

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****COMPANY APPEAL (L) NO. 10 OF 2015****IN****CLB COMPANY APPLICATION NO. 296 OF 2014****IN****CLB COMPANY PETITION NO. 13 OF 2012.**

Supermax Personal Care Pvt. Ltd.

... Appellant

vs.

Vidyut Metallica Pvt. Ltd. and Ors.

...Respondents

*Mr. Ravi Kadam, Senior Advocate with Mr. A. Bookwala, Senior Advocate, along with Mr. Ashish Kamat, Mr. Ankit Lohia, Mr. Ranjit Shetty, Ms. Aastha, Mr. Rohan Agrawal instructed by M/s. Udwadia Udeshi & Argus Partners, for the Appellant.*

*Mr. Aspi Chinoy, Senior Advocate, along with Mr. Mustafa Doctor, Senior Advocate, Mr. Rohaan Cama, Mr. Rohan Dakshini, Ms. Shweta Jaydev, Mr. Prakhar Parekh and Mr. Ashwin Bhadang, instructed by M/s. Federal & Rashmikant, for the Respondent Nos. 1 and 2.*

*Mr. Prashant Chawan with Mr. Navdeep Vora i/by M/s. Navdeep Vora and Associates, for MIDC.*

**CORAM: S. J. KATHAWALLA, J.**

**Judgment reserved on:** 21<sup>st</sup> April, 2015,  
26<sup>th</sup> October, 2015,  
16<sup>th</sup> November, 2015.

**Judgment pronounced on:** 30<sup>th</sup> November, 2015

**JUDGMENT:**

1. The present Appeal is filed by the Appellant- Super Max Personal Care Pvt. Ltd. (“SPCPL”) against the Order dated 2<sup>nd</sup> February, 2015, passed by the Company Law Board, Western Region Bench [“the impugned order”] on the ground that the Company Law Board (“CLB”) inter alia granted ingress to Respondent No. 2 Mr. Rajinder Kumar Malhotra (“RKM”) into Plant No. 2 of the Respondent No. 1 – Vidyut Metalics Pvt. Ltd. (“VMPL”), which is in possession and control of SPCPL since the year 2010/11, without SPCPL being a party to the proceedings pending before the CLB, and which is the subject matter of an Arbitration Petition pending before this Court arising out of a Business Transfer Agreement (“BTA”) dated 30<sup>th</sup> December, 2010. Even in the written submissions tendered in Court by SPCPL, it is categorically mentioned that, *“The Appellants' case is of possession of Plant 2 by virtue of the BTA dated 30<sup>th</sup> December, 2010 and the Supplementary BTA dated 18<sup>th</sup> March, 2011 (Appeal Pgs. 12-13).”*

2. It is very necessary to point out at the outset, that SPCPL has in the above Appeal alleged that pursuant to the BTA and the Supplementary

BTA it is in possession and control of VMPL's Plant 2 since 30<sup>th</sup> December, 2010 / 18<sup>th</sup> March, 2011 and is carrying on its business operations from the said Plant No.2. The contents of the Appeal are reiterated and confirmed by Mr. Sanjay Jagtap ("Jagtap"), Head Legal and Secretariat of SPCPL in his Affidavit-in-Support of the above Appeal. The said Jagtap who is now alleging that SPCPL is in possession and control of Plant No. 2 of VMPL since 30<sup>th</sup> December, 2010/18<sup>th</sup> March, 2011, had as late as 14<sup>th</sup> March, 2013, filed an Affidavit on behalf of VMPL in Civil Application No. 2023 of 2012 in Writ Petition No. 4358 of 2001 in this Court, wherein he has stated that, "***I deny that SPCPL has been put in possession of the suit property (i.e. Plant No. 2) or that they are now carrying on the business from the suit property***" (Para 20 of the Affidavit) and "***I deny that SPCPL are in occupation and possession of the suit property....***" (para 21 of the Affidavit). Similarly, Respondent No. 9 herein Mr. Subhash Chaudhari ("Chaudhari"), General Manager – Corporate Legal of SPCPL, who had orally contended before the CLB on 2<sup>nd</sup> February, 2015, when the impugned order was passed that SPCPL was allegedly in possession of VMPL's Plant No. 2 had filed an Affidavit on

28<sup>th</sup> February, 2012, as the Authorised Signatory of VMPL in Civil Application No. 2023 of 2012 in Writ Petition No. 4358 of 2001, wherein he has categorically stated that, “ *I deny that SPCPL are in occupation and possession of the suit property*” (i.e. Plant No. 2) [Para 10 of the Affidavit/ and “*I deny that the Petitioners (VMPL) have created third party interest over suit property or that they have parted with possession of the suit property to SPCPL.....*” [Para 12 of the Affidavit].

When it was pointed out that the stand now taken by Jagtap and Chaudhari on behalf of SPCPL are contradictory to the statements earlier made by them on oath before this Court on behalf of VMPL, SPCPL not being in a position to offer any legitimate explanation, unabashedly submitted before this Court that the earlier statements made by Jagtap and Chaudhari were made on behalf of VMPL and not on behalf of SPCPL, and reflected VMPL's position, thereby suggesting that false statements are made on oath by Jagtap and Chaudhari as per their convenience and depending on the party/Company on whose behalf such statements were being made. SPCPL has also sought to explain that the said statements were made at the instance of the Directors/Promoters of VMPL, without

realising that Chaudhari himself was a Director of VMPL at the relevant time and the said statements were obviously not made at the instance of RKM because before the said Affidavits were filed by Jagtap and Chaudhari, RKM had on 2<sup>nd</sup>/3<sup>rd</sup> February, 2012, already filed a Company Petition before the CLB under Sections 397-398 of the Companies Act, 1956 alleging acts of oppression and mismanagement by the then Directors of VMPL i.e. Shri Paresh Vyas (Vyas) and Chaudhari. This clearly demonstrates that these days, litigants show scant respect for Courts and the rule of law. They not only brazenly take a stand contradictory to that taken earlier on oath, but subsequently, and equally brazenly, also attempt to justify the same on a false and illegal premise.

3. One more fact which needs to be brought out to the forefront in this Appeal is that though SPCPL has repeatedly tried to assert in the present proceedings that it is an independent legal entity which has nothing to do with the disputes between the members of Malhotra family, the present dispute is essentially one of the many proceedings arising out of a long standing feud between Rakesh Malhotra (the son) on the one hand and

Rajinder /RKM (the father) and his entire family on the other. Rakesh Malhotra (“Rakesh”) who in fact has admitted in the proceedings filed before the Hon'ble Supreme Court of India that he is in charge and control of SPCPL, has, as pointed out hereinafter, as late as on 4<sup>th</sup> September, 2014, in an Affidavit filed in the proceedings before the High Court of Justice, Queen's Bench Division Commercial Court in England, furnished a Schedule of Properties in which VMPL's Plant No. 2, Peeco Plant and the staff quarters are all stated by him to be in the possession of VMPL. Of course, SPCPL which is left with no answer to the said statement made on oath by Rakesh, has in the present Appeal stated that the said Affidavit is not filed by SPCPL and does not bind SPCPL and also that the said Affidavit appears to have been on the basis of inadequate information available with Rakesh. In view of Rakesh admittedly being in charge and control of SPCPL, the said statement/explanation by SPCPL, to put it very mildly, is preposterous and unacceptable.

4. It is also very necessary to set out at the outset that RKM has in his pleadings and through his Counsel repeatedly submitted that Vyas and

Chaudhari, the ex-Directors of VMPL after being transferred as employees/consultants of SPCPL, which is admittedly controlled by Rakesh, at the instance of Rakesh, turned completely hostile to RKM, because of which RKM had no alternative but to file Company Petition No. 13 of 2012 and seek removal of Vyas and Chaudhari as Directors of VMPL and appoint new Directors in their place and also to seek protective orders qua the assets/properties of VMPL. Despite Orders dated 2<sup>nd</sup> February, 2012 and 7<sup>th</sup> November, 2012 passed by CLB inter alia restraining Rakesh and the ex Directors (Respondents) from disposing off, transferring, encumbering or creating any charge on the assets /immovable properties of VMPL and directing the parties to maintain status quo in respect of the immovable properties of VMPL, neither Rakesh nor the ex-Directors impugned the said orders or contended that the immovable assets/properties of VMPL are in possession of SPCPL, pursuant to the BTA, as is now alleged. Instead, as submitted by RKM, his son Rakesh left no stone unturned in trying to prevent him from removing Vyas and Chaudhari, the ex-Directors of VMPL, but failed to succeed despite taking the issue right upto the Hon'ble Supreme Court. As submitted by RKM,

Rakesh thereafter realised that the hostile ex-Directors (Vyas and Chaudhari) through whom he was exercising control over VMPL's assets and properties shall no longer be able to wrongfully retain charge of VMPL's assets. Rakesh therefore arranged for SPCPL to make a false claim for the first time that it is in possession and control of Plant No.2 of VMPL pursuant to the BTA of December, 2010 and Supplemental BTA dated 18<sup>th</sup> March, 2011, which is nothing but a mala fide attempt to somehow exercise control over VMPL's assets, and properties. According to RKM, the above Appeal therefore clearly constitutes an abuse of the process of this Court.

4.1 SPCPL has denied and disputed that SPCPL has made a claim of being in possession and control of Plant No. 2 of VMPL at the instance of Rakesh. SPCPL has submitted in the above Appeal filed on 3<sup>rd</sup> February, 2015 that :

*“4 (a) .... The Appellant is a professionally led and managed Company and none of the members of the Rakesh Malhotra family are on the Board of Directors of the Appellant”; and*

*“5 (o) The Appellant herein came to learn of a significant family dispute within the R.K. Malhotra Family between R.K. Malhotra and his younger son Mr. Rajiv Malhotra on one side and Mr. Rakesh Malhotra on the other. **The Appellant would ordinarily not be concerned with any disputes between the family members. However, over the last few months Respondent No. 1 and its shareholders at the behest of Respondent No. 1 herein or otherwise started to interfere with and obstruct the business of the Appellant**”.*

**4.2** In the above Appeal SPCPL through Sanjay Jagtap filed an Affidavit in Sur-Sur Rejoinder dated 26<sup>th</sup> March, 2015 wherein, whilst dealing with the stand taken by RKM, that SPCPL is a Company fully controlled and managed by Rakesh (Respondent No. 5), it has stated as follows:

*“ 4. In respect of the allegation that the Appellant is a Company fully controlled and managed by Respondent No. 5, I state that the Appellant is a professionally run and managed Company and that Respondent No. 5 is not even on the Board of Directors of the Appellant, neither is he involved in the management of the day to day affairs of the Appellant. ”*

4.3 In paragraph 6.5 of the written submissions dated 21<sup>st</sup> April, 2015 filed by SPCPL, it is stated as follows:

*“Much has been sought to be made out on purported failure on the part of the Appellant to deny that Respondent No.5 (Rakesh) is in control and management of the Appellant. Respondent No. 1 (VMPL) sought to rely upon various affidavits filed in the course of pleadings before this Hon'ble Court. However, what Respondent No.1 (VMPL) failed to point out is the fact that on a conjoint reading of paragraph 5 (r) at Appeal : Pg. 12 read with Exhibit-K Appeal : Pg. 564 at paras 1 and 3 Appeal: Pg. 576, it is clear that the Appellant approached this Hon'ble Court clearly on the basis that the Appellant is a professionally run and managed Company and none of the Directors of the RKM Family are on the Board of Directors of the Appellant. The Appellant has also in paragraph 5 (o) at Appeal: Pg. 11 of the present Appeal clearly stated that the Appellant was not concerned with the family disputes between members of the RKM Family....”*

4.4 In the Arbitration Petition filed by SPCPL in January, 2015 and annexed by SPCPL as Exhibit-K to the Appeal, SPCPL has stated as under:

*“16. The Petitioner has come to learn that the RKM Family is involved in a significant family dispute between RKM and his younger son Rajiv Malhotra on one side and Mr. Rakesh Malhotra on the other side. Whilst it is a purely family dispute and ordinarily the Petitioner should not be at all concerned about it, the Petitioner started getting very anxious and apprehensive about the same only when the disputes between the family reached the Petitioner's doorsteps and started interfering with the Business of the Petitioner. Over the last few months, the Respondent whether at the behest of RKM or otherwise has started to significantly interfere with and obstruct the Business of the Petitioner”.*

It is pertinent to note from the purported instances set out by SPCPL in the said paragraph 16 of the Petition that the alleged obstruction commenced only from 31<sup>st</sup> December, 2014.

