14 to 16 dated 28.10.2016	1 - 327
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	Volume 2 dated 05.05.2022	**670**
3	Judgements Compilation on behalf of Respondent nos. 1, 12 & 14 to 16 dated 22.04.2022 – Volume 1	**1 - 227**
4	Judgements Compilation on behalf of Respondent nos. 1, 12 & 14 to 16 dated 22.04.2022 – Volume 2	**228 - 668**
5	Compilation of Submissions dated **06.05.2022** containing – **i.** Family Tree depicting shareholding of Promoter Group in Respondent no. 1 as on 30.04.2022 **ii.** List of Dates and Events on behalf of Respondent nos. 1, 12 and 14 - 16 **iii.** Written Submissions on behalf of Respondent nos. 1, 12 and 14 – 16 **iv.** Excerpts of judgements being relied upon by Respondent nos. 1, 12 and 14 – 16 **v.** Details of interim applications pending as on **30.04.2022** **vi.** Comparative submissions on behalf of the Petitioner (as amended by Respondent no. 1 as on **25.04.2022**)	**1 - 96**
6	Affidavit of Company Secretary of Respondent no. 1 dated **05.05.2022**	**1- 38**
7	Affidavit of Director of Respondent no. 1 dated **05.05.2022**	**1- 5**

8	Affidavit of Company Secretary of Respondent no. 1 dated **31.05.2022**	**1 - 28**
9	Affidavit of Director of Respondent no. 1 dated **31.05.2022**	**1 - 101**
10	Compilation of charts dated **31.05.2022** containing – **i.** Litigation Chart **ii.** Employee Designations of Kapur family members in Respondent no. 1 **iii.** Board of Directors of Respondent no. 1 **iv.** Details of all interim applications filed in C.P. No. 18 (ND) / 2015	**1 - 36**
11	Additional Written Submissions dated **04.07.2022** on behalf of Respondent nos. 1, 12 & 14 - 16	**1 - 26**
12	List of Pending CAs as on 29.08.2022	**1-3**
13.	Turn Around Strategy on behalf of Atlas (Haryana) Private limited	**1-5**
	RESPONDENTS R3 TO R11	
1	Revised Written Submissions on behalf of R3 to R11	**1-17**
2.	Para wise Reply to Allegations of Oppression and Mismanagement against Respondent No. 3 to 11	**18-29**
3.	Excerpts of Judgements being relied upon by R3 to R11	**30-54**
4.	Judgements on behalf of Respondent R3 to R11 (Volume I)	**1-206**
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	II)	
	CA 429/2021 & CA 469/2021	
1.	Written Submissions on behalf of the Vendors and Employees of Atlas Cycles (Haryana) Ltd.	**1-4**