**4.5** This Court after hearing the Learned Advocates appearing for the Parties and after going through all the papers, placed the matter on Board on two occasions to put its queries to the Advocates for the Parties and get their response to the same. In view of the above stand on the part of RKM on the one hand that Rakesh has put up SPCPL to make a false

claim of being in possession and control of Plant No.2 from the year December 2010/March, 2011, and SPCPL on the other hand contending that SPCPL is in no way concerned with the disputes between RKM and Rakesh, and that Rakesh is neither on the Board of Directors of SPCPL or concerned with the day to day affairs of SPCPL, one of the queries put to the Advocate for SPCPL by this Court was whether SPCPL had financed Rakesh qua any of the litigations that were fought against RKM before the CLB and/or before this Court or before the Hon'ble Supreme Court, and in the event of SPCPL having financed Rakesh to pursue the litigation against his father, whether the Board of Directors of SPCPL has passed any Resolution approving the same. This Court had also clarified that if any such litigation of SPCPL is financed by SPCPL, the same would amount to SPCPL having made a false representation to the Court in their Appeal/affidavits as set out hereinabove.

**4.6** After seeking time from this Court on two occasions, the Court was informed by the Counsel appearing for SPCPL that the entire litigation fought by Rakesh against RKM (i.e. since the year 2012) has been financed

throughout by SPCPL and there is no Board Resolution on record of SPCPL qua the litigation costs having been borne by SPCPL on behalf of Rakesh.

**4.7** It is therefore clear that the entire cost incurred throughout by Rakesh in the fight between RKM and Rakesh is borne by SPCPL and shown by SPCPL in its accounts as legal expenses of SPCPL. This fact therefore clearly demonstrates that incorrect statements have been made by SPCPL in the Appeal, in the affidavits filed on behalf of SPCPL therein and in the Arbitration Petition relied upon by SPCPL in the Appeal, to give an incorrect impression to the Court that SPCPL has not approached the Court at the instance of Rakesh, after Rakesh failed to succeed in preventing the removal of Vyas and Chaudhari as Directors of VMPL; that SPCPL is not controlled by Rakesh (though Rakesh has himself admitted this fact in his SLP before the Hon'ble Supreme Court); that SPCPL is not concerned with the family disputes between Rakesh and RKM and had no alternative but to approach the Court only because, since December 2014 RKM/VMPL started interfering with the business of the Appellant; and

that SPCPL is a professionally led and managed Company where Rakesh is not a member of the Board of Directors of the SPCPL and is also not concerned with the day to day affairs of SPCPL.

4.8 These facts once again expose the dishonest conduct of SPCPL in not being fair and honest with the Court but instead misrepresenting facts which are incorrect to its knowledge, only to seek favourable reliefs as sought by it in the proceedings.

5. Since the disputes between Rakesh on the one hand and his father RKM and his entire family on the other qua various Companies which are hereunder referred to as the “RKM Indian Companies”, has a chequered history, it is necessary to set out hereunder the relevant facts which have led to the filing of the present Appeal, which Appeal this Court has, with the consent of the Parties, decided to dispose of at the stage of admission itself.

5.1 The Super Max Group was a family-owned Group of Companies founded by RKM in the year 1949 and its business was and is that of

manufacturing and selling razor blades and related products internationally. The Super Max Group Companies were held through a number of foreign holding Companies and ultimately forms part of the Lichtenstein Foundation.

**5.2** RKM was and is also the effective owner of 5 Indian Companies (the RKM Indian Companies) which either manufactured products for the Super Max Group, or owned land/plant, or intellectual property rights which were used by the Super Max Group for its business. These RKM Indian Companies included VMPL -- the Respondent No.1 herein. RKM holds 47.3% of VMPL's equity. Of the rest, 53% is held by Transauto and Mechaid Pvt. Ltd. and 0.01% by Rakesh. Mrs. Veena Malhotra, wife of RKM holds 1 share of Transauto and RKM holds the rest. VMPL till date, is therefore effectively held and owned by RKM.

**5.3** As a matter of policy, the Directors of the said RKM Companies comprised of employees and/or ex-employees of the Companies and no member of the Malhotra family was appointed as Director of any of the

## RKM Indian Companies.

**5.4** In 2008-2010, RKM decided to restructure and hand over control of the Super Max Group, to his eldest son Rakesh. Accordingly, on 4<sup>th</sup> November, 2010 a Share Subscription Deed (“SSD”) was executed between the parties mentioned therein. The said SSD was subsequently modified by a Supplemental Share Subscription Deed dated 4<sup>th</sup> March, 2011 (“SSSD”). As part of that restructuring, SPCPL was registered as a new Company with Rakesh in charge of its management. A Foreign Pvt. Equity Investor - ACTIS, subscribed to 25 -30 % of the Holding Company against payment of US \$ 225 Million : 1018 Crores. Of this, an amount of US \$ 53 million (approx. Rs. 240 Crores) was to be paid by SPCPL to the 5 RKM Indian Companies as consideration for the transfer/lease/utilization of their Business Assets. Of this amount, VMPL was to receive Rs. 110 crores.

**5.5** On 30<sup>th</sup> December, 2010, a BTA was executed between VMPL and SPCPL for transfer of VMPL's business to SPCPL. The BTA provided

that VMPL's Plant No. 1 was to be leased to SPCPL. The BTA did not provide for lease/transfer of the Plant No. 2 to SPCPL. Instead, the BTA specifically provided that VMPL was to undertake toll manufacturing (job work) for SPCPL at its Plant No.2. Under the BTA, all the equipment and employees of VMPL were transferred to SPCPL. Accordingly for carrying out the job work arrangement, the said equipment was to be leased back by SPCPL to VMPL and the said employees were to be seconded back by SPCPL to VMPL.

**5.6** RKM in the aforesaid manner handed over control of the 5 RKM Indian Companies to his elder son Rakesh and trusted him totally. A Supplementary BTA as well as the Job Work Agreement, the Staff Secondment Agreement and the Equipment Lease Agreements were all executed on 18<sup>th</sup> March, 2011. Vyas and Chaudhari, who were the two Directors of VMPL had now become employees/Consultants of SPCPL. However, since they had been the Directors of VMPL since 1993 and 2001 respectively, RKM believed that they would continue to protect the interest of VMPL and therefore allowed them to continue as Directors of

VMPL. Similarly, the Directors of the other RKM Indian Companies remained unchanged. However according to RKM his son Rakesh misused the trust reposed in him by RKM and used his influence over the Directors of the RKM Indian Companies including VMPL (now employees/Consultants of SPCPL) to exclude RKM who held 99.99% of the shares of the five Companies. According to RKM, the Directors of the 5 Companies acting upon Rakesh's instructions refused to give RKM, who was the effective owner of the said 5 RKM Indian Companies, information and access to records, registers and accounts. Through these pliant Directors, Rakesh also sought to utilize the funds, assets and properties of the five Companies (including VMPL) for the benefit of SPCPL/himself.

**5.7** On 2<sup>nd</sup>/3<sup>rd</sup> February, 2012, RKM either directly or through Companies belonging to him, filed four Company Petitions in the CLB at Mumbai and one at Chennai, on the ground of oppression and mismanagement, inter alia for removal of the hostile Directors from the RKM Indian Companies. Company Petition No. 13 of 2012 was one of the Petitions filed by RKM under Sections 397 and 398 of the Companies

Act, 1956, against the Respondents therein including Vyas, Chaudhari and Rakesh (Respondent Nos. 2, 3 and 6 therein). In paragraph 11 of the Petition, RKM has categorically stated that, “*It may be noted that Mr. Rakesh Malhotra, the elder son of Mr. Rajinder Kumar Malhotra (the Petitioner) and Respondent No. 6 herein, is in de facto charge and management of SPCPL*”. By the said Company Petition, RKM inter alia sought orders and directions for convening an Extra Ordinary General Meeting of VMPL for removal of the then Directors, Vyas and Chaudhari and appointment of new Directors in their place. Further appropriate directions and orders were also sought under Section 402 of the Act concerning the various alleged acts of oppression and mismanagement, including directions for true and fair disclosure of various payments made and liabilities incurred by VMPL with effect from 18<sup>th</sup> March 2011, and compensation in respect of losses incurred on account of such acts. A general order was sought for termination and modification of all agreements that may have been executed by VMPL after 18<sup>th</sup> March, 2011. A temporary order and injunction was sought against Vyas and Chaudhari (the then Directors of VMPL) from: “*selling, transferring, encumbering or charging or otherwise*

*disposing of or alienating any of the assets of the Company, including the immovable properties more particularly described in Annexure 2 hereto”* and inter alia against Vyas, Chaudhari and Rakesh to maintain status quo with regard to the properties and assets of the Company including but not limited to bank accounts, mutual fund holdings and immovable properties. It is pertinent to note that in Annexure 2 to the Petition, Plant No. 2 of VMPL was also included.

5.8 RKM along with the Petitioners who had filed the said four Company Petitions before the CLB, Mumbai, mentioned the matters including Company Petition No. 13 of 2012 with regard to VMPL, before the CLB on 9<sup>th</sup> February, 2012 when the following ad-interim order was passed:

*“ (i) The Respondents shall not utilize, invest or deal in any manner the funds, monies and securities of the Company (including bank account) except for the purpose of making statutory payments that may be required to be made to any government authorities and salaries of the employees in the ordinary course of business until further orders.*

*(ii) The Respondents shall not dispose off, transfer, encumber*

*or create any charge on the assets of the Company including the immovable properties until further orders”.*

Interestingly, neither Vyas nor Chaudhari (employees/consultants of SPCPL) who continued to be the Directors of VMPL, nor Rakesh who admittedly was managing the affairs of SPCPL took a stand similar to the stand now taken through SPCPL, namely that all the assets of VMPL including Plant No.2 are transferred to and/or in control and possession of SPCPL by virtue of the BTA dated 30<sup>th</sup> December, 2010 and the Supplementary BTA dated 18<sup>th</sup> March, 2011.

**5.9** Instead, Rakesh obtained an ex-parte ad-interim anti-suit injunction from the Commercial Court of the Queen's Bench Division of the Royal Courts of Justice in the U.K. RKM and the other Petitioners in the Petitions filed by the Indian Companies thereafter approached the English Court and contested the matter. After hearing the parties, the injunction granted in favour of Rakesh by the UK Court was dissolved by a Judgment dated 30<sup>th</sup> October, 2012.

**5.10** In view thereof, the proceedings before the CLB in the said Company Petitions stood revived. However, before entering upon the defence by way of filing the written statement/reply in the Company Petitions filed by the Indian Companies, Rakesh Malhotra filed Company Applications in the respective Company Petitions under Section 45 of the Arbitration and Conciliation Act (“the Act”) and prayed that the disputes be referred to an Arbitrator in terms of clauses 43.1 to 43.2.6 as contained in the SSD dated 4<sup>th</sup> November, 2010.

**5.11** By an Order dated 7<sup>th</sup> November, 2012 passed by the CLB, the CLB in its Order recorded an undertaking on behalf of the parties to maintain status quo in respect of the shareholding, the constitution of the Board of Directors and the fixed assets of the Company, as on that date, and also continued the interim order dated 9<sup>th</sup> February, 2012. Even at that time Vyas and Chaudhari, ex-Directors of VMPL and Rakesh who admittedly is in control of SPCPL did not take a stand before the CLB that all the assets of VMPL have been transferred to and/or are in possession and control of SPCPL.

**5.12** By an Order dated 31<sup>st</sup> January, 2013, the CLB dismissed Rakesh's Application for reference to arbitration under Section 45 of the Act and also permitted RKM to reconstitute the Board of Directors of the said Companies.

**5.13** On 6/7<sup>th</sup> February, 2013, Rakesh filed Company Appeals in this Court impugning the Order allowing RKM to reconstitute the Board of Directors of the said Company (including the Board of Directors of VMPL). The Appeals were admitted and the impugned Order dated 31<sup>st</sup> January, 2013 was stayed. In view thereof, the removal of the Directors of the said four Companies including VMPL and the appointment of new Directors in their place could not be given effect to.

**5.14** On 12<sup>th</sup>/20<sup>th</sup> August, 2014, this Court (Coram: G.S. Patel, J.) dismissed Rakesh's Company Appeals and also refused to extend the stay on the removal of Rakesh's suborned Directors/appointment of new

Directors. In paras 134 to 138 of its judgment, the Court recorded that:

(i) Rakesh had betrayed the confidence reposed in him by RKM, had engineered a coup d'etat, hijacked the RKM controlled Indian Cos., and deployed their funds to further the interests of entities controlled by him.

(ii) That although RKM owned and controlled 99.9 % of the Shares of the said Indian Cos., the said Directors acting as puppets of Rakesh, had continued in control of the RKM Indian Cos. and had continued to be “obdurate & obfuscatory”. That as a consequence the said RKM Cos. were exposed to considerable financial risk, severe financial distress and even possibly ruin.

(iii) That considerable harm and profound prejudice was likely to occur if these state of affairs were allowed to continue.

(iv) That it would be wholly inequitable to allow such a state of affairs to continue and there could not possibly be any equity in Rakesh's favour in a situation like this.

The interim orders dated 9<sup>th</sup> February 2012 and 7<sup>th</sup> November 2012 were continued.

**5.15** Against the said Judgment and Order dated 12<sup>th</sup>/20<sup>th</sup> August, 2014,

Rakesh preferred a Special Leave Petition before the Hon'ble Supreme Court of India. Rakesh applied for a stay of the said Judgment and Order dated 20<sup>th</sup> August, 2014, inter alia on the grounds set out below:

*“A. Because **the Petitioner is in control of the newly formed Indian Company called Supermax Personal Care Pvt. Ltd.** And that if the present order is allowed to continue, the Respondent shall take control of the other Indian Companies and cancel all Agreements mandated to be entered into by the SSD and the business of the Petitioners' Company will come to a standstill.”*

*“D. Because removing the interim protection would result in irreversible situation inasmuch as permitting an immediate change in the Constitution of the Board of Directors of the Respondent Companies. Since these Companies have contractual obligations with or to the SuperMax Companies, should any of the existing contracts be terminated, the consequences to the SuperMax group would be crippling.”*

Thus Rakesh, as Petitioner in the SLP, has categorically admitted that he is in control of SPCPL and if RKM shall take control of the Indian Companies (including VMPL) and cancel all agreements mandated to be entered into by the Share Subscription Deed (SSD) the business of

SPCPL will come to a standstill. It will again not be out of place to mention here that Rakesh who admitted before the Hon'ble Supreme Court to be in control of SPCPL, did not take a stand in the said SLP that the question of alienating, encumbering, parting with possession of the assets of VMPL or maintaining status quo in respect of the fixed assets of VMPL as ordered by the CLB on 9<sup>th</sup> February, 2012 and 7<sup>th</sup> November, 2012 respectively, and continued by the Learned Judge of this Court by his impugned Order dated 12<sup>th</sup>/20<sup>th</sup> August, 2014, does not arise, since under the BTA dated 30<sup>th</sup> December, 2010 all the assets of VMPL including Plant No.2 were transferred to SPCPL and/or the same were in possession and control of SPCPL, as now alleged.

**5.16** By its Order dated 10<sup>th</sup> September, 2014, the Hon'ble Supreme Court granted Rakesh leave to appeal but declined stay of the Order passed by this Court dated 12<sup>th</sup>/20<sup>th</sup> August, 2014.

**5.17** At an Extraordinary General Meeting of VMPL held on 21<sup>st</sup> December, 2012, a Resolution had been passed removing Vyas and

Chaudhari as Directors of VMPL and appointing in their place Mr. Punnilal Chhabria and Mr. Gordhandas Daulal Arora respectively (“the newly appointed Directors”). The newly appointed Directors of the Company had refrained from acting as Directors and Vyas and Chaudhari (employees/consultants of SPCPL) had continued to be the Directors of VMPL in view of the pending Appeals in this Court. However, after the Judgment and Order dated 12<sup>th</sup>/20<sup>th</sup> August, 2014 was passed, the newly appointed Directors immediately addressed a letter dated 25<sup>th</sup> August, 2014 to Vyas and Chaudhari calling upon them to forthwith seize and desist from acting as Directors of the Company and on and from 27<sup>th</sup> August, 2014 to hand over to them the entire charge of the Company along with all its records (statutory, financial and otherwise) including all original documents of all assets owned by VMPL.

**5.18** In response to the said request made, the newly appointed Directors received a letter dated 26<sup>th</sup> August, 2014 from Vyas stating that he was replying on behalf of himself and Chaudhari and that they were unable to meet on 27<sup>th</sup> August, 2014 as it was not possible to reschedule

their prior commitments. He suggested that the parties meet on 5<sup>th</sup> September, 2014.

**5.19** RKM by his Advocate's letter dated 30<sup>th</sup> August, 2011, called upon Vyas and Chaudhari through their Advocates to immediately (not later than 2<sup>nd</sup> September, 2014) hand over the entire charge inter alia of VMPL along with its records (statutory, financial and otherwise) as required. No response was received to the said letter. RKM therefore by his Advocate's letter dated 19<sup>th</sup> September, 2014 whilst recording that the Hon'ble Supreme Court had refused to grant interim relief to the Respondents in the aforesaid SLP, once again requested Vyas and Chaudhari through their Advocates to ... *“at least now co-operate with our clients and hand over the assets and records (statutory, financial and otherwise) of the Companies so that the interest of the Companies can be properly protected”*.

**5.20** In the meantime, the newly constituted Board of the Company addressed a letter dated 11<sup>th</sup> September, 2014 to the ex-Directors Vyas and Chaudhari inter alia recording that no documents were handed over

even on the proposed date i.e. 5<sup>th</sup> September, 2014 as suggested by Vyas and Chaudhari.

**5.21** By their Advocates letter dated 22<sup>nd</sup> September, 2014, Vyas, Chaudhari and Rakesh in reply to the above mentioned letters, purported to contend that they continued to be Directors of VMPL and that their removal as Directors was in violation of the Judgment and Order dated 12<sup>th</sup>/20<sup>th</sup> August, 2014, passed by this Court.

**5.22** In response to the said letter dated 22<sup>nd</sup> September, 2014, RKM by his Advocate's letter dated 26<sup>th</sup> September, 2014, pointed out that Vyas, Chaudhari and Rakesh were taking a deliberately false and mischievous stand by purportedly contending that they continued to remain as Directors of VMPL. By the said letter, RKM also pointed out that VMPL had received a few assessment orders and recovery notices from the Income Tax Department and that VMPL was required to file its Income Tax Return on or before 31<sup>st</sup> September, 2014, for which purpose they needed the 'User ID' and 'Password' of the Company's on-line payment

account, also for issuance of TDS Certificate, and to complete statutory compliance.

**5.23** The newly appointed Directors of VMPL by a letter dated 7<sup>th</sup> October, 2014, requested Vyas and Chaudhari to make arrangements to hand over charge of VMPL's property viz. Peeco Plant (Wagle Estate), Panama Headquarter (Thane) and Plant 2, VMPL (Thane) and to remove their security guards from the said plants/properties.

**5.24** On 11<sup>th</sup> October, 2014, certain persons deputed by the newly appointed Directors went to the Company's Panama Head Quarter and the Peeco Plant premises along with their security guards to take charge of the same. However, they were denied entry by the security guards employed by Vyas and Chaudhari.

**5.25** By a letter dated 10th October 2014, Vyas, Choudhari and Rakesh through their Advocates replied to the RKM Advocate's letter dated 26<sup>th</sup> September, 2014. By the said letter, they purported to contend

that the Petitioner was erroneously interpreting the orders passed by this Court and the statements made by them in the Special Leave Petition filed before the Hon'ble Supreme Court of India. They also refused to give the Petitioner the 'User ID' and 'Password' with regard to the Company's on-line account. In fact, on 13<sup>th</sup> October, 2014, Vyas and Choudhari, in the name of VMPL purported to issue a public notice in the Times of India newspaper stating that they continue to be the Directors of VMPL.

**5.26** According to RKM, notwithstanding the fact that the Judgment and Order of this Court dated 12<sup>th</sup>/20<sup>th</sup> August, 2014, was clear and unambiguous, only by way of abundant caution, RKM filed a praecipe before this Court seeking clarification of its Order dated 12<sup>th</sup>/20<sup>th</sup> August, 2014. The said application was disposed of by an Order dated 14<sup>th</sup> October, 2014 wherein this Court observed that it was made amply clear in its Order of 12/20<sup>th</sup> August, 2014 that it was not staying the change in the Constitution of the Board of Directors of the Company and the only restraint was against the CLB Respondents i.e. Rakesh, Vyas, Chaudhari and others from utilizing the Company's funds or from disposing of or

encumbering their assets. The Respondents made an application for a stay of the said clarificatory order, which was not granted.

**5.27** On 17<sup>th</sup> October, 2014, RKM by his Advocate's letter once again called upon Vyas and Chaudhari to hand over charge of properties (moveable and immovable) of the Company including all its records (statutory, financial and otherwise) to the Petitioner and to withdraw the said public notice issued by them on 13<sup>th</sup> October, 2014 in the Times of India.

**5.28** Instead of complying with the requisitions made in the aforesaid letter, Vyas and Chaudhari by their Advocates letter dated 27<sup>th</sup> October, 2014, continued to falsely contend that the clarificatory order dated 14<sup>th</sup> October, 2014, was passed by this Court without jurisdiction and that they were in the process of filing proceedings in the Hon'ble Supreme Court against the said Order and were therefore unable to comply with the requisitions contained in the said letter. Again, Vyas and Chaudhari had not taken the stand that the question of handing over charge of

immovable properties of VMPL did not arise since pursuant to the BTA and Supplemental BTA all the immovable assets of VMPL are transferred and/or in possession and control of SPCPL, as now alleged. RKM responded to the aforesaid letter dated 27<sup>th</sup> October, 2014 by his letter dated 29<sup>th</sup> October, 2014.

**5.29** In the circumstances VMPL filed Company Application No. 296 of 2014 in the CLB Petitions, inter alia to restrain Vyas and Chaudhari from holding themselves out as Directors of VMPL and to direct them to hand over charge of the properties and records of VMPL to the newly appointed Directors. In the said Application, Rakesh and the ex-Directors of VMPL were represented by the same Advocate.

**5.30** By Orders dated 20<sup>th</sup> November, 2014 and 5<sup>th</sup> January, 2015, made in Company Application No. 296 of 2014, the CLB restrained Vyas and Chaudhari from acting and holding themselves out as Directors of VMPL; and recorded a finding that Vyas and Chaudhari were wilfully disobeying the orders and not handing over charge.

**5.31** According to RKM, realizing that the ex-Directors would no longer be able to retain control/change of the funds and assets of VMPL, on 12<sup>th</sup> January, 2015, Rakesh caused SPCPL to file Arbitration Petition (L) No. 55 of 2015 against VMPL. By the said Petition SPCPL falsely purported to contend that it was not concerned with the disputes between the Malhotra family. The reliefs sought in the Arbitration Petition related to restraining VMPL from interfering with the business of the SPCPL, from obstructing the water supply from the Peeco Plant to Plant Nos. 1 and 2. VMPL filed its Affidavit-in-Reply dated 27<sup>th</sup> January, 2015 in the said Arbitration Petition. However, till date no ad-interim/interim reliefs are granted in favour of SPCPL.

**5.32** At the hearing of the said Company Application No. 296 of 2015 on 2<sup>nd</sup> February, 2015, Vyas and Chaudhari who had till then refused to hand over charge on diverse grounds, now confirmed/accepted that they had ceased to be Directors of VMPL from November, 2014. However, the said erstwhile Directors for the first time now orally alleged that SPCPL

(which is admittedly controlled by Rakesh) was allegedly in possession of the assets of VMPL under the Business Transfer Agreement of 2010. VMPL in response had pointed out to the CLB that only its Plant No. 1 had been leased/transferred to SPCPL under the BTA of December, 2010. In the circumstances, the CLB passed an Order dated 2<sup>nd</sup> February, 2015, directing the said ex-Directors to hand over charge of the properties and assets of VMPL to the present management and Directors of VMPL and restrained the Respondents from causing any obstruction/interference in the ingress of the present Management and Directors to the properties/factory premises/manufacturing units and directed local administration and police authorities to ensure implementation of the order if any interference/resistance was reported to them by the present management of VMPL. The CLB however excluded from the purview of the order, assets which had been transferred to SPCPL under the BTA.

**5.33** On 3<sup>rd</sup> February, 2015, SPCPL filed the present Company Appeal impugning the Order of the CLB dated 2<sup>nd</sup> February, 2015. In the present Appeal, SPCPL has alleged that it was in possession of VMPL's Plant No.

2. In the Appeal no particulars were stated as to how and when SPCPL had allegedly come into possession of VMPL's Plant No.2. However, in paragraph 6 of its Rejoinder Affidavit, SPCPL stated how it allegedly claimed to be in possession of Plant No. 2 as follows:

*“ I say and submit that pursuant to the BTA and other relevant agreements, all the assets of the Respondent No. 1 (including Plant Nos. 1 and 2) came into possession of the Appellant inter alia by virtue of the transfer of all the erstwhile employees of Respondent No. 1 who were operating Plant 1 and Plant 2. Thereafter these employees continued to possess and operate both these plants for the appellants. The Appellants therefore possessed both these plants and no further transfer of possession was required. Thus pursuant to the BTA and the Supplemental BTA, possession of both Plant 1 and Plant 2 along with other properties mentioned therein stood transferred to the Appellant”.*

The other agreements referred to in para 6 of SPCPL's said Affidavit, were set out in paragraph 5 of the Rejoinder Affidavit i.e. (i) the Job Work Agreement, (ii) the Secondment Agreement & (iii) the Equipment Lease Agreement – all executed between VMPL and SPCPL and all dated 18<sup>th</sup>

March, 2011. In fact, the same three agreements dated 18<sup>th</sup> March, 2011 had also been referred to in para 5 (g) of the Company Appeal as having been executed to take forward the job work arrangement between SPCPL and VMPL under the BTA and the said three Agreements had also been annexed as Exhibits-E, F and G thereto at pages 489, 514, 530.

6. As stated hereinabove, the case set up by SPCPL in the present Appeal is that pursuant to the BTA and Supplemental BTA, it is in possession and control of Plant No.2 since 10<sup>th</sup> December, 2010/18<sup>th</sup> March, 2011. In support of its case, SPCPL has, in its Appeal inter alia, stated/submitted as under:

(i) That as part of the restructuring of the Supermax Group around the year 2010-2011, the entire business of shaving products, including all the business assets, which includes Plant No. 1 and Plant No. 2 **was to be transferred** to SPCPL.

(ii) That on 30<sup>th</sup> December, 2010, VMPL entered into a BTA with

SPCPL wherein VMPL agreed to sell, assign and transfer all its business, including all the business assets, licenses and employees to SPCPL.

(iii) That subsequent to the BTA, SPCPL and VMPL also executed a Supplemental Agreement to the BTA dated 18<sup>th</sup> March, 2011 to carry out certain amendments/changes to the BTA.

(iv) That since the Deed of Conveyance was not executed by one Harbanslal Malhotra & Sons Ltd. in favour of VMPL qua the land and Plant No. 2 standing thereon, although VMPL operated its business from Plant No.2, VMPL did not legally own the Plant No.2.

(v) That since the business was to be transferred to SPCPL pursuant to the BTA, SPCPL and VMPL entered into an arrangement of job work to enable SPCPL to carry out the business from Plant No.2. For the said job work arrangement, SPCPL and VMPL executed a Job Work Agreement dated 18<sup>th</sup> March, 2011. To take this arrangement forward, ancillary agreements i.e.. a Secondment Agreement and the Equipment Lease

Agreement, both dated 18<sup>th</sup> March, 2011 were also executed between SPCPL and VMPL, copies of which are annexed to the Appeal.

(vi) That this arrangement was to follow till such time VMPL would effectively execute a Conveyance with respect to the land pertaining to Plant No. 2 in its favour, from Harbanslal Malhotra & Sons Ltd. pursuant to the Consent Terms dated 20<sup>th</sup> December, 2002 and transfer the same to SPCPL.

(vii) That the Lease Agreement in respect of Plant No. 1 or the Job Work Agreement with respect to Plant No. 2 was therefore entirely an interim arrangement, and the following provisions of the BTA amply reflect this intention.

“1.1.3 “**Business**” shall mean the global business of manufacturing, marketing, sales, distribution and related business activities in respect of shaving products, shaving accessories, shaving preparation and post-shave products (foam, gel, balm, lotion, creams) and the specific adjacent male grooming categories carried on by the Transferor or as a ‘going concern’, including the Business Assets : the Business Liabilities, the Records and all Employees.

1.1.4 *“Business Assets” shall mean all assets relating to the Business including the following:*

- (i) the right to use the immovable properties set out in **Annexure-1 Part A (“VMPL Plant 1”)**;*
- (ii) All leased and licensed immovable properties set out in **Annexure -1 Part B (“Rental Properties”)**;*
- (iii) The right, interests and benefits in respect of all Contracts;*
- (iv) All plant & Machinery and other fixed assets currently operated within the Business as set out in the fixed asset register maintained by the Transferor, the summary of which is annexed as **Annexure-1 Part D**;*
- (v) all Business IPR including but not limited to the (i) licenses with respect to (a) all computer software being used in connection with the Business, as set out in **Annexure-1 Part E** and (b) the payroll software being used in connection with the business, as set out in **Annexure-1 Part F**; (ii) trademarks owned and applied for by the Transferor, as set out in **Annexure -1 Part G**; (iii) goodwill of the said Business; and (iv) Business Information held by the Transferor which in any way relate to the Business, if any (v) all patents, designs (registered or unregistered). Copyrights, technical information used in respect of the Business, including drawings, sketches and blue prints, designs, product manuals, specifications, data, processes, operation sheets, quality control and inspection data,*

*instructions and other such information, details of which are set out in **Annexure – 1 Part H**; (hereinafter referred to as “**Business IPR**”);*

- (vi) *all the current assets of the Transferor including (i) all accounts receivable or portions thereof, and other rights to payments of the Transfer (billed or accrued) in respect of the customers attributable to or arising out of the Business (“**Account Receivables**”) i.e. sold and money to be received as set out in **Annexure-1 Part 1**; (ii) all inventory wherever located, including all raw materials, work-in-progress, finished goods and products, spare parts, packaging materials, factory supplies, perishable tooling, maintenance, repairs and other supplies that are owned by the Transferor or subject to a lease or license in each case, to the extent used in, or to the extent related to, the Business (“**inventory**”), including such Inventory held at any location controlled by the Transferor, such Inventory previously purchased and in transit and any such Inventory paid for but not yet purchased and in transit and any such Inventory paid for but not yet delivered or received by the Transferor that is engaged, deployed, employed or used in and forming a part of the Business, details of which are set out in as set out in **Annexure -1 Part J**;*
- (vii) *all the movable assets, resources, facilities, utilities and services of the Business including without limitation all movables office*

*equipment telephone instruments, electronic installations, printers, fax machines, furniture and fixtures, computers, mobile phones, and such other tangible movable property, which are owned and used by the Transferor in respect of the Business and more particularly described in **Annexure -1 Part K** (hereinafter referred to as “**Movable Property**”);*

- (viii) all transferable Licenses for carrying on the Business details of which are set out in **Annexure – 1 Part I**.*
- (ix) the benefit of all refunds in connection with any Other Taxes arising from or in connection with, the Business prior to the Transfer Date, and relating to a specific liability transferred to the Transferee;*
- (x) the benefit of all the insurance policies held by the Transferor which relate to the Business, as set out in **Annexure-1 Part M (“Insurance Policies”)**;*
- (xi) the benefit of all rights and claims arising from, or coming into existence as a result of, the carrying on of the Business (including, without limitation, the benefit of all outstanding insurance claims in Schedule 7 of the Disclosure Letter ) by the Transferor; and*
- (xii) the aggregate of cash (whether in hand or credited to any account with any banking financial, acceptance credit, lending or other similar institution or organization) and its cash*

*equivalents, including all interest accrued thereon, as shown by the books of the Transferor in connection with the Business.*

*1.1.25 “**Licenses**” shall mean all licenses, permissions authorizations (public or private), consents, approvals, certificates, permits or other evidence of authority issued by a Regulatory Authority relating to or utilized in connection with the Business or any part thereof or the Business Assets, including any and all consents and approvals required to be obtained from any Regulatory Authority under any applicable Laws for the Transferor to sell, assign and transfer, or procure the sale, assignment or transfer of the Business, to the Transferee.*

*1.1.33 “**Records**” shall mean and include the files, books, records, customer and supplier information and other documents relating to the Business, in the possession or control of the Transferor, in whatever form and upon whatever media they may be recorded, as set out in Annexure-4.*

*1.1.36 “**Slump Sale**” shall mean and transfer of the Business, as an inseparable whole, as a going concern on an as is where is basis for a lump sum consideration without value being assigned to the individual assets and liabilities as defined in the Income Tax Act, 1961”.*

(viii) That in the BTA, VMPL had also specifically represented and warranted to SPCPL that Plant No. 1 and Plant No. 2 , amongst others,

comprise all the land and building leased, controlled, occupied or used by or in connection with the business. Article 10 of the BTA also stipulates various obligations of VMPL subsequent to the transfer, i.e. to aid and assist SPCPL before various authorities for completion of filing and other necessary formalities in order to give effect to the transfer of the business from VMPL to SPCPL.

(ix) That even under the Subscription and Shareholders' Deed dated 4<sup>th</sup> November, 2010 ("SSD") as amended by a Supplemental Deed dated 4<sup>th</sup> March 2011 ("Supplemental SSD"), pursuant to which the aforesaid restructuring took place and the BTA and the Supplemental Agreement dated 18<sup>th</sup> March, 2011 were entered into, the Malhotra Parties which includes RKM were required to, simultaneously with the termination of the Job Work Agreement Secondment Agreement and/or Equipment Lease Agreement, deliver inter alia a lease agreement executed by VMPL (as lessor) in favour of SPCPL (as lessee) in respect of Plant No. 2 and a letter agreement in relation to the renewal of the aforesaid lease.

(x) That in view thereof, it is an admitted position that the intention of

the parties was to transfer the Business and the Business Assets in its entirety to SPCPL and to the exclusion of VMPL.

(xi) That VMPL has filed an Affidavit-in-Reply dated 27<sup>th</sup> January, 2015 before this Court. In the Affidavit-in-Reply VMPL has inter alia admitted that SPCPL was in possession and control of Plant No.2. Such admissions are also found in the other pleadings filed by VMPL.

7. In support of its above case, SPCPL in its Affidavits and written submissions further submitted as follows:

(a) That the Affidavits filed by the Officers of SPCPL and the bills and photographs produced by SPCPL show that SPCPL is in possession of Plant No.2.

(b) That VMPL itself has in Petition No. 13 of 2012 filed before the CLB alleged that it is not carrying on any other business and all its assets have been transferred to SPCPL, which clearly establishes that it is SPCPL

which is carrying on its business from Plant No.2 and is in possession and control of the same.

(c) That a conjoint reading of Clauses 1.13, 1.1.4, 6.6, Annexure-8- Clause 5.3 and Clause 9.1 of the BTA, makes it apparent that all assets and properties used by VMPL as part of its business were agreed to be transferred by VMPL in favour of SPCPL which includes Plant No.2.

(d) That post execution of BTA, all employees and assets of VMPL including Plant No.2, stood transferred in favour of the Appellant . As such post the BTA, SPCPL stood possessed of Plant No.2 and its employees started operating Plant No.2.

(e) That it is clear from the terms relating to transfer of Licenses (Clauses 1.1.4 (vii) read with Annexure-1 Part L (Appeal Page 178) that licenses inter alia in respect of Plant No.2 were to be transferred to SPCPL.

(f) That Respondent Nos. 1 and 2 have failed to make any submissions with regard to the need for the employees and equipment in respect of Plant No. 2 being transferred to the Appellant under the BTA and purportedly leased back/seconded under the BTA. The employees were

obviously transferred to SPCPL, since Plant No. 2 was to come to SPCPL.

(g) That till August/September, 2013, VMPL had no knowledge of the terms of the Job Work Agreement, the Secondment Agreement and the Equipment Lease Agreement. This is in consonance with SPCPL's submission that the Agreements were not acted upon and that post the BTA the Appellant continues to be in possession of Plant No.2.

(h) That VMPL or RKM has not identified a single individual who in fact exercised control or possession over Plant No.2 or supervised any of the seconded staff of Plant No.2.

(i) That VMPL did not make any demand for job-work charges and the entries sought to be relied upon by VMPL in respect of conversion charges are merely book entries reflected in the profit and loss statement and do not show any receipt of payment of the said charges.

8. As regards the impugned Order it is submitted on behalf of SPCPL as follows:

(i) That the impugned Order violates natural justice and that failure of natural justice cannot be cured at the appellate stage as held in *L.K. Ratna*

*vs. ICAI* .

(ii) That the impugned Order inasmuch as it provides for police assistance, seeks to pass directions in the nature of execution without the CLB having any express execution powers to do so, and thus the same is beyond the jurisdiction and control of the provisions of Sections 402, 403, 634 and 634A of the Companies Act, 1956.

(iii) That the effect of the impugned Order is to set aside the Agreement (BTA and Supplemental BTA) under which SPCPL claims possession.

(iv) The impugned Order ought not to have been passed without SPCPL being heard by an appropriate forum.

(v) The CLB ought to have deferred the hearing of the Company Application since the Arbitration Petition filed by SPCPL under Section 9 of the Arbitration and Conciliation Act, 1996 was pending before this Court.

(vi) That as held in *Superintendent and Remembrance of Legal Affairs , West Bengal vs. Anil Kumar Bhunja & Ors.*<sup>2</sup>, it is trite law that

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<sup>1</sup> AIR 1987 SC 71

<sup>2</sup> (1979) 4 SCC 274

determination of whether a person is in possession of a property is a mixed question of fact and law and involves determination of control over the property.

(vii) That the above Appeal therefore deserves to be allowed.

9. Mr. Chinoy, Learned Senior Advocate appearing for VMPL/RKM has after referring to the sequence of facts/events set out in Paragraph 5 hereinabove, submitted as follows:

9.1 That the present Appeal is nothing but one more ploy of Rakesh who admittedly controls SPCPL to deprive VMPL and his father RKM who holds 99.99 per cent of the shareholding of VMPL, to inter alia take possession of the assets of VMPL including Plant No. 2 from the ex-Directors Vyas and Chaudhari, having been unsuccessful in stalling the same right upto the Hon'ble Supreme Court.

9.2 The present Appeal is filed by SPCPL at the instance of Rakesh and is a part of Rakesh's mala fide (and judicially stigmatized attempt) to somehow wrongfully continue to exercise control over the assets and properties of VMPL and the same clearly constitutes an abuse of the

process of the Court.

9.3 That under the BTA dated 30<sup>th</sup> December, 2010, while VMPL's Plant No. 1 is listed and included in the definition of "Business Assets" in Clause 1.1.4, VMPL's Plant No. 2 is not included. Therefore, VMPL's Plant No. 2 is not amongst the business assets required to be transferred by VMPL to SPCPL. Moreover, the BTA specifically deals with Plant No. 2 in Clause 1.1.13(d) and requires VMPL to carry out "toll manufacturing" (job work) thereat and supply the products to SPCPL. Such specific provision made in the BTA for Plant No. 2 necessarily excludes any contrary inference/submission on the basis of the General Clauses of the BTA.

9.4 That therefore Clause 6.2.2 (f) and 6.7 of the BTA which are relied on by SPCPL are not applicable to VMPL's Plant No.2. The said two Clauses only refer to VMPL's obligation to execute further documents if required to effectively transfer the "Business Assets" which term is defined in Clause 1.1.4., and which does not include VMPL's Plant No. 2.

9.5 That therefore Clauses 2.1, 5 and 9 and Annexure-8 of the BTA

which are relied on by SPCPL also have no relevance. They are general provisions regarding transfer of the business and do not alter the above position or in any way detract from the specific provision made in Clause 1.1.13 (d) regarding Plant No.2.

9.6 That under the BTA, whilst VMPL is to carry on toll manufacturing/job-work at its Plant No.2 and supply such products to SPCPL, its plant and machinery as also all its employees stood transferred to SPCPL.

9.7 That thereafter to implement the above Toll Manufacturing/job work arrangement, (a) the Job Work Agreement was executed which recorded that VMPL as a job handler agreed to manufacture and supply certain stipulated products to SPCPL, against payment of stipulated amounts as conversion charges. (b) The Staff Secondment Agreement was executed under which the employees who had stood transferred to SPCPL under the BTA, were made available/deputed back by SPCPL to VMPL for operating VMPL's Plant No. 2 against VMPL paying a Secondment Fee to

SPCPL. (c) The Equipment Lease Agreement was executed whereunder the plant and machinery /equipment of Plant No. 2 which had stood transferred to SPCPL under the BTA, was leased back by SPCPL to VMPL against VMPL paying lease rental for the same.

9.8 That RKM was aware about these three Agreements which were to be executed between VMPL and SPCPL. However, copies of the same were made available to VMPL by the hostile ex-Directors of VMPL in the course of the Company Appeal proceedings in this Court in 2013. The said Agreements are in accordance with the BTA which requires VMPL to carry out toll manufacturing at its Plant No. 2 and supply the manufactured products to SPCPL. However, the commercial/payment terms under the three agreements have been skewed in favour of SPCPL by the said hostile ex-Directors acting at the instance of Rakesh, with the result that VMPL has made substantial losses while carrying out such job work inasmuch as the lease rentals and the staff secondment charges required to be paid by VMPL to SPCPL are higher than the conversion charges received by VMPL from SPCPL.

**9.9** That it was under the said Secondment Agreement that SPCPL employees were deputed/made available to VMPL for operating/manning its Plant No.2. However, clauses 2.1 to 2.5 of the Secondment Agreement make it clear that Plant No. 2 is in the possession and control of VMPL and that Plant No. 2 is being operated by VMPL and that the staff deputed/seconded from SPCPL to VMPL are operating Plant No. 2 under the supervision and control of VMPL.

**9.10** That the job manufacturing activities at Plant No. 2 were and are being carried on by VMPL and not by SPCPL. The said activities were being carried on and the deputed employees were operating Plant No. 2 under the supervision of Vyas and Chaudhari, the ex-Directors of VMPL till February, 2015. Accordingly the fact that SPCPL's employees, who were seconded/deputed to VMPL under the Secondment Agreement, are operating VMPL's Plant No.2, or that SPCPL has been paying the wages/statutory dues of such seconded employees, or that such deputed/seconded employees wear the uniform of SPCPL, or the affidavits filed by such deputed employees, does not and cannot mean that SPCPL is

either in possession or control of VMPL's Plant No. 2, as falsely alleged by SPCPL.

**9.11** That a completely false and malafide submission is belatedly made by SPCPL, in the List of Dates and written submissions that the said three Agreements i.e. Job Work Agreement, Secondment Agreement and Equipment Lease Agreement, have not been acted upon. The said three Agreements have been referred to and relied upon by SPCPL itself in the present Company Appeal (and have been annexed as Exhibits-E, F and G) as Agreements entered into to “take forward” the job work arrangement under the BTA and have also been referred to and relied upon in SPCPL's Affidavit-in-Rejoinder. However, inasmuch as the terms of the said three Agreements clearly negate/are destructive of SPCPL's false case/allegation of being in possession of VMPL's Plant No. 2 by virtue of its deputed/seconded employees operating VMPL's Plant No.2, in the List of Dates tendered in Court by SPCPL it was sought to be falsely contended for the first time that, “ *In Appellants submission these Agreements have not been acted upon...* ”. The same false and mala fide allegation/contention has

also been repeated in the written submissions filed by the Appellants on 21<sup>st</sup> April, 2015. Not only is this comment/allegation of SPCPL, in the List of Dates and written submissions, contrary to the case/pleadings of SPCPL, but is indicative of the fact that SPCPL is making this baseless/false submission as it is aware that its false case of being in possession of Plant No.2, is negated/contradicted by the bare terms of the said job work Agreement and the said Secondment Agreement. The said allegation that the Agreements were not acted upon is also belied by the fact that VMPL's ledger folio in SPCPL's books of account (produced and handed over in Court during the hearing), has regular debits for payment of "Equipment Lease Charges" and "Secondment Charges" by VMPL to SPCPL and payment of conversion charges - as per the Agreement by SPCPL to VMPL.

**9.12** That significantly the presence of its employees in VMPL's Plant No. 2 and the fact that they are operating the same, is the only basis on which SPCPL alleges that it is in possession of the said Plant No. 2 from March, 2011. As stated above, that baseless/false case is fully answered by the BTA and the staff Secondment Agreement.

**9.13** That there can be no better evidence to belie the case of SPCPL being in possession of Plant No. 2 since 30<sup>th</sup> December, 2010/18<sup>th</sup> March, 2011, than the Affidavits of Jagtap and Chaudhari dated 14<sup>th</sup> March, 2013 and 28<sup>th</sup> February, 2012 respectively, filed on behalf of VMPL in C.A. No. 2023 of 2012 in Writ Petition No. 4358 of 2001, wherein they have categorically denied that SPCPL is in occupation or possession of the suit property (Plant No.2) and asserting that VMPL has not created any third party interest over Plant No.2 or parted with possession of Plant No.2, and also the List of Assets dated 4<sup>th</sup> September, 2014, submitted by Rakesh in the UK Court wherein he has affirmed on oath that VMPL's Plant No.2, Peeco Plant and staff quarters are in possession of VMPL.

**9.14** That the CLB's order dated 2<sup>nd</sup> February, 2015, falls squarely within its powers/jurisdiction under Section 403 of the Act as it in effect directs the removed/ex-Directors of VMPL to hand over charge of the Company's properties and assets to its newly appointed Directors/present management. The question therefore of the impugned Order being in

violation of natural justice, or the said Order having dispossessed SPCPL does not arise. By no means the impugned Order can be said to be passed beyond the jurisdiction and control of any provisions of the Companies Act, 1956. The case-law relied upon by SPCPL also lends no assistance to them.

**9.15** That the above Appeal therefore deserves to be dismissed with compensatory costs.

**10.** Before dealing with the above contention of SPCPL that pursuant to the BTA and Supplemental BTA, SPCPL is in control and possession of Plant No. 2 of VMPL since December 2010/18<sup>th</sup> March, 2011, I would like to make it clear that in a case where a written contract is available before the Court and if the terms of the contract are cogent and clear, the Court is not required to read into /examine the intention of the parties outside the contract. Though it is possible that the parties may have intended to ultimately transfer Plant No.2 in favour of SPCPL, the BTA and Supplemental BTA make it clear that the business of VMPL as defined under clause 1.1.3 of the BTA is transferred in favour of SPCPL, but all the assets of VMPL are not transferred to VMPL. Though VMPL's

Plant No. 1 is included in the “Business Assets” required to be transferred to SPCPL as per clause 1.1.4 (a) and under Clause 1-1.13(b) is required to be leased to SPCPL, VMPL’s Plant No. 2 which is referred to/described in Clause 1.1.42 is **not** included in the “Business Assets” required to be transferred to SPCPL (Clause 1.1.4). In fact, though Clause 1.1.4 (viii) of the BTA included in “Business Assets” all the transferable licenses including licenses pertaining to Plant No. 2, the same was consciously deleted in the Supplemental BTA. Moreover, the BTA specifically deals with VMPL’s Plant No. 2 in Clause 1.1.13 (d) and specifically provides that VMPL shall carry out Toll Manufacturing (job work) at its Plant No. 2 and supply the products to SPCPL.

11. As correctly pointed out by Mr. Chinoy, such specific provisions made in the BTA for Plant No. 2 necessarily exclude any contrary inference/submission on the basis of the General Clauses of the BTA. In any event, Clause 6.2.2 (f) and 6.7 of the BTA which are relied on by SPCPL are not applicable to VMPL’s Plant No.2. The said two clauses only refer to VMPL’s obligation to execute further documents, if required, to effectively transfer the “Business Assets”, which term is

defined in Clause 1.1.4 and does not include VMPL's Plant No. 2. Instead, as stated earlier, it is specifically provided in Clause 1.1.13 (d) that VMPL is to carry on its job work at Plant No. 2 and supply the products to SPCPL. Also Clauses 2.1, 5, 9 and Annexure-8 of the BTA and the other provisions which are relied on by SPCPL are general provisions regarding transfer of the business and do not alter the above position or in any way detract from the specific provision made in Clause 1.1.13 (d) regarding Plant No.2.

**12.** Therefore, in my view, SPCPL has been unable to show a single provision from the BTA or the Supplemental BTA whereunder Plant No. 2 is either transferred to SPCPL, or the control and possession of Plant No. 2 is handed over to SPCPL.

**13.** SPCPL's allegation/case that it has been in possession of VMPL's Plant No. 2 since December 2010/March 2011 is further belied by the following:

**13.1** Under the BTA whilst VMPL is to carry on toll manufacturing/job work at its Plant No.2 and supply such products to SPCPL (Clause 1.1.13 (d) of the BTA), its plant and machinery as also its employees stood

transferred to SPCPL (Clause 1.1.4 (iv) & Cl. 6.2.3 of the BTA). Therefore, in order to implement the above Toll Manufacturing/job work arrangement, three Agreements were executed by VMPL with SPCPL viz. (a) the Job Work Agreement dated 18<sup>th</sup> March, 2011, wherein it is recorded that VMPL as a job handler agreed to manufacture and supply certain stipulated products to SPCPL, against payment of the stipulated amounts as conversion charges; (b) The Staff Secondment Agreement dated 18<sup>th</sup> March, 2011 which was executed under which the employees who had stood transferred to SPCPL under the BTA, were made available/deputed back by SPCPL to VMPL for operating VMPL's Plant No. 2 against VMPL paying a Secondment fee to SPCPL; and (c) the Equipment Lease Agreement dated 18<sup>th</sup> March, 2011 whereunder the plant and machinery /equipment of Plant No. 2 which had stood transferred to SPCPL under the BTA, were leased back by SPCPL to VMPL against VMPL paying lease rental for the same (hereinafter referred to as the "three Agreements"). All the three Agreements which were executed much after the execution of the BTA and simultaneously with the Supplemental BTA are referred to and relied upon by SPCPL

itself in the above Appeal. The relevant clauses of the three Agreements which show VMPL's control and possession of Plant No. 2 are reproduced hereunder:

**(i) Secondment Agreement dated 18<sup>th</sup> March, 2011 between VMPL and SPCPL:**

*“2.1 “VMPL shall exercise day to day supervision and control over the deputed employees...”*

*2.2 “ All the deputed employees shall be deputed solely at **VMPL’s premises** located at Plot No. 153, TPS 1. The deputed employees shall during their deputation perform the tasks allotted to them by the representatives of VMPL and shall act under the supervision, direction, instructions and guidance of VMPL ”.*

*2.3 “ VMPL shall be liable for the acts and omissions of the deputed employees.... ”*

*2.4 “The deputed Employees shall follow the working hours specified by VMPL. ”*

*2.5 “ VMPL shall ensure that the deputed employees are adequately instructed with respect to the tasks to be performed by them and are provided adequate supervision and guidance so as to enable them to perform the tasks assigned to them”*

**(ii) Job Work Agreement dated 18<sup>th</sup> March, 2011 executed between VMPL and SPCPL:**

“.....

AND WHEREAS VMPL HAS AGREED TO CARRY OUT  
AFORESAID JOB HANDLING FOR SPCPL AS  
ENUMERATED BELOW:

JOB HANDLING ACTIVITIES BY VMPL AT ITS  
PREMISES LOCATED AT PLOT NO. 153 TPS NO. 1  
VILLAGE NAUPADA TAL. & DIST. THANE”.

**(iii) Equipment Lease Agreement dated 18<sup>th</sup> March, 2011 executed between VMPL and SPCPL:**

“...Now therefore, in consideration of the reciprocal promises and obligations and mutual covenant between the parties recorded hereinafter, the parties hereto, are entering into this Deed which witnesses as follows:

The lessor hereby grants lease and the lessee takes on lease (lease) with effective control and possession, the equipment for the fixed period with effect from the commencement date subject to the terms and conditions, covenants and agreements herein contained and part of

the lessee to be observed and performed provided that **all of the equipment shall be located solely at the lessee's premises** located at Plot No. 153, TPS No.1, Village Naupada, Taluka & Dist. Thane

Admittedly Plant No. 2 is located at Plot No. 153, TPS No. 1, Village Naupada, Taluka and District Thane. The relevant Clauses from the Secondment Agreement set out hereinabove make it clear that Plant No. 2 is in possession and control of VMPL; that Plant No. 2 is being operated by VMPL and that the staff deputed/seconded from SPCPL to VMPL are operating Plant No.2 under the supervision and control of VMPL. In the Job Work Agreement dated 18<sup>th</sup> March, 2011 it is inter alia clearly agreed between VMPL and SPCPL that job handling activities will be carried out by VMPL **AT ITS PREMISES i.e. at Plant No.2** thereby admitting that Plant No. 2 is and would be in possession of VMPL and not SPCPL. Again it is mentioned in the Equipment Lease Agreement that the equipment leased by SPCPL shall be in the premises of VMPL, i.e. Plant No. 2, which again shows that SPCPL had agreed that Plant No.2 would remain in possession of VMPL. It is therefore clear that the activities under the Job

Work Agreement were being carried on under the supervision of the ex-Directors Vyas and Chaudhari by the deputed employees at Plant No.2.

In the circumstances, as correctly submitted by Mr. Chinoy, the fact that SPCPL's employees who were seconded/deputed to VMPL under the Secondment Agreement are operating VMPL's Plant No.2 or that SPCPL has been paying the wages/statutory dues of such seconded employees or that such deputed/seconed employees wear the uniform of SPCPL or the affidavits filed by such deputed employees, does not and cannot mean that SPCPL is either in possession or in control of VMPL

14. The allegation made in the Appeal of SPCPL that the job work arrangement was to follow till such time VMPL would effectively execute conveyance of the land pertaining to Plant No. 2 in its favour from Harbanslal Malhotra & Sons Ltd., or that the job work agreement with respect to Plant No. 2 was entirely an ad-interim arrangement for logistical reasons, is nowhere to be found in the BTA or in the Supplemental Agreement pursuant to which SPCPL claims that it is in possession and

control of Plant No. 2 of VMPL.

15. Again, as stated earlier, SPCPL has in its Appeal relied on the Job Work Agreement, Secondment Agreement and the Equipment Lease Agreement, all dated 18<sup>th</sup> March, 2011 and has also annexed copies of the same as Exhibits 'E', 'F' and 'G' to the Appeal. In the said Appeal, SPCPL has nowhere stated that the said Agreements were not to be implemented or were not infact implemented. However, at the time of advancing arguments, SPCPL realised that the incorrect case advanced by it viz. that Plant No. 2 of VMPL is transferred to SPCPL and/or is in control and possession of SPCPL since December 2010/18<sup>th</sup> March, 2011, was completely negated/contradicted by the BTA and more particularly the said three Agreements. SPCPL therefore, for the first time in the list of dates tendered in Court and in its written submissions, falsely alleged that the said three Agreements were not acted upon. Again, the allegation that the Agreements were not acted upon is also belied by the fact that VMPL's ledger folio in SPCPL's books of account (produced and handed over in Court during the hearing), has regular debits for payment of "Equipment Lease Charges" and "Secondment Charges" by VMPL to SPCPL and

payment of conversion charges - as per Agreement by SPCPL to VMPL. SPCPL has tried to incorrectly draw support to their contention that the three Agreements were not acted upon, from the submission of RKM that he was handed over copies of the three Agreements only in the year 2013. However, Mr. Chinoy has correctly explained that RKM was always aware that the three Agreements were required to be executed between SPCPL and VMPL for the purpose of the job work agreement, as provided in the BTA. However, since Vyas and Chaudhari at the instance of Rakesh, who admittedly controlled SPCPL, turned hostile and chose to exclude RKM, who holds 99.99% shares in the five Indian Companies including VMPL, they did not provide RKM with copies of the three Agreements, and the same were provided to him only in the course of the Company Appeal proceedings in this Court in 2013. This fact certainly cannot be construed to mean that the said three Agreements were not acted upon by the parties.

**16.** That the case of SPCPL that all the assets of VMPL were transferred to SPCPL pursuant to the BTA and Supplemental BTA is further belied by the fact that on 9<sup>th</sup> February, 2012 and 7<sup>th</sup> November, 2012, CLB passed

Orders restraining the Respondents in Company Petition No. 13 of 2012 filed by RKM including Rakesh, Vyas and Chaudhari from disposing off, transferring, encumbering or creating any charge on the assets of VMPL including the immovable properties of VMPL and directed the parties to maintain status quo in respect of the assets/immovable properties of VMPL. The said Orders were also continued by this Court whilst dismissing the Appeals filed by Rakesh by its Order dated 20<sup>th</sup> August, 2014. However, at no point of time Vyas and Chaudhari and/or Rakesh have impugned the said Order and/or have submitted before the CLB or before this Court or before the Hon'ble Supreme Court that since all the assets of VMPL have allegedly been transferred to SPCPL or that SPCPL is in possession and control of the assets including Plant No. 2, no such orders could have been passed by the CLB or continued by this Court.

17. Again, after the Appeals filed by Rakesh were dismissed by this Court by its order dated 12<sup>th</sup> /20<sup>th</sup> August, 2014 and the removal of Vyas and Chaudhari was upheld and Rakesh failed to obtain a stay of the said order in the SLP filed by him, the Advocates for RKM repeatedly wrote

letters to the Advocates for Rakesh, Vyas and Chaudhari, calling upon Vyas and Chaudhari to hand over the records and immovable properties of VMPL to the newly appointed Directors. Neither the said Ex-directors nor Rakesh at any time took a stand that all the immovable properties of VMPL are transferred to SPCPL or are in control and possession of SPCPL as is now alleged.

18. The most glaring facts which belie the allegation of SPCPL that it is in control and possession of Plant No. 2, are, at the cost of repetition, once again set out hereunder as follows:

18.1 Mr. Sanjay Jagtap, Head Legal and Secretariat of SPCPL who has filed his Affidavit-in-Support in the above Appeal claiming control and possession of Plant No. 2 by SPCPL since December, 2010/March, 2011 has filed an Affidavit dated 14<sup>th</sup> March, 2013, in Civil Application No. 2023 of 2012 in Writ Petition No. 4358 of 2001 in this Court wherein he has stated that, ***“I deny that SPCPL has been put in possession of the suit property (i.e. Plant No. 2) or that they are now carrying on the business***

*from the suit property”* (Para 20 of the Affidavit) and *“I deny that SPCPL are in occupation and possession of the suit property....”* (para 21 of the Affidavit).

18.2 Similarly, Mr. Subhash Chaudhari, General Manager – Corporate Legal of SPCPL, Respondent No. 9 herein, who has filed Affidavit/s in the present proceedings and had orally contended before the CLB on 2<sup>nd</sup> February, 2015, when the impugned Order was passed that SPCPL was allegedly in possession of VMPL's Plant No. 2 had filed an Affidavit on 28<sup>th</sup> February, 2012, as the authorised signatory of VMPL in Civil Application No. 2023 of 2012 in Writ Petition No. 4358 of 2001 categorically stating that, *“ I deny that SPCPL are in occupation and possession of the suit property” (i.e. Plant No. 2)* [Para 10 of the Affidavit] and *“I deny that the Petitioners (VMPL) have created third party interest over suit property or that they have parted with possession of the suit property to SPCPL.....”* [Para 12 of the Affidavit].

18.3 As stated earlier, when the above contradictions were pointed out,

SPCPL unabashedly submitted before this Court that the earlier statements made by Jagtap and Chaudhari were made on behalf of VMPL and not on behalf of SPCPL and reflected VMPL's possession thereby admitting that false statements were made on oath by Jagtap and Chaudhari as it suited their convenience and depending on the party/Company on whose behalf such statements are made. It is also sought to be contended by SPCPL that the said Affidavits were filed at the instance of the Directors/Promoters of the Company. This surely cannot be accepted since again, as stated earlier, before the said Affidavits were filed, RKM had already filed Petition No. 13 of 2012 before the CLB under Sections 397, 298 and 402 of the Act setting out how at the instance of Rakesh, the said Vyas and Chaudhari were committing acts of oppression and mismanagement qua RKM/VMPL.

19. SPCPL, in support of its contention that pursuant to the BTA and Supplemental BTA, SPCPL is in possession and control of all the assets of VMPL including Plant No. 2, has laid emphasis on the fact that in Company Petition No. 13 of 2012, it is averred by RKM that the Company

is not carrying on any business as on date and that by a BTA, the business together with all its assets and liabilities were transferred to SPCPL, thereby meaning that even Plant No. 2 was in control and possession of SPCPL. Apart from the contention of the SPCPL that they were in control/possession of Plant No.2 since 30<sup>th</sup> December 2010/18<sup>th</sup> March, 2011 being belied by the aforestated facts, as correctly submitted by Mr. Chinoy, the Learned Senior Advocate appearing for VMPL, it is obvious that what RKM meant was that VMPL was not carrying on its own business as on date but was carrying on the job work of SPCPL as agreed under the Job Work Agreement. Again it cannot be held that RKM meant that each and every asset along with the liabilities of VMPL was under the BTA transferred to SPCPL in view of the following averments/prayers contained in the Company Petition No. 13 of 2012 itself:

- (i) “..... *The Company, in addition to the investments held as stated above, is the owner of several immovable properties, which are more particularly described in Annexure “2” hereto annexed*”

(Para 15 page 175 of Compilation Volume 1). It is pertinent to note that Annexure “2” also includes Plant 2 of VMPL and

therefore as on 2<sup>nd</sup> February 2012 it is the case of RKM in the Petition that the Company (VMPL) is inter alia the owner of Plant No.2.

(ii) “..... *The Petitioner states that by issuing the said corporate guarantee, Respondent Nos. 2 and 3 have not only breached the fiduciary responsibilities to the Company but have also jeopardized **the assets of the Company***” ( Para 21 page 178 of Compilation Volume 1);

(iii) “*The Petitioner apprehends that under the influence of Mr. Rakesh Malhotra, Respondent No.6 (Rakesh), Respondent Nos. 2 and 3 (Vyas and Chaudhari) are likely to engage in further activities of mismanagement that may permanently impair the **assets of the Company** and result in irreparable loss damage and injury to the Company and its shareholders*” (Para 26 pages 179-180 of Compilation Volume 1);

(iii) Interim reliefs: (g) and (h):

“(g) *Respondent Nos. 2 and 3 (Vyas and Chaudhari) be restrained by a temporary order and injunction of this Hon'ble Board from:*

(i) ... ....

(ii) *selling, transferring, encumbering or charging or otherwise disposing of or alienating any of the assets of the Company including the immovable properties more particularly described in Annexure 2 hereto:*

(iii) .... ..

(h) *Respondent Nos.2, 3 and 5 to 8 be directed to maintain status quo with regard to the properties and assets of the Company including but not limited to bank accounts, mutual fund holdings and immovable properties.”*

Therefore the statement made in Company Petition No. 13 of 2012 that the business together with all its assets and liabilities was transferred to SPCPL will have to be read to mean that by a BTA all the assets and liabilities **set out therein** were transferred to SPCPL.

**20.** I am therefore of the view that SPCPL has not even made out a prima facie case of VMPL's Plant No. 2 having been transferred to SPCPL,

or SPCPL being in control and possession of Plant No.2. As submitted by RKM, upon execution of the BTA, the Staff of VMPL was transferred to SPCPL. Vyas and Chaudhari who were earlier the employees of VMPL now became employees/consultants of SPCPL. However, since Vyas and Chaudhari as employees of VMPL were appointed as Directors of VMPL since the years 1993 and 2001 respectively, RKM reposed trust in them and allowed them to continue as Directors of VMPL. Rakesh who admittedly controls SPCPL started prevailing upon Vyas and Chaudhari and through them was dealing with the finance and assets of VMPL as per his wishes. In fact it is for this purpose that RKM filed Company Petition No. 13 of 2012 before the CLB under Sections 397, 398 and 402 of the Companies Act, inter alia, against Vyas, Chaudhari and Rakesh, seeking removal of Vyas and Chaudhari and appointment of new Directors in their place and protection of the assets of VMPL. CLB allowed RKM to replace Vyas and Chaudhari from acting as Directors of VMPL. Rakesh impugned the orders right upto the Hon'ble Supreme Court of India but failed to prevent RKM from removing Vyas and Chaudhari as Directors of VMPL. Since Vyas and Chaudhari have during the interregnum throughout denied

access to RKM qua the working and affairs of VMPL and have acted as per the directions of Rakesh who admittedly controlled SPCPL and allowed Rakesh to deal with the finances and assets of VMPL as per his wishes, Rakesh or SPCPL now cannot be allowed to take advantage of the same and contend that SPCPL was in possession and control of the assets of VMPL, since RKM is unable to show which Officer of VMPL supervised the working of Plant No. 2 or that VMPL never made a demand for conversion charges or that there were only book entries made qua the conversion charges or that some property tax bills were paid by SPCPL, etc. All these happenings were only because Rakesh, who controlled SPCPL, also controlled Vyas and Chaudhari, who were employees/consultants of SPCPL and also the ex-Directors of VMPL and through them acted completely against the interest of VMPL and RKM. If Rakesh/SPCPL is allowed to take advantage of their own wrongs, it would amount to Rakesh/SPCPL being paid a premium on their dishonesty.

**21.** SPCPL has in its desperate attempt to point out that it was allegedly in possession and control of Plant No. 2 tried to pull out a sentence here

and there from the pleadings filed by RKM in his several proceedings claiming that RKM has admitted the possession and control of SPCPL in respect of Plant No.2. I have gone through all the pleadings in their entirety and am satisfied that they belie the allegation that RKM has admitted the possession and control of SPCPL. On a reading of the pleadings in entirety (and not a sentence here and there) it is clear that RKM has repeatedly stated in his pleadings that Vyas and Chaudhari were the two Directors of VMPL on the date of execution of the BTA of December, 2010 and were the employees/consultants of VMPL. Upon execution of the BTA, the staff of VMPL was transferred to SPCPL, Vyas and Chaudhari became employees/consultants of SPCPL. RKM reposed trust in them and allowed them to continue as Directors of VMPL. Rakesh who admittedly controls SPCPL started prevailing upon Vyas and Chaudhari and through them was dealing with the finance and assets of VMPL as per his wishes. In fact it is for this purpose that RKM filed Company Petition No. 13 of 2012 before the CLB under Sections 397, 398 and 402 of the Companies Act, inter alia, against Vyas, Chaudhari and Rakesh, seeking removal of Vyas and Chaudhari and appointment of new Directors in their place and

protection of the assets of the Company.

22. Having come to the conclusion that SPCPL has not even made out a prima facie case in support of its contention that Plant No. 2 has been transferred to SPCPL or SPCPL has been in control and possession of Plant No. 2 pursuant to the BTA dated 30<sup>th</sup> December, 2010 and the Supplemental BTA dated 18<sup>th</sup> March, 2011, the issue which now needs to be considered is whether, as submitted on behalf of RKM, the present Appeal filed by SPCPL is a bona fide action on the part of SPCPL or is an act of SPCPL at the instance of Rakesh who admittedly controls SPCPL. As stated earlier, RKM had decided to restructure and hand over control of Supermax Group of Companies to his eldest son Rakesh. As part of that restructuring, SPCPL was registered as a new Company controlled by Rakesh. On 30<sup>th</sup> December, 2010, a BTA was executed between VMPL and SPCPL, the relevant terms of which are set out/discussed hereinabove. Since the persons who were appointed as Directors of VMPL were always the employees/consultants of VMPL and not the family members of RKM, pursuant to the BTA all the employees including the ex- Directors of

VMPL (Vyas and Chaudhari) were transferred as employees/consultants of SPCPL. RKM at this stage could have removed Vyas and Chaudhari and appointed new Directors. However, since mortal beings are unable to foresee the future, and RKM being no exception, RKM not only trusted Rakesh, but Vyas and Chaudhari as well, and continued Vyas and Chaudhari as Directors of VMPL. Rakesh misused the trust placed on him by RKM and used his influence over Vyas and Chaudhari, the Directors of VMPL (who pursuant to the BTA were now employees/Consultants of SPCPL), to exclude RKM who held 99.99% of the shares of the five Companies. Through these pliant Directors, Rakesh also sought to utilise the funds, assets and properties of the 5 Companies including VMPL for the benefit of SPCPL/himself. Therefore in 2012, RKM was constrained to file Petitions in the CLB under Sections 397/398 of the Companies Act for removal of the said hostile Directors Vyas and Chaudhari. Rakesh, at whose instance the said Directors were acting, was joined as a party Respondent to the Petition. Ordinarily, employees like Vyas and Chaudhari would have straightaway submitted to the orders of the Court but Rakesh, who admittedly controlled SPCPL, wanted his way

out in VMPL. He therefore left no stone unturned in opposing their removal sought by RKM.

**22.1** From 2012 till 2014, Rakesh prevented/delayed the hearing of the CLB Petition/removal of the said hostile Directors by filing diverse proceedings and through the said hostile Directors continued to use and exercise control of the funds and assets of VMPL. In 2012, Rakesh filed a Suit in the UK Court and obtained a stay from proceeding with the CLB Petitions. After the UK Suit was dismissed, Rakesh filed an application in the CLB Petition for reference of the disputes to an Arbitrator under Section 45 of the Arbitration and Conciliation Act, 1995. After that application was dismissed by the CLB and orders were made by the CLB in January, 2013, permitting the removal of the hostile Directors, Rakesh filed an Appeal (L) No. 10 of 2013 in this Court and secured orders of interim stay of their removal. Vide its Judgment dated 12<sup>th</sup> /20<sup>th</sup> August, 2014, this Court dismissed Rakesh's Appeal, and while rejecting his application for continuation of stay of removal of the Directors, severely criticized /stigmatised Rakesh's attempt to usurp and control the funds and

assets of VMPL through Vyas and Chaudhari. Rakesh preferred SLP against the said Judgment and Order dated 20<sup>th</sup> August, 2014. In the SLP grounds, Rakesh categorically affirmed that he controlled SPCPL and stated that he was apprehensive that if the stay order was vacated and RKM was allowed to take control of the 5 Companies including VMPL, he would jeopardize arrangements between them and SPCPL. By its Order dated 10<sup>th</sup> September, 2014, the Hon'ble Supreme Court granted Rakesh Leave to Appeal but specifically declined stay of the order. Thereafter from August 2014 to December, 2014, the said ex-Directors despite the Judgment and Order refused to hand over charge of the funds, assets and properties to VMPL's new management on diverse and untenable grounds. This again was done obviously at the instance of Rakesh.

**22.2** In the circumstances, VMPL filed Company Application No. 296 of 2014 in the CLB Petition to restrain the ex- Directors from holding themselves out as Directors of VMPL and to direct them to hand over charge of the properties and records of VMPL to the newly appointed Directors. In the said application, Rakesh and the ex-Directors of VMPL

were represented by the same Advocates. By Orders dated 20<sup>th</sup> November, 2014 and 5<sup>th</sup> January, 2015, made in Company Application No. 296 of 2014, CLB had restrained the ex- Directors of VMPL i.e. Respondents Nos. 8 and 9 therein from acting and holding themselves out as Directors of VMPL and had recorded a finding that the ex-Directors were wilfully disobeying the orders and not handing over charge. Rakesh and the ex-Directors now realised that it would no longer be possible for the ex-Directors to hold on to the assets of VMPL. Rakesh therefore caused SPCPL to file an Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1996 against VMPL restraining VMPL from communicating with the statutory authorities regarding Plant No.2 and against discontinuation of water supply from the Peeco Plant to Plant Nos. 1 and 2. VMPL has in its reply set out the aforesaid facts and pointed out that at the instance of Rakesh the removed/hostile Directors had wrongfully been retaining control of VMPL's Plant No.2; that under the BTA, SPCPL has no right to control or manage Plant No.2, but notwithstanding that, SPCPL had purported to file the Petition; that the said Petition of SPCPL was an abuse of the process of law and was a mala

fide attempt by Rakesh to wrongfully assert control over Plant No.2. As correctly submitted by Mr. Chinoy, SPCPL in its written submissions have incorrectly alleged that VMPL has in the said Affidavit admitted SPCPL's possession of Plant No. 2. A perusal of the entire Affidavit clearly negates the said allegation. No reliefs are granted to SPCPL till date in the said petition.

**22.3** On 2<sup>nd</sup> February, 2015, the ex-Directors for the first time confirmed/accepted before the CLB that they had ceased to be Directors of VMPL from November, 2014. However, the said ex-Directors for the first time orally alleged that SPCPL was in possession of the assets of VMPL under the BTA of 2010. As submitted by VMPL, the said claim was obviously at the instance of Rakesh and was an attempt by him to somehow continue to retain control over the assets of VMPL, this time through SPCPL. SPCPL filed the present Appeal on 3<sup>rd</sup> February, 2015 alleging that it has nothing to do with the disputes between Rakesh and RKM and was forced to approach the Court only in view of certain instances of interference on the part of VMPL/RKM commencing from

December, 2014. As set out in paragraph 4 hereinabove, SPCPL repeatedly represented to this Court that it was not concerned with the fights between RKM and Rakesh. In answer to the contention of VMPL/RKM that Rakesh admittedly controls SPCPL, SPCPL took a stand on oath that Rakesh is neither on the Board of Directors of SPCPL nor is concerned with the day to day affairs of SPCPL. These false representations on the part of SPCPL stood exposed when this Court enquired from SPCPL whether SPCPL had financed Rakesh qua any of the litigations initiated/defended by Rakesh against RKM before the CLB or before this Court or before the Hon'ble Supreme Court and in the event of SPCPL having financed Rakesh to pursue the litigation against his father, whether the Board of Directors of SPCPL had passed any Resolution approving the same. After seeking time from the Court on two occasions, the Court was informed by the Counsel appearing for SPCPL that the entire litigation initiated/defended by Rakesh i.e. since the year 2012 has been throughout financed by SPCPL and there is no Board Resolution on record qua the litigation expenses having been borne by SPCPL on behalf of Rakesh. Therefore the entire litigation expense of

Company Petition No. 13 of 2012 incurred by Rakesh has been throughout borne by SPCPL and is shown as the litigation expense of SPCPL. So much for the assertion on oath by SPCPL that it is an independent entity which has nothing to do with the disputes between Rakesh and RKM. I have therefore no doubt that Rakesh after leaving no stone unturned in trying to prevent the removal of Vyas and Chaudhari as Directors of VMPL and having failed in his endeavour, realised that the assets of VMPL, viz. Plant No. 2, will have to be handed over to the new Directors. He has therefore put up SPCPL to file the above appeal making statements/submissions which are false and incorrect to the knowledge of SPCPL. SPCPL, which has admittedly financed the entire litigation pursued by Rakesh against his father RKM, cannot be heard to say that since they were not parties to Company Petition No. 13 of 2012 they were not aware that in the said Petition, RKM had sought protection qua the assets and immovable properties of VMPL and the same were protected by Orders dated 9<sup>th</sup> February, 2012 and 7<sup>th</sup> November, 2012 and were also continued by this Court vide its Order dated 20<sup>th</sup> August, 2014. SPCPL also cannot claim to be ignorant of the fact that Rakesh himself has in an Affidavit filed in the

UK proceedings admitted that Plant No. 2 is in possession of VMPL. Being conscious of these difficulties, SPCPL in its pleadings has repeatedly stated that it was not concerned in any manner with the litigation between Rakesh and RKM. However, this falsehood, as stated hereinabove, stood exposed when in a query raised by the Court SPCPL was compelled to speak the truth that in fact it is SPCPL who has inter alia financed the entire litigation commencing with Company Petition No. 13 of 2012 filed by RKM including Appeals/SLP filed by Rakesh arising from the orders passed therein. The above Appeal, which is undoubtedly filed by SPCPL at the instance of Rakesh, in my view, therefore, lacks bona fides and smacks of mala fides.

**23.** As set out hereinabove, SPCPL has made several submissions qua the impugned order. Since as held hereinabove, SPCPL has failed to even prima facie establish that it is in possession of Plant No. 2 pursuant to the BTA/Supplemental BTA since 30<sup>th</sup> December, 2010/18<sup>th</sup> March, 2011, no question arises of the impugned Order dated 2<sup>nd</sup> February, 2015 being in violation of natural justice qua SPCPL or of the Order having dispossessed

SPCPL. As correctly submitted by Mr. Chinoy, a mere bald allegation made by the ex-Directors for the first time before the CLB on 2<sup>nd</sup> February, 2015, or the allegation of possession subsequently made by SPCPL in the present Appeal cannot affect the jurisdiction of the CLB to pass the Order dated 2<sup>nd</sup> February, 2015 or require the CLB to join SPCPL as a party or hear SPCPL or adjudicate upon such an oral allegation. On 2<sup>nd</sup> February, 2015 the allegation that pursuant to the BTA dated 30<sup>th</sup> December, 2010, SPCPL was in possession of Plant No. 2 was orally made on behalf of Vyas and Chaudhari. Significantly no such allegation was made by Rakesh who admittedly controls SPCPL, who was a party Respondent before the CLB and who was represented by the same Advocates. Again from the record of the proceedings it was clear that though by an Order dated 9<sup>th</sup> February, 2012, CLB had restrained the Respondents, which included Rakesh and the ex-Directors, Vyas and Chaudhari from disposing off, encumbering the assets of VMPL and the very same Order was continued by this Court whilst dismissing the Appeals filed by Rakesh in August, 2014, at no stage had Rakesh (who admittedly controlled SPCPL) and the ex-Directors Vyas and Chaudhari submitted before the CLB or before this Court or before the

Hon'ble Supreme Court that the said Order dated 9<sup>th</sup> February, 2012 ought not to have been passed since allegedly all the assets including Plant No. 2 of VMPL are in possession and/or control of SPCPL from 30<sup>th</sup> December, 2010/18<sup>th</sup> March, 2011. Even after Rakesh failed to obtain a stay from the Hon'ble Supreme Court on removal of Vyas and Chaudhari as Directors of SPCPL, Rakesh and the ex-Directors, as stated hereinabove, refused to accept that Vyas and Chaudhari had ceased to be the Directors of VMPL and that consequently they were required to hand over the assets of VMPL to the new Directors. Extensive correspondence was thereupon exchanged by and between the Advocates for RKM/ VMPL and the Advocates for Rakesh/ex-Directors Vyas and Chaudhari. However, in none of the letters it was contended on behalf of Rakesh, Vyas and Chaudhari that all the assets of VMPL are transferred to SPCPL or are in possession and control of SPCPL. Moreover, the oral allegation made before the CLB was directly contrary to the statements made on oath, more particularly the statement made by Rakesh himself before the UK Court that amongst others, Plant No. 2 of VMPL is in possession and control of VMPL. I therefore see no infirmity in the Order passed by the CLB dated

2<sup>nd</sup> February, 2015 and in my view the same falls squarely within the powers/jurisdiction under Section 403 of the Act as it in effect directs the removed/ex-Directors of VMPL to hand over charge of the Company's properties and assets to its newly appointed Directors/present management. None of the submissions made on behalf of SPCPL in support of its case that the Company Law Board ought not to have passed the impugned order dated 2<sup>nd</sup> February, 2015 can be accepted and the same are hereby rejected. Also in view of the past conduct on the part of Rakesh (who admittedly controls SPCPL) and the ex-Directors Vyas and Chaudhari of refusing to abide by the Orders passed by the CLB/this Court even after the Hon'ble Supreme Court in the SLP filed by Rakesh had specifically declined to stay the same, the CLB was completely justified in directing police assistance which was required to maintain peace and order at the time of implementation of its Order by VMPL/RKM. The case law relied upon by SPCPL is therefore of no assistance to SPCPL.

24. In the circumstances, the above Appeal is dismissed with costs.

25. After pronouncement of this Judgment, the learned Senior Advocate appearing for the Appellant has submitted that the statement of RKM

recorded by this Court in its Order dated 3<sup>rd</sup> February, 2015, be continued for some time. Since the arguments advanced in this Appeal on behalf of SPCPL are confined only in respect to Plant No.2 of VMPL and SPCPL has also confirmed in its written submissions that “*The Appellants' case is of possession of Plant 2 by virtue of the BTA dated 30<sup>th</sup> December, 2010 and the Supplementary BTA dated 18<sup>th</sup> March, 2011*” (Appeal Pgs. 12-13), VMPL/RKM shall for a period of four weeks from the date of this order, maintain status quo as of today in respect of Plant No.2.

**(S.J. KATHAWALLA, J.)**